IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ROBERT T. WRIGHT and YVONNE C. WRIGHT, Plaintiff,	:	NO. CV-2024-00232
vs.	:	CIVIL ACTION - LAW
MASSARO CORPORATION, et al., Defendants.	:	
vs.	:	
STEEL SUPPLY & ENGINEERING CO., Additional Defendant,	:	
vs.	:	
CENTURY STEEL ERECTORS COMPANY, Additional Defendant.	:	Preliminary Objections filed by Yates-Massaro

OPINION AND ORDER

The matter captioned above was transferred to this Court from the Court of Common Pleas of Philadelphia County. The Court conducted a status conference on September 3, 2024, for the purpose of developing a Scheduling Order. During that status conference, counsel called to the Court's attention that three (3) sets of preliminary objections filed in Philadelphia County have long lingered, and that those preliminary objections have delayed progress in the matter. For that reason, the Court has elected to resolve all three (3) preliminary objections, before proceeding with a Scheduling Order.

I. BACKGROUND

This matter was commenced by Complaint filed October 27, 2022, by Robert T. Wright and Yvonne C. Wright (hereinafter "Plaintiffs") in the Court of Common Pleas of Philadelphia County, alleging personal injuries sustained by Robert in a construction accident which occurred in Lycoming County on October 27, 2020. A Joinder Complaint was filed on March 14, 2023, against Steel Supply & Engineering Company (hereinafter "Steel Supply") by WG Yates & Sons Construction Company, Yates Construction LLC,

Massaro Corporation, Massaro Construction Management Services LLC, Yates-Massaro Joint Venture, Yates Construction of Florida LLC, Yates Services LLC, Yates Engineers LLC, The Yates Companies Inc., and Yates Construction and Yates Construction Company Inc. (hereinafter collectively as "Yates-Massaro"). Another Joinder Complaint was filed on April 4, 2023, by Steel Supply against Century Steel Erectors Company (hereinafter "Century").

Plaintiffs filed an Amended Complaint on April 13, 2023, alleging four (4) counts of negligence, one (1) count of strict liability, and one (1) count of lost consortium. Specifically, Plaintiffs allege, among other things, that Yates-Massaro were involved in the "construction work and/or management" at the construction site in question, provided "construction engineering services and/or structural engineering services," and "failed to perform these construction management, oversight, contractor selection and inspection processes with proper or reasonable care." Amended Complaint at ¶¶ 17, 34, 35, 38, 96. Yates-Massaro filed Preliminary Objections to the Amended Complaint on May 3, 2023. Nucor Corporation and Nucor Building Systems Sales Corporation (hereinafter "Nucor Defendants") also filed Preliminary Objections to the Amended Complaint on May 3, 2023. Century filed Preliminary Objections on May 8, 2023, to the Joinder Complaint by Steel Supply.

In the Preliminary Objections filed by Yates-Massaro on May 3, 2023, Yates-Massaro contend that 1) "Plaintiffs fail to plead claims for tort liability against the [Yates-Massaro] as The Workers' Compensation Act bars those claims"; 2) "This Court lacks subject matter jurisdiction for actions in tort against 'employers'"; and 3) "Plaintiffs' claims should be dismissed because they have an exclusive statutory remedy under the Workers' Compensation Act." Yates-Massaro's Preliminary Objections at 3, 9, 11. On the first contention, Yates-Massaro assert that on the date of the alleged incident, a joint venture was "serving as the General Contractor for the Geisinger Medical Center Muncy project," and that, as a general contractor, Yates-Massaro had "entered into a subcontract with [Steel Supply] to provide the fabrication and erection of steel …," who then "entered into a subcontract with [Century]…." *Id.* at 4-5. As such, Yates-Massaro argue that the

Workers' Compensation Act grants Yates-Massaro immunity. On the second contention, Yates-Massaro argue that the Court does not have subject matter jurisdiction, because the Workers' Compensation Act deprives a trial court of jurisdiction for tort actions against employers. *Id.* at 9. On the third contention, Yates-Massaro contend that because Plaintiffs have an "exclusive statutory remedy…under the Workers' Compensation Act," Plaintiffs' claims should be dismissed. *Id.* at 11.

