

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Robert Lannon)
) C.A. No. 08-03-0093
 Plaintiff,)
)
 v.)
)
 Bruce Tucker Construction and)
 Russ Palmer Builders,)
)
 Defendants.)

January 20, 2010

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DECISION ON DEFENDANT RUSS PALMER BUILDERS
MOTION FOR SUMMARY JUDGMENT

Plaintiff has filed this civil action against his employer and the general contractor for which his employer was a subcontractor. He is seeking the payment of unpaid workers' compensation benefits. The general contractor has filed a motion for summary judgment, maintaining that an employee of a subcontractor cannot make a claim for workers' compensation benefits against a general contractor. Based on the well-reasoned opinions of the Delaware Superior Court and the Delaware Supreme Court in *Petit v.*

Country Life Homes, Inc., 2009 WL 846922 (Del. Super.), *aff'd*, 2009 WL 3530377 (Del.), the motion for summary judgment is granted.

BACKGROUND

Robert Lannon (“Plaintiff”) was hired by Bruce Tucker, t/a Tucker Construction, (“Tucker” or “subcontractor”) to provide carpentry services in the construction of custom homes. Tucker was a subcontractor for Russ Palmer Builders, Inc. (“Palmer” or “general contractor”). Plaintiff, while employed by Tucker, was injured on the Palmer job site on September 28, 2006. The Industrial Accident Board (“IAB”) awarded Plaintiff workers’ compensation benefits under the Workers’ Compensation Act (“WCA”) against Tucker for disability and medical expenses totaling \$15,405.34, as well as attorney’s fees and medical witness fees in the amount of \$3,646.96. Tucker failed to pay those benefits within 30 days from the date of demand for payment. As a result, Plaintiff has filed this action against Tucker for breach of statutory duty and breach of the IAB award. In this action, he has additionally filed a claim against Tucker’s general contractor, Palmer, for failure to pay the amount of his unpaid workers’ compensation award.

Palmer has filed this Motion for Summary Judgment. Palmer contends that an employee of a subcontractor cannot make a claim for unpaid workers’ compensation benefits against a general contractor, based on the Delaware Superior Court decision in *Pettit v. Country Life Homes, Inc.*, 2009 WL 846922 (Del. Super.). It is Palmer’s position that the Superior Court in *Pettit* resolved an issue identical to this one and determined that “wages” in the WPCA are not the same as unpaid workers’ compensation benefits for general contractors when the injured worker is an employee of one of their

subcontractors. Therefore, based on *Pettit*, Palmer contends that Plaintiff cannot make a claim for unpaid workers' compensation benefits against it.

Plaintiff contends that Palmer, as the general contractor, is liable to Plaintiff for workers' compensation benefits left unpaid by his subcontractor pursuant to the statutory requirements of 19 *Del. C.* § 2357 and the provisions of the Delaware Wage Payment and Collection Act ("WPCA") at 19 *Del. C.* § 1101, *et seq.* Plaintiff relies on *Huffman v. C. C. Oliphant & Son, Inc.*, 423 A.2d 1201 (Del. 1981) and *Turner v. City of Wilmington*, 2007 WL 731407 (Del.) for the proposition that unpaid workers' compensation payments are legally collectable as unpaid wages.

DISCUSSION

This case involves the interpretation of relevant parts of the WCA and the WPCA.

The WCA states, in relevant part:

If default is made by the employer for 30 days after demand in the payment of any amount due under this chapter, the amount may be recovered in the same manner as claims for wages are collectible.

19 *Del. C.* § 2357. The WCA also provides:

No contractor or subcontractor shall receive compensation under this chapter, but shall be deemed to be an employer and *all rights of compensation of the employees of any such contractor or subcontractor shall be against their employer and not against any other employer.*

19 *Del. C.* § 2311(a) (emphasis added). The WPCA states, in relevant part:

Whenever any person shall contract with another for the performance of any work which the contracting person has undertaken to perform, the person shall become civilly liable to employees engaged in the performance of work under such contract for the payment of wages, exclusive of liquidated damages, as required under this chapter, whenever and to the extent that the employer of such employees fails to pay such wages, and the employer of such employees shall be liable to such person for any wages paid by the employer under this section.

19 *Del. C.* § 1105.

Plaintiff's argument, that 19 *Del. C.* § 2357 can be used to bring an action under the WPCA to hold a general contractor liable for the unpaid workers' compensation benefits of a subcontractor's employee, was specifically addressed in the Superior Court's recent decision in *Pettit v. Country Life Homes, Inc.*, 2009 WL 846922 (Del. Super.). In fact, the parties' arguments are virtually identical. Like the plaintiff in *Pettit*, Plaintiff contends that *Huffman* allows him to utilize 19 *Del. C.* § 1105, which makes general contractors liable for the unpaid wages of the employees of their subcontractors, to collect unpaid workers' compensation benefits under § 2357. *Id.* at *4. Plaintiff's argument, in essence, equates "wages" in the WPCA with unpaid workers' compensation benefits for general contractors using a subcontractor. However, in *Pettit*, the court rejected the plaintiff's argument that *Huffman* joins the language of the WCA and the WPCA together in such situations.

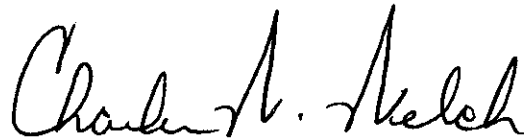
The Superior Court, in *Pettit*, held that *Charley v. Lomascola*, 1995 WL 656800 (Del. Super.), controls. *Id.* The *Charley* court found that § 2311 of the WCA was intended to govern the application of the entire WCA, including § 2357, and that § 1105 of the WPCA could not be used by a subcontractor's employee to recover unpaid workers' compensation from a general contractor. *Charley*, 1995 WL 656800, at *3 (citing *Dickinson v. Eastern Railroad Builders, Inc.*, 403 A.2d 717 (Del. 1979)). The Superior Court determined that "to say 'wages' in the WPCA was the same as unpaid workers' compensation benefits would be to stand the law and policy on its head." *Pettit*, 2009 WL 846922, at *4.¹ The Supreme Court, affirming the Superior Court's ruling in

¹ The General Assembly amended § 2311 on January 17, 2007, to allow employees of uninsured subcontractors to recover workers' compensation benefits from a general contractor. *Pettit*, 2009 WL 846922, at *5 (citing *McKirby v. A & J Builders, Inc.*, 2009 WL 713887, at *4 (Del. Super.)). Because this amendment did not exist prior to 2007, the Court cannot retroactively apply it to this case.

Pettit, explained that “§ 2357 does not convert workers’ compensation benefits into wages. It only provides a mechanism for collection of those benefits under the WPCA.”

The Court cannot find any distinction between the arguments in this case and those in *Pettit*.² Therefore, based on the well-reasoned opinions of the Delaware Superior Court and the Delaware Supreme Court in *Pettit*, Palmer’s Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED THIS 20th DAY OF JANUARY, 2010.



**CHARLES W. WELCH
JUDGE**

² In *Pettit*, the general contractor and subcontractor had a contract obligating the subcontractor to maintain liability and workers’ compensation insurance, and to provide proof of same to the general contractor. The claim was based on breach of contract and the provisions of 19 *Del. C.* § 2357 and 19 *Del. C.* § 1105. The court addressed the statutory claim separately, and it is on this section that this Court bases its decision.