IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISANDRO ORITZ **v.** **CEQUENT PERFORMANCE PRODUCT *d/b/a Bulldog,* CAMDEN IRON AND METAL**	**CIVIL ACTION** **NO. 16-6593**

Baylson, J. April 3, 2017

MEMORANDUM RE: FRAUDULENT JOINDER

In this personal injury action, Plaintiff Lisandro Ortiz alleges that he sustained serious injuries while operating a forklift in the course of his employment, and brings claims arising from that accident against Defendants Cequent Performance Products, Camden Iron & Metal, Inc., and Rhino Recycling, Inc. ("Rhino"). Pending before the Court is Rhino's motion to dismiss, but in order to decide that motion we first must determine the threshold issue of our jurisdiction. This case was removed from the Court of Common Pleas of Philadelphia County by Camden Iron & Metal, Inc. and Rhino ("Removing Defendants") notwithstanding the lack of complete diversity between parties, pursuant to a fraudulent joinder theory.

For the reasons set forth below, we find that Plaintiff did not fraudulently join Rhino, and therefore that we do not have subject matter jurisdiction over this case. We deny Rhino's motion to dismiss as moot and remand the case.

I. Factual and Procedural Background

Plaintiff alleges that he was seriously injured when, on October 16, 2014, he was operating a forklift on a ramp during the course of his employment and the ramp suddenly collapsed. ECF No. 1, Notice of Removal, Ex. A (Complaint) ¶ 8. Plaintiff filed suit on November 22, 2016 in the Court of Common Pleas of Philadelphia County, asserting claims for

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product liability, strict liability, negligence, and breach of warranty against all three defendants. Removing Defendants promptly filed a notice of removal in which they argued that removal was proper notwithstanding Rhino's status as a Pennsylvania corporation, under a fraudulent joinder theory. Id. at 5-7. Specifically, Removing Defendants contended that Pennsylvania's Worker's Compensation Act ("PWCA") immunizes Rhino from liability for any injuries sustained by Plaintiff during the course of his employment with Rhino. Id. According to Removing Defendants, it is a legal impossibility for Plaintiff to recover from Rhino because Plaintiff was Rhino's employee at the time of the alleged accident and therefore his sole remedy from Rhino arises under the PWCA. In support of this argument, Removing Defendants submitted the affidavit of Stephen Deacon, Chief Operations Officer of Camden Iron & Metal, Inc., in which Mr. Deacon states that Camden Iron & Metal, Inc. is a parent corporation of Rhino and that at the time of Plaintiff's accident Plaintiff was an employee of Rhino. Id., Ex. B (Affidavit of Stephen Deacon). Rhino then filed a motion to dismiss on the same grounds asserted in the notice of removal. ECF No. 4, Rhino Mot.

Plaintiff did not seek remand but rather opposed Rhino's dismissal from the case, stating that he believes he was employed by Eastern Metal Recycling at the time of the accident, not Rhino, and that his employment relationship is an issue of fact to be investigated during discovery. ECF No. 5, Pl.'s Opp'n at 3-4. Rhino replied, largely reiterating the same arguments made in its motion. ECF No. 9, Rhino Reply.

II. Legal Standard

Under 28 U.S.C. § 1332, this Court has subject matter jurisdiction over civil actions between citizens of different states where the amount in controversy exceeds $75,000. 28 U.S.C. § 1332. Complete diversity is required, meaning that "every plaintiff must be of diverse state

citizenship from every defendant." In re Briscoe, 448 F.3d 201, 215 (3d Cir. 2006). A corporate defendant is deemed a citizen of its state of its incorporation and the state where it has its principal place of business. 28 U.S.C. §1332(c). Here, Plaintiff is a Pennsylvania citizen and Rhino is a Pennsylvania corporation; therefore, complete diversity is lacking and under most circumstances we would not have jurisdiction to hear the case.[1]