In response to the above Preliminary Objections, Plaintiffs contend that Yates-Massaro were not in contract privity with the actual owner of the subject property, but rather undertook "construction management services." Plaintiffs' Answer/Response to Preliminary Objections filed by Yates-Massaro at ¶ 16-18. For that reason, Plaintiffs contend that Yates-Massaro were not general contractors, do not qualify as statutory employers under the Workers' Compensation Act, and are not entitled to immunity. *Id.* at ¶¶ 16-48. Plaintiffs also assert that discovery is required to confirm the proper status of Yates-Massaro. *Id.* at ¶¶ 17, 48-54.

II. QUESTIONS PRESENTED

A. WHETHER YATES-MASSARO QUALIFY AS AN EMPLOYER UNDER THE WORKERS' COMPENSATION ACT.

B. WHETHER THE COURT HAS SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' TORT CLAIM AGAINST YATES-MASSARO.

C. WHETHER THE WORKERS' COMPENSATION ACT PROVIDES PLAINTIFFS' EXCLUSIVE REMEDY.

III. DISCUSSION

The settled law of this Commonwealth is that preliminary objections in the nature of a demurrer are not favored:

> A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. *Firing v. Kephart,* 466 Pa. 560, 353 A.2d 833 (1976). For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, *Savitz v. Weinstein,* 395 Pa. 173, 149 A.2d 110 (1959); *March v. Banus,* 395 Pa. 629, 151 A.2d 612 (1959),

> and every inference fairly deducible from those facts, *Hoffman v. Misericordia Hospital of Philadelphia,* 439 Pa. 501, 267 A.2d 867 (1970); *Troop v. Franklin Savings Trust,* 291 Pa. 18, 139 A. 492 (1927). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Savitz v. Weinstein, supra.*
>
> Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Schott v. Westinghouse Electric Corp.,* 436 Pa. 279, 259 A.2d 443 (1969); *Botwinick v. Credit Exchange, Inc.,* 419 Pa. 65, 213 A.2d 349 (1965); *Savitz v. Weinstein, supra; London v. Kingsley,* 368 Pa. 109, 81 A.2d 870 (1951); *Waldman v. Shoemaker,* 367 Pa. 587, 80 A.2d 776 (1951). If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Packler v. State Employment Retirement Board,* 470 Pa. 368, 371, 368 A.2d 673, 675 (1977); *see also Schott v. Westinghouse Electric Corp., supra,* 436 Pa. at 291, 259 A.2d at 449.

Mudd v. Hoffman Homes for Youth, Inc., 543 A.2d 1092, 1093–94 (Pa. Super. Ct. 1988)(quoting *County of Allegheny v. Commonwealth,* 490 A.2d 402, 408 (Pa. 1985)).

Regarding preliminary objections for lack of subject matter jurisdiction, our Superior Court in *Sheard v. J.J. DeLuca Co.* restated the following:

> [T]he Work[ers'] Compensation Act deprives the common pleas courts of jurisdiction of common law actions in tort for negligence against employers and is not an affirmative defense which may be waived if not timely pled. The lack of jurisdiction of the subject matter may be raised at any time and may be raised by the court *sua sponte* if necessary. To the extent that prior appellate decisions have held to the contrary, they are expressly overruled. *LeFlar v. Gulf Creek Indus. Park No. 2*, 511 Pa. 574, 581, 515 A.2d 875, 879 (1986) (internal citation omitted). *See also Shamis v. Moon*, 81 A.3d 962, 970 (Pa.Super.2013).

> "Subject matter jurisdiction relates to the competency of a court to hear and decide the type of controversy presented. Jurisdiction is a matter of substantive law." *Midwest Financial Acceptance Corp. v. Lopez*, 78 A.3d 614, 627 (Pa.Super.2013) (citation omitted). "By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought; and this is conferred by the sovereign authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred." *Mid–City Bank & Trust Co. v. Myers*, 343 Pa. 465, 469, 23 A.2d 420, 423 (1942) (citing *Cooper v. Reynolds*, 77 U.S. 308, 316, 19 L.Ed. 931, 932, 10 Wall. 308, 316 (1870)).

Sheard v. J.J. DeLuca Co., 92 A.3d 68, 75 (Pa. Super. Ct. 2014).

A. WHETHER YATES-MASSARO QUALIFY AS AN EMPLOYER UNDER THE WORKERS' COMPENSATION ACT.

77 P.S. § 462—"coverage of laborer or assistant hired by employe or contractor; contractor defined"—provides the following:

> Any employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employe or contractor, for the performance upon such premises of a part of such employer's regular business entrusted to that employe or contractor, shall be liable for the payment of compensation to such laborer or assistant unless such hiring employe or contractor, if primarily liable for the payment of such compensation, has secured the payment thereof as provided for in this act. Any employer or his insurer who shall become liable hereunder for such compensation may recover the amount thereof paid and any necessary expenses from another person if the latter is primarily liable therefor.
> For purposes of this subsection (b), the term "contractor" shall have the meaning ascribed in section 105 of this act.

