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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

PAUL FRIEND,

Plaintiff and Appellant,

v.

WILLIAM KANG et al.,

Defendants and Respondents.

E063643

(Super.Ct.No. CIVBS1200046)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Sachs, Judge. Affirmed.

Law Office of Robert D. Conaway and Robert D. Conaway for Plaintiff and Appellant.

Cihigoynetche, Grossberg & Clouse, Katharine L. Spaniac, and Lea Patricia L. Francisco for Defendants and Respondents.

Plaintiff and appellant Paul Friend, a tow truck driver, filed a complaint alleging he was injured at work when a metal folding chair he was sitting on collapsed. In his fourth cause of action, Friend alleged his injury was caused by the negligence of defendants and respondents William Kang and GBWY Investment Group, Inc. dba Stateline Service, Inc. (collectively defendants).[1] Defendants moved for summary judgment on Friend's negligence claim, arguing workers' compensation was Friend's exclusive remedy for his injury. The trial court agreed, granted summary judgment, and dismissed the claim.

On appeal, Friend argues summary judgment was improper because the record contains evidence creating a factual dispute as to whether defendants were Friend's employer and whether Kang personally owned the folding chair that caused Friend's injury. We affirm.

I

FACTS AND PROCEDURAL BACKGROUND

A. *Allegations in Friend's Complaint*

Friend works for GBWY. In January 2011, Friend was injured at work when he sat on a metal folding chair and the chair collapsed.

Friend alleged his injury was a result of Kang's negligence. Friend alleged Kang had acquired the chair "in his personal name for use by [Friend] and other co-workers during the course and scope of their employment." Sometime before Friend sat in the

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[1] Friend's fourth cause of action is the only claim at issue in this appeal.

chair, Kang had the chair repaired. Kang should have known the chair was not properly repaired and was not safe for use in the workplace.

B. *Defendants' Motion for Summary Judgment*

Defendants filed a motion for summary adjudication alleging Friend's exclusive remedy for his injury was workers' compensation (Lab. Code, § 3600 et seq.) because the injury was work related and based on a claim of his employer's negligence. Defendants disputed Friend's allegation that Kang personally owned the chair. They submitted evidence, in the form of Kang's deposition testimony and sworn declaration, that the chair was GBWY's property, acquired when Kang purchased Stateline Service, Inc. from its prior owner along with its equipment and furnishings.

Friend opposed defendants' motion, arguing that Stateline Service, Inc., not GBWY, was his employer, and that Kang "personally owned" the chair because he acquired it from the previous owner in his own name, as an individual. Friend pointed to Massoud Akhamzadeh's deposition testimony that he hired Friend as a driver for Stateline Service, Inc.[2] To support his argument that Kang personally owned the chair, Friend pointed to the portion of Kang's deposition testimony where he answered "Yes" to the question, "[D]o you know if that chair or the type of chair Mr. Friend collapsed in, was that – was that there when you purchased the business?"

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[2] Akhamzadeh is Kang's business partner. In addition to testifying that he hired Friend as a driver for Stateline Service, Inc., Akhamzadeh testified, "Stateline Service is dba of GBWY."

The trial court granted defendants' motion for summary adjudication as to Friend's negligence claim "because [Friend] cannot establish Mr. Kang's personal ownership of the subject property or subject chair."

II

DISCUSSION

A. *Standard of Review*

"Any party may move for summary judgment in any action or proceeding by contending that the action has no merit, or there is no defense to the action. (Code Civ. Proc., § 437c, subd. (a).) Code of Civil Procedure section 437c, subdivision (c), *requires* a trial court to grant summary judgment if all the papers and affidavits submitted, together with 'all inferences reasonably deducible from the evidence' and uncontradicted by other inferences or evidence, show that 'there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' [Citations.] Where the defendant is the moving party, he or she may meet the burden of showing that a cause of action has no merit by proving either that (1) one or more elements of the cause of action cannot be established, or (2) there is a complete defense to that cause of action. Once that burden is met, the burden shifts to the plaintiff to show the existence of a triable issue of one or more material facts with respect to that cause of action or defense. [Citations.]

'On appeal, we review the trial court's decision to grant or deny the summary judgment motion de novo, on the basis of an examination of the evidence before the trial

court and our independent determination of its effect as a matter of law.' " (*Ashdown v. Ameron Internat. Corp.* (2000) 83 Cal.App.4th 868, 873-874.)

B. *Exclusiveness of Workers' Compensation Remedy*

The sole issue on appeal is whether the trial court erred in granting defendants' motion for summary judgment on Friend's negligence claim. We conclude on the basis of Friend's allegations and the undisputed evidence that Friend's claim is barred by the exclusivity provision of the Workers' Compensation Act (Lab. Code, § 3600 et seq.) and therefore the trial court properly granted summary judgment.

Subject to limited exceptions, workers' compensation is the exclusive remedy available to injured employees against an employer responsible for injuries "arising out of and in the course of employment." (See Lab. Code, §§ 3600-3602, 5300.) "[T]he exclusivity provisions encompass all injuries 'collateral to or derivative of' an injury compensable by the exclusive remedies of the [Workers' Compensation Act]." (*Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 813.) An injury is "compensable" for exclusivity purposes if two conditions exist: The plaintiff is seeking to recover for an "industrial personal injury or death" sustained in and "arising out of and in the course [and scope] of the employment," and the acts or motives giving rise to the injury constitute "a risk reasonably encompassed within the compensation bargain." (*Id.* at pp. 813-814, 819-820.) Where a claim is based on an employer's alleged negligence, reckless disregard for safety, or even intentional misconduct if the misconduct is in connection with actions that are a normal part of the employment relationship, the claim

falls under the exclusivity provisions. (*Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, 158.)

