

*Dominick Lucenti v. Greg Laviero Et. Al. (SC 19723)*

The plaintiff in this case sought to recover damages for injuries incurred while operating a machine in the course of his employment. In seeking damages, the plaintiff claimed that the defendant, his employer, had knowingly made improper repairs to the machine which caused it to run only at full throttle. The plaintiff contends that the improper repair was indicative of recklessness on the part of the defendant and resulted in the plaintiff's injuries. In response, the defendant filed a motion for summary judgement, based on their contention that the plaintiff was barred from bringing this claim under the Workers' Compensation Act exclusivity provision (§31-284(a)) as they failed to show that the defendant's conduct was intentional. The defendant further contended that the plaintiff had operated the machine both prior to and following the incident.

Alternatively, the plaintiff argued that his claims constituted an exception to the exclusivity provision because the defendant, as the plaintiff's employer, had a "subjective belief that its conduct was substantially certain to cause injury to an employee." In support of this contention, the plaintiff provided an affidavit from a former employee of the defendant, Quick, wherein Quick claimed that he had informed the defendants of the danger and risks posed by the improperly repaired machine and that the defendant refused to spend additional money on repairing the machine because he intended to sell it. Additionally, the plaintiff provided an affidavit in which he claimed that he too had expressed concerns about the safety of the machine to the defendant, to which the defendant gave essentially the same answer as he had previously given to Quick.

The trial court determined that there was no genuine dispute as to whether the defendant believed the machine posed an intentional risk which was substantially certain to cause injury

because the defendant himself used the machine on a regular basis. The trial court therefore granted the defendant's motion for summary judgment. The plaintiff subsequently appealed the decision of the trial court. The Appellate Court affirmed the decision of the trial court on the grounds that the plaintiff had not provided evidence sufficient to constitute a genuine issue of material fact in regard to the defendant's subjective beliefs. The plaintiff then appealed to the Connecticut Supreme Court.

The issue presented to the Court on appeal required the Court to determine what degree of proof is necessary for a plaintiff-employee to prove a defendant-employer's subjective intent to create a risk which is substantially certain to cause injury to their employees such that the plaintiff can avoid the exclusivity provision of the Workers' Compensation Act §31-284(a). The Court determined that the plaintiff failed to establish a genuine issue of material fact regarding the defendant's subjective beliefs in light of the plaintiff's failure to produce standard evidence demonstrating employer misconduct and therefore affirmed the decision of the Appellate Court.

The Court principally based their reasoning in coming to this conclusion on the precedent cases: *Jett v. Dunlap*, *Mingachos v. CBS* and *Suarez v. Dickmont Plastics Corp. I & II*. The Court in *Jett* determined that the intentionally tortious act of an employer in instructing their employee to assault a third party was exempt from the Workers' Compensation exclusivity provision. However, in *Mingachos* the Court declined to extend this exemption to an employer's intentional, willful, or reckless violation of safety standards. Rather, the Court determined that in order for the exclusivity exemption to apply, the employer's alleged conduct must have been deliberately designed and intended to cause the injuries sustained. Additionally, in *Suarez I* the Court determined that "both the action producing the injury and the resulting injury must be intentional," and "the known danger involved must go from being a foreseeable risk which a

reasonable man would avoid and become a substantial certainty.” The Court further noted that in order to satisfy the substantial certainty exception, the plaintiff is required to show the employer’s subjective intent to involve themselves in a practice which the employer knows is substantially certain to cause injury to their employees.

The Court additionally looked to the practices of neighboring states regarding substantial certainty exceptions to their respective Workers’ Compensation Acts. The Court determined that their neighboring states all used essentially the same factors for determining substantial certainty which were initially implemented by the New Jersey Court. New Jersey courts consider four factors to establish an employer’s substantial certainty: “(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.” The Court found that Connecticut’s appellate case law is consistent with New Jersey and other neighboring states’ standards. Based on these factors, the Court determined that there was no deceit on the part of the defendant in regard to the risk posed by the machine, there was no evidence of the defendant having a history of workplace safety violations, and there was no evidence of prior injuries caused by that machine. The Court found, therefore, that the defendant could not be said to have been substantially certain that such an injury would occur.

The Court found it to be a well-established principle that “although warnings to the employer regarding the safety of work- place conditions are relevant evidence, they do not, without more, raise a genuine issue of material fact to defeat summary judgment with respect to whether an employer subjectively believes that its employee’s injuries are substantially certain to

result from its action.” In the present case, the plaintiff presented two affidavits which provided nothing more than evidence of the defendant’s knowledge of a potential danger. The affidavits did not provide evidence that the defendant’s conduct constituted a blatant intention to pose a risk to the plaintiff, such that the defendant’s denial that they knew the consequences were substantially certain to follow, is not believable. The Court determined that, based on this precedent, the plaintiff failed to establish that the defendant was substantially certain that the injury to the plaintiff would occur and therefore the plaintiff did not establish a genuine issue of material fact.