University of Baltimore Law Forum

Volume 17
Number 2 *Winter, 1987*

Article 5

1987

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Recent Developments

Montgomery County v. Lake: EMPLOYER NOT ALLOWED TO OFFSET OVERPAYMENT OF WORKERS' COMPENSATION BENEFITS

In *Montgomery County v. Lake*, 68 Md. App. 269, 511 A.2d 541 (1986), a case of first impression, the Maryland Court of Special Appeals held that Maryland Code Ann. Art. 101, § 56, does not allow an employer to offset the overpayment of workmen's compensation benefits in one claim against a second award granted to an injured employee. In so holding, the court affirmed the decision by the Circuit Court for Montgomery County.

The appellee, Charles Lake, a Montgomery County employee, made two separate claims for workmen's compensation benefits. On his first claim, the Workers' Compensation Commission determined that Lake sustained a thirty percent loss of the use of his body because of injury to his lungs and ordered permanent partial disability benefits for a period of 150 weeks. On the second claim, the Commission determined that Lake suffered a five percent loss of his right hand and a fifteen percent loss of the use of his body as a result of injuries to his nose, right shoulder and right elbow sustained after a second unrelated injury. The Commission ordered benefits for this injury for a period of 87.5 weeks. *Id.* at 271, 511 A.2d at 542.

Montgomery County appealed the Commission's decision. The Circuit Court for Montgomery County granted the County's motion for partial summary judgment and ordered that the payments awarded on the second claim not be paid until the payments under the first claim were completed. After the decision by the circuit court, Lake applied to the Commission for a lump sum payment of the amount awarded on the first claim. The Commission granted the application and accelerated $4,000.00 of the $4,711.00 then due Lake under that award. *Id.*

In a jury trial on the first claim, the County won its appeal and the jury reduced Lake's permanent partial disability from thirty percent to ten percent. This reduction created an overpayment of $8,900.00 in benefits on the first claim because all of the payments due under that claim had already been paid. At the time of the jury's decision, there remained $1,600.00 unpaid on the second claim. The County, in an effort to recoup the overpayment, suspended the payment of benefits due under the second claim without either formal notice to Lake or prior approval by the Commission. Lake complained to the Commission and a hearing was conducted in which the Commission ruled that the County was not entitled to offset the overpayment in the first claim against the unpaid, unaccrued benefits awarded in the second claim. *Id.* at 272, 511 A.2d at 542-43.

The County appealed the Workers' Compensation Commission's orders to the Circuit Court for Montgomery County. The court upheld the decision of the Commission reasoning that, "[t]here is a presumption of propriety that attaches to any determination by the Workmen's Compensation Commission. . . ." *Id.* at 272, 511 A.2d at 543.

On appeal to the Maryland Court of Special Appeals, the County asserted that the overpayment of compensation benefits in one claim should be offset against the same type of benefits awarded in another claim when the latter benefits are unpaid and unaccrued when the overpayment arose. The County also contended that a credit was necessary to prevent unjust enrichment to Lake because he received benefits in excess of that which he was entitled. *Id.* at 274, 511 A.2d at 544.

In rejecting the County's claims, the court of special appeals observed that it is firmly established in Maryland that once moneys are paid out on a claim, those funds are not recoverable "on any theory," absent fraud, even if the award is reduced or reversed on appeal. *Id.* at 274, 511 A.2d at 544 (citing *St. Paul Fire & Marine Ins. Co. v. Treadwell*, 263 Md. 430, 439 (1971)). The County had contended that it was not seeking *recovery back* of funds paid out, but instead was merely *offsetting* funds overpaid in one claim against unpaid, unaccrued funds awarded in a second claim, and therefore *St. Paul Fire & Marine Ins. Co.* was not applicable. The Maryland Court of Special Appeals concluded that whether the County terms it "offset" or "recovery back," the effect is the same and the claimant is deprived of funds awarded to him for a separate injury. *Id.* at 275, 511 A.2d at 544.

The Court noted that the Maryland Court of Appeals has held that "the Workmen's Compensation Act establishes a procedure of its own covering every phase of the right to compensation and of the procedure for obtaining and enforcing it, which procedure is complete and exclusive in itself." *St. Paul Fire & Marine Ins. Co.*, 263 Md. at 436 (quoting *Tompkins v. George Rinner Constr. Co.*, 409 P.2d 1001, 1003 (1966)). In *St. Paul Fire & Marine Ins. Co.*, the court interpreted Art. 101, § 56 and concluded that since the Act did not provide a procedure for recovery of funds after overpayment, it was the intent of the legislature to prohibit such a right. *Id.* The court in *Lake* similarly held that since the compensation statute does not provide a procedure to offset separate claims when overpayment results, the legislature did not intend to permit this procedure. *Id. See also Mayor and City Council of Baltimore v. Oros*, 301 Md. 460, 483 A.2d 748 (1984).

The court in *Lake* then addressed the question of whether recovery back of funds is permissible where the sum paid out on a claim was awarded under the lump sum provisions of the Act. The court analyzed the holding in *Bayshore Indus., Inc. v. Ziats*, 229 Md. 69, 76-77 181 A.2d.652 (1962), which found that "a stay of payment awarded by reasons of an appeal challenging the underlying award is prohibited." 68 Md. App. at 577, 511 A.2d at 545. The *Bayshore Indus., Inc.* court also held that "the purpose behind the prohibition is that of affording day-to-day support to an injured employee and his or her dependents." *Id.* Following this rationale, the court of appeals in *St. Paul Fire & Marine Ins. Co.* held that restitution or recovery back of payments would not be permitted because "it is not the intention and spirit of the Workmen's Compensation Act to allow an employer to

recover back money paid under an award which already has been spent by a claimant for living expenses." *Id.*

In *Lake*, the Maryland Court of Special Appeals stated that they are not unmindful of the potential inequities presented by this appeal. In theory, no one would disagree that funds which are disbursed without ultimate legal vindication should be recoverable, however, after a lump sum award is made, it is difficult to justify taking back the money which has already been used for living expenses. This question poses a real dilemma and until the legislature addresses these problems, these potential inequities will surely occur again.

