

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

LEO McLAVERTY AND PATRICIA : IN THE SUPERIOR COURT OF
McLAVERTY, H/W, : PENNSYLVANIA

Appellants :

v. :

LIBERTY/COMMERZ :
1701 JFK BOULEVARD, L.P. AND :
LIBERTY PROPERTY PHILADELPHIA :
CORPORATION AND LIBERTY PROPERTY :
TRUST AND L.F. DRISCOLL COMPANY :
AND LLOCSIRD, INC., :
D/B/A L.F. DRISCOLL COMPANY, :
AND J.J. DON, INC., :
D/B/A L.F. DRISCOLL COMPANY AND :
WYATT INCORPORATED AND :
PENNS LANDING SUPPLY COMPANY :
D/B/A WYATT INCORPORATED AND :
JEFFREY SWEENEY :

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LEO McLAVERTY AND PATRICIA :
McLAVERTY, H/W, :

Appellants :

v. :

L.F. DRISCOLL CO., LLC AND :
ROBERT JOHNSON :

No. 501 EDA 2012

Appeal from the Judgment Entered January 17, 2012,
in the Court of Common Pleas of Philadelphia County
Civil Division at Nos. February Term, 2010, 1408,
October Term, 2009, 3787

BEFORE: FORD ELLIOTT, P.J.E., WECHT AND MUSMANNO, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.:

FILED JUNE 06, 2014

We dismiss this appeal on the principle of *de minimis non curat lex* (the law does not concern itself with trifles).

Appellants brought suit against the several defendants for personal injuries arising from a workplace accident during the construction of the Comcast Center in Philadelphia. Appellee L.F. Driscoll Company ("Driscoll") was the general contractor; appellant Leo McLaverty's direct employer was subcontractor Holtzhauer Tile Company, while appellant Leo McClaverty's injuries were caused by an employee of subcontractor Wyatt Incorporated. At trial, Driscoll moved for summary judgment on the basis that it was a statutory employer under the Worker's Compensation Act and immune from liability. The trial court granted the motion and appellants filed this appeal.

Following the filing of this appeal, appellants reached a settlement with the remaining defendants. Under the terms of that settlement, appellants signed a release which limited their possible damages against Driscoll, pending a successful appeal, to one dollar:

WHEREAS, counsel for LEO F. MCLAVERTY and PATRICIA MCLAVERTY has represented during the settlement discussions that in consideration of LEO F. MCLAVERTY and PATRICIA MCLAVERTY agreeing to settle their claims as against the Wyatt Defendants for the sum of [redacted], LEO F. MCLAVERTY and PATRICIA MCLAVERTY would neither seek nor pursue any additional claims for monetary damages **in excess of One Dollar (\$1.00) from or on behalf of, or trial of plaintiffs' claims against, L.F. Driscoll in the appeal that LEO F.**

MCLAVERTY and PATRICIA MCLAVERTY were pursuing upon there being a final disposition against the Wyatt Defendants (which facts and terms shall remain confidential between Releasors/Plaintiffs, the Wyatt defendants, the Insurer and shall not be used as a defense to Releasors/Plaintiffs' appeal as against L.F. Driscoll by anyone, including L.F. Driscoll)

Appellants/Plaintiffs' Answer to the Application for Leave to File a Reply in Further Support of Motion to Quash Appeal, 8/5/13 at ¶2 (emphasis in original).

Appellants' counsel thereby sought to prevent the appeal involving Driscoll from being rendered moot by insuring that one dollar would remain in controversy. While we do not find this appeal moot, we nonetheless will dismiss it on the afore-stated *de minimis* principle. We will not waste precious judicial resources on a matter that has effectively been resolved.

Furthermore, in that light, we find that appellants have set up a situation in which they are essentially asking this court to render an advisory opinion. Counsel for appellants admitted that he is seeking our ruling to prevent the trial court's ruling from being used in future cases:

By way of further response, the Trial Court ignored the law and resolved genuine issues of material fact in the moving party's favor and rendered a ruling which will be used by Driscoll in future litigation filed by other construction workers in order to try to escape its liability under the law through use of statutory employer doctrine as a sword rather than a shield.

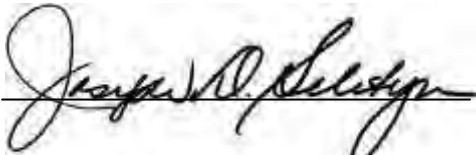
J. A30006/13

Answer in Opposition to Motion to Quash this Appeal, 7/15/13 at ¶1. This court may not provide advisory opinions to address issues that may arise in future cases. ***Bindschusz v. Phillips***, 771 A.2d 803, 810 n.4 (Pa.Super. 2001), ***appeal denied***, 790 A.2d 1012 (Pa. 2001).

Application to quash appeal as moot denied. Appeal dismissed.

Wecht, J. joins and files a Concurring Memorandum.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/6/2014