

*Dila Hassiem v. O & G Industries, Inc. (AC 41794)*

The plaintiff brought this action against his employer, seeking to recover damages for personal injuries sustained while cleaning equipment at work. The plaintiff's injury occurred when he was ordered by the defendant to clean an auger and trough. The plaintiff was unaware that the auger was still on while he prepared to clean it. The plaintiff climbed to a platform above the auger, which had no protective railing, and while pulling up a hose, the plaintiff slipped off the platform. As a result, the plaintiff fell into the auger, which severed his leg above his knee. The plaintiff alleges that the defendant intentionally created a dangerous condition which they knew with substantial certainty would cause the plaintiff to suffer severe injuries. The defendant filed a motion for summary judgement arguing that the plaintiff was barred from bringing this claim forward by the Worker's Compensation Act exclusivity provision (§31-284 (a)). The trial court granted the defendant's motion, finding that the plaintiff failed to provide facts suggesting that the defendant acted with substantial certainty or with the intention of causing harm to the plaintiff. The plaintiff appealed, claiming the trial court improperly granted the motion for summary judgement arguing, among other things, that the matter of intent is a question for the trier of fact.

The question presented to the Appellate Court in this appeal is "whether the trial court properly determined that there were no issues of material fact as to the defendant's subjective intent to create a dangerous situation with a substantial certainty of injury to the plaintiff." The Court determined that the plaintiff failed to establish that there was a genuine issue of material fact with regard to the defendant's intent to create a risk of harm or their substantially certain knowledge that harm to the plaintiff would occur.

In reaching this conclusion, the Court first noted that the Connecticut Supreme Court has consistently “interpreted the exclusivity provision of the [(§31-284 (a)) . . . as a total bar to [common-law] actions brought by employees against employers for job related injuries with one narrow exception that exists when the employer has committed an intentional tort or where the employer has engaged in willful or serious misconduct.” However, in instances where the plaintiff alleges an intentional tort on the part of their employer, the exclusivity provision does not bar them from pursuing a legal remedy. The Court further noted that in order to establish that a defendant acted intentionally, a plaintiff must show that the act or omission of the defendant was done with the purpose of causing a given result, or the defendant is substantially certain that such a result will follow. The Court also noted that in order for an injury to be considered intentional, the known risk of harm must be more than a mere foreseeable risk, the risk must be substantially certain to occur. The Court found that in order to satisfy the substantial certainty exception, a plaintiff must show their “employer’s subjective intent to engage in activity that it knows bears a substantial certainty of injury to its employees.”

The Court next looked to the factors set forth in New Jersey’s substantial certainty test, which the Connecticut Supreme Court has applied to similar cases in the past. This test involves a two prong analysis wherein the Court must first consider the employer’s conduct in each particular case, and second, must consider the context of the plaintiff’s injury and “whether [that] injury or disease, and the circumstances in which it is inflicted on the worker, [may] fairly be viewed as a fact of life of industrial employment, or whether it is plainly beyond anything the legislature could have contemplated as entitling the employee to recover only under the [Workers’ Compensation Act].”

In order to establish the conduct prong, the Court should consider facts including, but not limited to: “(1) prior similar accidents related to the conduct at issue that have resulted in employee injury, death, or a near-miss, (2) deliberate deceit on the part of the employer with respect to the existence of the dangerous condition, (3) intentional and persistent violations of safety regulations over a lengthy period of time, and (4) affirmative disabling of safety devices.” In considering these factors, the Court determined that the defendant did not act to intentionally cause harm to the plaintiff. The Court reasoned that the plaintiff offered no evidence of similar accidents occurring in the past, nor did the plaintiff provide facts suggesting the defendant deceived the plaintiff. The Court further reasoned that failure to provide more substantial safety measures “while possibly a sign of poor management, is not tantamount to the intentional conduct which is described by our courts.” Additionally, by the plaintiff’s own testimony, there was a safety procedure in place which was intended to prevent incidents such as this from occurring. The plaintiff failed to establish that the defendant acted at all improperly at the time of the incident and therefore failed to show that there was an intentional act by the defendant which was substantially certain to injure the plaintiff.

The Court next addressed the plaintiff’s claim that summary judgement was improper as the matter of the defendant’s intent was a question of fact for a jury. The Court found that there were no facts to substantiate the plaintiff’s claim that the defendant acted intentionally and with substantially certain knowledge to cause injury to the plaintiff. There is therefore no genuine issue of material fact regarding the defendant’s intent and summary judgement was appropriate. The Court also considered the plaintiff’s claim that there was a genuine issue of material fact regarding the defendant’s deliberate deception of the plaintiff in failing to provide adequate

safety measures for the auger. The Court found that the defendant's failure to provide safety measures did not constitute intentional conduct which is substantially certain to harm to plaintiff.

Lastly, the Court considered the plaintiff's claim that there was a genuine issue of material fact as to whether he was under duress when he was ordered to clean the auger. The Court found that there was nothing in the plaintiff's complaint to suggest that he was coerced into cleaning the auger or that he could not have voiced his concerns regarding the safety of the cleaning procedure. The plaintiff had cleaned the machine several times in the past and had never complained or made the defendant aware of his concerns. Additionally, there is nothing in the complaint to suggest that doing so would have a negative consequence on the plaintiff in his employment.

Ultimately, the Court found that the plaintiff's claim is barred by the exclusivity provision of §31-284(a) and therefore the trial court properly granted the defendant's motion for summary judgement.