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REVERSED

Appellant, Peter Edel, Jr., appeals the trial court's granting of summary judgment in favor of appellee, Scottsdale Insurance Co. ("Scottsdale"). We reverse.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On December 7, 2002, Mr. Edel, while working at Uptown Beauty Supply, was shot by an unknown perpetrator. Mr. Edel filed suit against Bilal Subhi, the operator of the business; Scottsdale, the liability insurer of the business; Vincent Pizzo, the owner of the property; and Genesis Indemnity Insurance Co., Pizzo's insurer. In his petition, Mr. Edel alleged that the defendants breached their legal duties by failing to provide adequate security.

Scottsdale filed a motion for summary judgment seeking dismissal from the lawsuit based on an exclusion in their policy, which precludes coverage for bodily injury to: "(1) An 'employee' of the insured arising out of and in the course of: (a) Employment by the insured; or (b) Performing

duties related to the conduct of the insured's business....” In support of the motion for summary judgment, Scottsdale introduced a Payroll Summary History Report, from January 2002 through December 2002, and Edel's worker's compensation claim form, which he filed in connection with the injuries sustained in the shooting, in order to prove Mr. Edel was an employee of Uptown Beauty Supply.

Although Mr. Edel does not dispute that Scottsdale's insurance policy bars coverage for injuries to employees, he does dispute the fact that he was an employee of Uptown Beauty Supply. To support his position, Mr. Edel submitted an affidavit, wherein he denied being a salaried employee, claiming instead that he was paid a contracted amount of \$500.00 per week with no deductions taken from his pay.

Scottsdale's motion for summary judgment was heard on December 3, 2004. The trial judge subsequently granted Scottsdale's motion for summary judgment and dismissed Mr. Edel's action against Scottsdale with prejudice on December 14, 2004. Mr. Edel appealed.

STANDARD OF REVIEW

Appellate courts review grants of summary judgment *de novo* using the same standard applied by the trial court in deciding the motion for summary judgment. *Schmidt v. Chevez*, 2000-2456, p.4 (La. App. 4

Cir.1/10/01), 778 So. 2d 668, 670. According to this standard, a summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B); *Schmidt*, 2000-2456 at p.3, 778 So. 2d at 670.

The Louisiana Supreme Court has recognized that a "genuine issue" is a "triable issue," an issue on which reasonable persons could disagree. *Jones v. Estate of Santiago*, 2003-1424, p. 6 (La. 4/14/04), 870 So.2d 1002, 1006 (citing *Smith v. Our Lady of the Lake Hosp.*, 93-2512, p. 27 (La. 7/5/94), 639 So.2d 730, 751). Further, "material fact" has been defined as one in which "its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery." *Id.*

DISCUSSION

Edel contends that the trial court erred by granting Scottsdale's motion for summary judgment. Specifically, Edel stated the following: (1) material issues of fact exist; (2) affidavits in support of the summary judgment were insufficient; and (3) adequate discovery had not taken place.

This Court will first address Edel's contention that there is a genuine issue of fact regarding whether he was an employee of Uptown Beauty

Supply. Scottsdale introduced two documents, a Payroll Summary History Report and a Workers Compensation Claim, to prove that Edel was an employee of Uptown Beauty Supply. The Payroll Summary History Report purportedly showed Edel's earnings of \$12.50 per hour as an employee of Uptown Beauty Supply (including deductions for social security and medicare) from January 2002 through December 2002. However, a review of this document suggests that "Uptown Fashion, Inc." and not "Uptown Beauty Supply" was paying Edel. The second document that Scottsdale relies upon is Edel's claim for worker's compensation benefits. In this claim, Edel named Uptown Beauty Supply as his employer and identified himself as an employee. It is unclear from the record whether that claim was accepted or rejected by worker's compensation. In addition to these two documents introduced at the hearing, Mr. Edel introduced his affidavit, which stated in part the following:

That Peter O. Edel, Jr. affirmatively represents that he was not paid twelve and 50/100 (\$12.50) dollars per hour for calendar year 2002;

That Peter O. Edel, Jr. alleges that he worked twelve (12) hours a day for six (6) days a week and five (5) hours on Sundays for a total of seventy seven (77) hours per week;

That Vilal Subhi paid Peter O. Edel, Jr. five hundred and no/100 (\$500.00) dollars per week;

That Peter O. Edel, Jr. worked at Uptown Beauty Supply for a period of time prior to calendar year 2002 and was

always paid the contracted amount of five hundred and no/100 (\$500.00) dollars per week;

That to the best of Peter O. Edel's knowledge, information and belief no deductions were made from this contract amount of five hundred and no/100 (\$500.00) dollars per week;

That to the best of Peter O. Edel's knowledge, information and belief no deduction were taken and Social Security records show 2002 annual earnings of twenty six thousand (\$26,000.00) dollars.

Based on the foregoing, this Court finds that there is a genuine issue of material fact as to whether Edel was an employee of Scottsdale Insurance Company's insured, Uptown Beauty Supply. Accordingly, the trial court's judgment granting Scottsdale's motion for summary judgment and dismissing Mr. Edel's action against Scottsdale with prejudice is reversed. Due to this Court's holding, appellants' remaining assignments of error need not be addressed.

CONCLUSION

For the foregoing reasons, we reverse the trial court's judgment granting Scottsdale's motion for summary judgment and dismissing Mr. Edel's action against Scottsdale with prejudice.

REVERSED