77 Pa. Stat. § 462 (footnote omitted); 77 Pa. Stat. § 25 (providing that "contractor" as "[u]sed in [77 P.S. § 52] and [77 P.S. §462] shall not include a contractor engaged in an independent business, other than that of supplying laborers or assistants, in which he serves persons other than the employer in whose service the injury occurs, but shall include a sub-contractor to whom a principal contractor has sublet any part of the work which such

principal contractor has undertaken.")(footnotes omitted); 77 Pa. Stat. § 52 ("An employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employe or contractor, for the performance upon such premises of a part of the employer's regular business entrusted to such employe or contractor, shall be liable to such laborer or assistant in the same manner and to the same extent as to his own employe.").

77 P.S. § 481—"Exclusiveness of remedy; actions by and against third party; contract indemnifying third party"—further provides the following:

> (a) The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employes, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in section 301(c)(1) and (2) or occupational disease as defined in section 108.
> (b) In the event injury or death to an employe is caused by a third party, then such employe, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to receive damages by reason thereof, may bring their action at law against such third party, but the employer, his insurance carrier, their servants and agents, employes, representatives acting on their behalf or at their request shall not be liable to a third party for damages, contribution, or indemnity in any action at law, or otherwise, unless liability for such damages, contributions or indemnity shall be expressly provided for in a written contract entered into by the party alleged to be liable prior to the date of the occurrence which gave rise to the action.

77 Pa. Stat. § 481 (footnotes omitted).

Regarding a determination of statutory employer immunity, all five elements—as opined by the *McDonald* Court—must be established: "(1) An employer who is under contract with an owner or one in the position of an owner. (2) Premises occupied by or under the control of such employer. (3) A subcontract made by such employer. (4) Part of the employer's regular business entrusted to such subcontractor. (5) An employee of such subcontractor." *O'Boyle v. J.C.A. Corp.*, 538 A.2d 915, 917 (Pa. Super. Ct. 1988)(citations omitted); *see, e.g., Emery v. Leavesly McCollum*, 725 A.2d 807, 811-12 (Pa. Super. Ct. 1999)(noting that "[a]n immediate contractual relationship with the original contractor was

not necessary for the original contractor to be considered the statutory employer…" and "the determining factor in these cases is whether or not there is a vertical 'chain' of contracts.")(citations omitted).

As explained by our Superior Court in *Cranshaw Construction, Inc. v. Ghrist*:

> [I]n negligence cases, the general contractor has the full immunity from suit by the employee of a subcontractor which an immediate employer would have. He is the statutory employer and is the injured employe's employer for negligence immunity purposes and is secondarily liable for compensation even though the immediate employer or some other intermediate subcontractor ... is insured and responds fully on the injured employe's claim. The reason for this difference cannot be found in the language of the statute, but the rationale must be that, since the general contractor remains statutorily liable, although only in a reserve status, in return for this he has the statutory employer's immunity from statutory employe negligence suits in all events.

O'Boyle v. J.C.A. Corp., 538 A.2d 915, 916-17 (Pa. Super. Ct. 1988)(citing *Cranshaw Construction, Inc. v. Ghrist*, 434 A.2d 756, 758 (Pa. Super. Ct. 1981)).

In *O'Boyle v. J.C.A. Corp.*, the plaintiff was an employee of a subcontractor on a building project; the plaintiff was injured when he fell from a wall built by another subcontractor. 538 A.2d at 916. Before trial, one of the defendants (Driscoll)—who entrusted the structural concrete work to the plaintiff's employer—moved for summary judgment on the basis of statutory employer immunity by virtue of 77 P.S. § 52. *Id.* The trial court agreed and dismissed Driscoll from the action; however, the plaintiff appealed, contending that "[b]y the terms of the contract between the owner and Driscoll, the latter was not denominated a general contractor but merely a construction manager." *Id.* at 916-17. Nonetheless, the appellate court affirmed the trial court's decision, reasoning that what was controlling was not the nomenclature used by the parties, but rather the contract between Driscoll and the owner, and whether the contract "[o]bligated Driscoll to construct the project." *Id.* at 917.