An exception to this rule exists in cases where a non-diverse defendant has been fraudulently joined. The doctrine of fraudulent joinder permits a defendant to remove an action notwithstanding a lack of complete diversity, "if [the diverse defendant] can establish that the non-diverse defendants were 'fraudulently' named or joined solely to defeat diversity jurisdiction." Briscoe, 448 F.3d at 216. Therefore, if Rhino was fraudulently joined, then this case is properly before the Court. Alternately, if Rhino was not fraudulently joined, then we must remand the case for lack of subject matter jurisdiction. 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."); CNA v. United States, 535 F.3d 132, 145-46 (3d Cir. 2008) ("[T]he [c]ourt may dismiss for lack of subject matter jurisdiction at any time.").

At the outset, we note the "heavy burden of persuasion" borne by a removing party seeking to show fraudulent joinder. Batoff v. State Farm Ins. Co., 977 F.2d 848, 851 (3d Cir. 1992). Joinder will only be deemed fraudulent "where there is no reasonable basis in fact or colorable ground supporting the claim against the joined defendant, or no real intention in good faith to prosecute the action against the defendants or seek a joint judgment." Id. (quoting Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990)) (internal quotations omitted). Stated differently, the removing party must show the plaintiff's claim against the resident defendant to

[1] We do not address whether the amount in controversy requirement has been met because we conclude that diversity is lacking.

be "wholly insubstantial and frivolous." Id. at 852. The court is precluded from finding that a party was fraudulently joined "based on its view of the merits of those claims or defenses," and "all doubts should be resolved in favor of remand." Boyer, 913 F.2d at 113; Batoff, 977 F.2d at 851. In making this inquiry, the court may look beyond the pleadings to identify any indicia of fraudulent joinder. Briscoe, 448 F.3d at 219.

Importantly, the standard for fraudulent joinder is higher than the standard for dismissal under Rule 12; that is, "it is possible that a party is not fraudulently joined, but that the claim against that party ultimately is dismissed for failure to state a claim upon which relief may be granted." Batoff, 977 F.2d at 852. A review of the case law makes clear that a finding of fraudulent joinder is "reserved for situations where recovery from the non-diverse defendant is a clear legal impossibility" rather than simply an unlikely outcome. Salley v. AMERCO, No. 13-921, 2013 WL 3557014, at *3 (E.D. Pa. July 15, 2013) (collecting cases).

III. Analysis

The dispute at the center of this analysis concerns the employment relationship, or lack thereof, between Plaintiff and Rhino at the time of the subject accident. The issue is critical because it controls whether the PWCA's exclusivity provision will bar Plaintiff from pursuing a claim against Rhino. Under the Act, employees are provided "the right to a fixed level of compensation for work-related injuries and, in return, . . . their employers [are exempted] from common law liability for negligence." Mathis v. United Eng'rs & Constructors, Inc., 554 A.2d 96, 101 (Pa. Super. Ct. 1989); 77 P.S. § 481(a). Liability under the PWCA is therefore exclusive, "and employers are not to be liable to employees 'in any action at law or otherwise on account of any injury or death . . . or occupational disease.'" Claudio v. MGS Mach. Corp., 798 F. Supp. 2d 575, 580 (E.D. Pa. 2011) (quoting 77 P.S. § 481(a)). Thus, if Plaintiff was a Rhino

employee at the time of the accident, then he will be precluded from pursuing any claim against Rhino for his injuries.

The existence of an employment relationship under the PWCA depends on application of the same rules "as those at common law for ascertaining the relation of master and servant." 77 P.S. §§ 21-22; Kiehl v. Action Mfg. Co., 517 Pa. 183, 187 (Pa. 1987). Key to the analysis is whether the purported employer "maintains control or the right to control the work to be done and the manner of doing it." Kiehl, 517 Pa. at 187. In the parent/subsidiary context, the court must determine "which corporation has control over an employee . . . by focusing on the functions performed by each corporation and by the employee in addition to other indicia of control." Mohan v. Cont'l Distilling Co., 422 Pa. 588, 593 (1966). As a whole, determining whether an employer-employee relationship exists is a fact-specific inquiry, dependent on the unique circumstances of each case. Nagle v. TrueBlue, Inc., 148 A.3d 946, 952 (Commw. Ct. 2016).

