IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

----------X

SMILY ESTEVAM, :

Plaintiff, :

v. : C.A. No. S11C-08-004

MARCELO SILVA, et al., :

Defendants. :

----------X

T R A N S C R I P T
O F
P R O C E E D I N G S

Sussex County Courthouse
Georgetown, Delaware
Friday, March 8, 2013

The above-entitled matter was scheduled for an office conference in Judge's chambers at 9:00 o'clock a.m.

BEFORE:
THE HONORABLE E. SCOTT BRADLEY, Judge.

APPEARANCES:
MICHAEL L. SENSOR, Esquire, appearing via telephone on behalf of the Plaintiff.

ROBERT J. LEONI, Esquire, appearing via telephone on behalf of Defendant WM Company.

SCOTT G. WILCOX, Esquire, appearing via telephone on behalf of Defendant NV Homes, LLC.

KATHY R. HAYNES, RPR
OFFICIAL COURT REPORTER

PROCEEDINGS

(Whereupon, the attorneys aforementioned on the title page were present; however, they did not state their names when they addressed the Court.)

THE COURT: Sorry, folks.

THE ATTORNEY: That's all right, Your Honor.

THE COURT: All right.

Well, this is my decision on the plaintiff's motion for partial summary judgment against Defendant WM Company.

After thinking about this for another week, I have decided that I will grant the plaintiff's motion for partial summary judgment against Defendant WM Company. This is based on the language of Section 2311(a)(5). I think that language is quite clear.

It states in part that:

"The contracting entity shall not be deemed the employer of any independent contractor or subcontractor or their employees, but shall be deemed to insure any workers' compensation claims

arising hereunder."

Section 2304, the exclusivity provision of the Workers' Comp Law, covers employers and employees.

WM is not the plaintiff's employer.

WM, under 2311(a)(5), is simply the insurer of the plaintiff's workers' compensation claims.

I do think that is a very meaningful distinction.

As Judge Stokes pointed out in *McKirby v. A&J Builders*, 2009 WL 713887, in that case he stated:

"Moreover, the change to Subsection (a)(5) clarified the lack of an employer-employee relationship with the contracting entity. This was necessary to preserve tort liability claims by injured workers against third parties in the position of A&J. Without clarification, an argument could be made that traditionally permitted tort suits would be barred by the exclusivity provisions of the workers' compensation law."

I think Judge Stokes has considered and

addressed the same situation we have here. I agree with his reasoning and analysis, and conclude since WM did not employ the plaintiff, the plaintiff's tort claims against WM are not barred by the exclusivity provisions of the Workers' Comp Law.

So I will sign the plaintiff's order.

THE ATTORNEY: Thank you, Your Honor.

THE COURT: Thank you for waiting a week, and thank you for calling back. I apologize about the phone difficulties.

THE ATTORNEY: Not a problem.

THE COURT: Have a good weekend, folks.

THE ATTORNEY: Have a good weekend. Bye-bye.

(Whereupon, all of the attorneys said "Bye" and the office conference was concluded in the above-entitled matter.)

C E R T I F I C A T E

I, KATHY R. HAYNES, an Official Court Reporter of the Superior Court of the State of Delaware, do hereby certify the above and foregoing Pages 2 to 4 to be a true and accurate transcript of the proceedings therein indicated on March 8, 2013, as was stenographically reported by me and reduced to typewriting under my direct supervision, as the same remains of record in the Sussex County Courthouse at Georgetown, Delaware.

This certification shall be considered null and void if this transcript is disassembled in any manner by any party without authorization of the signatory below.

Kathy R. Haynes

Kathy R. Haynes

3-27-13

Date

KATHY R. HAYNES, RPR
OFFICIAL COURT REPORTER