B. WHETHER THE COURT HAS SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' TORT CLAIM AGAINST YATES-MASSARO.

In the matter of *LeFlar v. Gulf Creek Indus. Park No. 2*, 515 A.2d 875, 879 (Pa. 1986), our Supreme Court was presented with the question of whether a trial court has subject matter jurisdiction to entertain a common law tort claim against an employer where the claim is subject to the Workers' Compensation Act. The Court ruled that it does not:

> The exclusivity of the Workmen's Compensation Act for recovery by an employee for an injury suffered in the course of his employment was recently reiterated in *Kline v. Arden H. Verner Co.*, 503 Pa. 251, 469 A.2d 158 (1983).
> Although the employer in *Socha* was joined as an additional defendant, rather than being sued as an original defendant, the analysis is no less compelling under the circumstances of this case. The procedural device by which an employer is brought into a negligence action instituted by an employee is not controlling. To draw such a distinction would disregard the recognized purpose of this legislation—i.e. "... to restrict the remedy available to an employee against the employer to compensation, and to close to the employee, and to third parties, any recourse against the employer in tort for negligence." *Tsarnas v. Jones & Laughlin Steel Corporation*, 488 Pa. 513, 519, 412 A.2d 1094, 1097 (1980). [Citations omitted]. We hold, therefore, that the Workmen's Compensation Act deprives the common pleas courts of jurisdiction of common law actions in tort for negligence against employers and is not an affirmative defense which may be waived if not timely plead. The lack of jurisdiction of the subject matter may be raised at any time and may be raised by the court *sua sponte* if necessary. Pa.R.C.P. 1032(2). To the extent that prior appellate decisions have held to the contrary, they are expressly overruled.

LeFlar v. Gulf Creek Indus. Park No. 2, 515 A.2d 875, 879 (Pa. 1986).

C. WHETHER THE WORKERS' COMPENSATION ACT PROVIDES PLAINTIFFS' EXCLUSIVE REMEDY.

On the exclusivity of the Workers' Compensation Act as a vehicle for actions in tort, our Supreme Court opined as follows:

> [W]here an injury is of a class that is cognizable under the [Workers' Compensation Act ("WCA")], this Court has virtually always construed the enactment to foreclose an action at law even if compensation is ultimately unobtainable. In *Kline v. Arden H. Verner Co.*, 503 Pa. 251, 469 A.2d 158 (1983), for example, the Court affirmed remedy exclusivity although the worker could not receive compensation for some of the injuries he sustained in a work-related accident. *Kline* explained that the act's remedies are exclusive even where compensation is unavailable, because the WCA by its terms "covers 'all injuries,' and the exclusivity clause bars tort actions flowing from any work-related injury." *Id.* at 256, 469 A.2d at 160 (emphasis in original); *see also Scott v. C.E. Powell Coal Co.*, 402 Pa. 73, 77–78, 166 A.2d 31, 34 (1960) (explaining that, when an employee sustains injuries that bring him within the provisions of the WCA, such provisions determine the amount he may be compensated and, as such, provide the exclusive remedy even if no compensation is available); *Moffett v. Harbison–Walker Refractories Co.*, 339 Pa. 112, 117, 14 A.2d 111, 113–14 (1940) (enforcing remedy exclusivity relative to a plaintiff who suffered a disability due to work-related silicosis but was unable to obtain any compensation because his disability was only partial; the Court reasoned that the Legislature's provision of benefits for total silicosis disability manifested an intent to bring all silicosis sufferers under the act). *See generally* 7 David B. Torrey & Andrew E. Greenberg, Pennsylvania Workers' Compensation Law & Practice § 10.15 (3d ed. 2011) ("It is ... the rule under the [WCA] that a common law action is barred even if there is no specific recovery available under the [WCA].").

Tooey v. AK Steel Corp., 81 A.3d 851, 874 (Pa. 2013).

IV. CONCLUSION

For the reasons more fully set forth above, the Court believes that the fact question of whether Yates-Massaro qualify as an employer under the Workers' Compensation Act is entirely dispositive of its Preliminary Objections, and requires further development through limited discovery.

ORDER

AND NOW, this 23rd day of October, 2024, upon consideration of the Preliminary Objections filed by Yates-Massaro on May 3, 2023, it is hereby **ORDERED** and **DIRECTED** that Plaintiff is granted ninety (90) days from the date hereof to conduct limited discovery to determine whether those Defendants qualify as employers under the terms of the Workers' Compensation Act. The Court will, by separate Order, schedule a follow-up oral argument for the above Preliminary Objections in February 2025.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

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