Here, the undisputed facts (indeed, Friend's own allegations) demonstrate Friend's injury is compensable under the Workers' Compensation Act and therefore his negligence claim is barred by the Act's exclusivity provisions. Kang owns GBWY, a corporation with the "dba" of Stateline Service, Inc. Friend alleged in his complaint that he is an employee of GBWY. Friend also alleged that, upon "returning to work," he sat on a metal folding chair, it collapsed, and he was injured. According to Friend, the chair collapsed because it had been negligently repaired, at Kang's request. In short, Friend alleged his workplace injury was caused by his employer's negligence. The Workers' Compensation Act applies to any workplace injury caused by an employer's negligence, and so by Friend's own allegations, the Act applies to his injury. (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 598 (*DaFonte*) ["Of course, an employer cannot be sued in tort for the work-related injury of an employee. The employer's sole liability is for benefits payable, regardless of fault, under the workers' compensation law"].)

On appeal, Friend asserts that Akhamzadeh hired him to work as a tow truck driver for Stateline Service, Inc. and contends that therefore Stateline Service, Inc., not GBWY, is his employer. We are unpersuaded. It is undisputed Stateline Service, Inc. is simply GBWY's "dba" or fictitious business name and Akhamzadeh is Kang's business partner. Furthermore, Friend alleged in his complaint that GBWY is his employer. Friend's paychecks come from GBWY, Friend admitted Kang had fired him once before,

and Friend listed GBWY as his employer on his workers' compensation claim form as well as on his employment eligibility form (Form I-9).

Next, Friend contends that "Kang's corporate position with GBWY" does not insulate him from personal liability for maintaining a dangerous workplace. The cases Friend cites are inapplicable as they do not involve workplace injuries and the Workers' Compensation Act; rather, the cases concern the unrelated issue of whether corporate directors can be held personally liable for the corporation's torts. (*Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490; *Michaelis v. Benavides* (1998) 61 Cal.App.4th 681.) Friend's attempt to cast Kang as a "person other than the employer" within the meaning of Labor Code section 3852 is similarly unpersuasive. (See Lab. Code, § 3852 [nothing in the exclusivity provisions of the Workers' Compensation Act bars an employee from suing a responsible person other than the employer].) In the case Friend relies on, *DaFonte*, *supra*, 2 Cal.4th 593, the employee successfully sued the manufacturer of the equipment that injured him. Kang is not the chair's manufacturer. As the owner of GBWY, Kang is the employer who furnished his workplace with the chair.

Friend's reliance on *Gigax v. Ralston Purina Co.* (1982) 136 Cal.App.3d 591 is misplaced. *Gigax* stands for the proposition that parent companies of an injured employee's company are not considered employers under the Workers' Compensation Act if they exercise no control over the employee. (*Gigax v. Ralston Purina Co.*, *supra*, at pp. 599, 601 ["the preeminent factor to be considered in determining this factual

question of employer-employee relationship is 'the right of control'"].) GBWY does business as Stateline Service, Inc., there is no parent-subsidiary corporate relationship in this case.

Finally, Friend makes much over the issue of who owns the folding chair that injured him. He claims Kang took "personal delivery" of the chair "in his own name" and therefore the chair belongs to Kang, not GBWY. Because Kang is Friend's employer, it does not matter whether he personally owns the chair or the chair is a GBWY asset. The material facts (as alleged) are Kang provided the chair at his workplace and the chair allegedly injured one of his employees. An employer's "*sole* liability" for a workplace injury "is for benefits payable, *regardless of fault*, under the workers' compensation law." (*DaFonte*, *supra*, 2 Cal.4th at p. 598, italics added.)

As Friend's employer, Kang's degree of fault with regard to the workplace chair is immaterial. Whether Kang was innocent, negligent, grossly negligent, or even if he intentionally furnished his workplace with a defective chair, workers' compensation is Friend's exclusive remedy against his employer for his workplace injury. (See *Cole v. Fair Oaks Fire Protection Dist.*, *supra*, 43 Cal.3d 148; *Singh v. Southland Stone, U.S.A., Inc.* (2010) 186 Cal.App.4th 338, 367.) Additionally, because it does not matter whether Kang was or was not negligent in order for the exclusivity provisions of the Workers' Compensation Act to apply, we need not address Friend's argument that Kang created a "presumption of negligence" by throwing the chair away (a claim Kang disputes).

Because Friend's allegations and the undisputed facts demonstrate his negligence claim is barred by the exclusivity provisions of the Workers' Compensation Act, the trial court did not err in granting summary judgment for defendants. We note the trial court based its ruling on Friend's inability to establish Kang personally owned the chair. While it is unclear from this stated basis whether the ruling is based on the exclusivity of the workers' compensation remedy, "[w]e need not defer to the trial court and are not bound by the reasons in its summary judgment ruling; we review the ruling of the trial court, not its rationale," and we conclude defendants were entitled to summary judgment. (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 630.)

III

DISPOSITION

The judgment is affirmed. In the interests of justice, the parties shall bear their own costs.

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SLOUGH
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.