There are few facts before the Court regarding which entity employed Plaintiff at the time of the incident. Removing Defendants rely exclusively on Mr. Deacon's affidavit in support of their contention that Plaintiff was employed by Rhino. Mr. Deacon describes the corporate structure of the various relevant entities as follows: Eastern Region of EMR (USA Holdings) Inc. ("EMR") is a parent corporation of Camden Iron & Metal, Inc., which in turn is a parent corporation of Rhino. Notice of Removal, Ex. B ¶¶ 2-4. His affidavit further states that at the time of the accident, "Plaintiff was working as part of a pool of union employees and was assigned to employment with Rhino." Id., Ex. B ¶ 7. Finally, Mr. Deacon describes the high level of control exercised by Rhino and its employees over Plaintiff. Id., Ex. B ¶¶ 9-12. In response, Plaintiff denies that he was employed by Rhino and states that, "[u]pon information

and belief, [he] was employed by Eastern Metal Recycling at the time of the subject accident." Pl.'s Opp'n at 3 n.2. He characterizes the issue of his employment relationship with Rhino as "[a]t best, . . . an issue of fact which must be further investigated during the discovery process." Id. at 3-4.

Removing Defendants have not met the heavy burden of showing fraudulent joinder because we cannot say that Plaintiff's claim against Rhino is "wholly insubstantial and frivolous." Batoff, 977 F.2d at 853. The question is not resolvable by Mr. Deacon's affidavit, where Plaintiff and Rhino are in disagreement on the facts and where a parent/subsidiary relationship exists. Judge DuBois faced a similar inquiry in Salley, in which the parties disputed the existence of an employment relationship on the same posture we face here. Salley, 2013 WL 3557014, at *3-4. The court declined to find fraudulent joinder, holding that the issue was not susceptible to resolution via a jurisdictional analysis where the facts regarding the plaintiff's employment were contested. Id. at *5. Likewise, because the fraudulent joinder inquiry requires us to "resolve all contested issues of substantive fact in favor of the plaintiff," we find that Plaintiff's status as an employee of Rhino cannot yet be determined. Id. at *5 (quoting Boyer, 913 F.2d at 111).

The instant matter stands in contrast to cases involving application of the PWCA in which joinder was found fraudulent. For instance, in Hogan v. Raymond Corp., 536 F. App'x 207 (3d Cir. 2013), the court affirmed the district court's finding of fraudulent joinder where the plaintiff had brought claims arising from a workplace accident against a defendant which the plaintiff himself characterized as his employer. Id. at 211. Because the claims were "clearly barred as a matter of Pennsylvania law," the district court had properly exercised jurisdiction over the case. Id. Similarly, in Uon v. Tanabe International Co., Ltd., No. 10-5185, 2010 WL

4946681 (E.D. Pa. Dec. 3, 2010), the court found the plaintiff's claim against his employer for intentional and deceptive conduct was fraudulently joined because "[t]he law in Pennsylvania [was] so thoroughly settled that no possibility exists that [the] plaintiff ha[d] any viable claim against [his employer]." Id. at *4. Whereas in Hogan and Uon the plaintiffs' inability to assert claims against their employers was clear and not subject to legitimate challenge, here, Plaintiff may be able to prove that he did not stand in an employer/employee relationship with Rhino and that his claim against it may therefore proceed.

IV. Conclusion

For the aforementioned reasons, we cannot conclude that Plaintiff fraudulently joined Rhino. Therefore, we have no subject matter jurisdiction over this case and it must be remanded.

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