–J. Russell Fentress IV

Anderson v. Bimblich: RECOVERY OF WORKER'S COMPENSATION BENEFITS PRECLUDES RECOVERY IN TORT ACTION

The Court of Special Appeals of Maryland in *Anderson v. Bimblich*, 67 Md. App. 612, 508 A.2d 1014 (1986), has held that an employee of a property management company under contract to the owners of an apartment building, injured while performing custodial duties under a subcontract with the building owners, and recovers worker's compensation benefits, may not later pursue a tort action against the owners if they are deemed "principal contractors," thus constituting a statutory employer within the meaning of the Worker's Compensation Act (the "Act"), Md. Ann. Code art. 101, § 62 (1985).

On December 10, 1981, appellant Cyril Anderson suffered serious injuries resulting in the amputation of his right hand while operating a trash compactor in his capacity as custodian at the Barbazon Plaza Apartment complex. At the time of the accident Anderson was employed by the Smith-Braedon Property Co., ("Smithy") pursuant to a contract with the appellees, Barbazon Plaza Associates (Barbazon), a partnership of which the named defendant Bimblich was a member. Under the terms of the contract, Smithy was to provide property management, custodial, and maintenance services for the apartment complex. Anderson subsequently filed for and received worker's compensation benefits for his injury.

Unsatisfied, Anderson proceeded to file a "third party" suit against Barbazon, alleging negligence in the latter's maintenance of a defective and dangerous trash compactor on the premises. Anderson's suit was filed pursuant to § 58 of the Worker's Compensation Act, which provides that an injured employee who previously received benefits under the Act, could also elect to seek damages against a person other than the employer for negligence jointly caused by the employer and some other third party. *See* Md. Ann. Code, art. 101, § 58 (1985).

In the Circuit Court for Montgomery County, Barbazon filed for, and the trial judge granted, a motion for summary judgment on the grounds that Barbazon was Anderson's statutory employer within the meaning of § 58 of the Act. Under the exclusive remedy provisions of § 15 of the Act, an employee was barred from suing his employer to recover damages arising out of the employer's negligence if the employee previously elected to seek benefits under the Act. *See* Md. Ann. Code, art. 101, § 15 (1985). Undeterred, Anderson appealed.

Presented with a case of first impression, the court addressed the question of whether the appellees (Barbazon) were the statutory employer of Anderson, which if answered in the affirmative, would bar Anderson's recovery as a matter of law.

The court first determined that the exclusive remedy provisions of § 15 of the Act barred an employee who had previously elected to recover worker's compensation from later suing his employer for tort damages. The court next determined that notwithstanding § 15, an employee could undertake to sue a person other than the employer to recover tort damages, so long as the party sued was not his statutory employer within the meaning of § 62 of the Act.

To determine whether the appellees in the instant case were the statutory employers of Anderson, the court relied on the holding of the Court of Appeals of Maryland in *Honaker v. W.C. and A.N. Miller Dev. Co.*, 278 Md. 453, 365 A.2d 287 (1976). In considering whether the employer was a "principal contractor", and thus the statutory employer of an employee injured while installing a slate roof, the *Honaker* court specified four elements that must be satisfied to bring an employer within the scope of § 62. The four elements are: (1) a principal contractor; (2) who has contracted to perform work; (3) which is a part of his trade, business, or occupation; and (4) who has contracted with any other party as a subcontractor for the execution by or under the subcontractor of the whole or any part of such work. *Anderson*, 67 Md. App. at 617, 508 A.2d at 1016.

The key determinant under *Honaker* was whether the contract between the principal contractor and the subcontractor arose out of the original contract between the parties, or resulted from a contract entered into by the principal contractor and a third party. As applied to the case at bar, if the subcontract for custodial services arose out of the original contract between Barbazon and Smithy, Barbazon as "principal contractor" would be designated as the statutory employer of Anderson. However, the *Honaker* court cautioned that the preliminary finding was subject to application of the "essential or integral part" test. Under this test, a finding that the "subcontracted work is an 'essential or integral' part of the principal contractor's business" is required. *Miller Dev. Co. v. Honaker*, 40 Md. App. 185, 388 A.2d 562 (1978), *aff'd*, 285 Md. 216, 401 A.2d 1013 (1979).

In applying the elements of the test set forth in *Honaker* to the facts of the case at bar, the court found that the first two elements were satisfied by evidence contained in the tenant-lease agreements which clearly designated Smithy as an agent/landlord of Barbazon. Additionally, the court found that a subcontract between Barbazon and the tenants to provide custodial services existed because of the landlord's promise, contained in the leases, to "deliver the premises and all areas in a clean, safe, and sanitary condition." *Anderson*, 67 Md. App. at 619, 508 A.2d at 1017.

The court further held that the third element of *Honaker* was satisfied by the fact that the subcontract to provide custodial services for the benefit of the tenants was "an essential or integral" part of Barbazon's business as apartment owners. Lastly, the court held that the fourth element was satisfied because the maintenance subcontract was viewed as being part of the original property management contract between the appellees and Smithy, and not the result of a separate contract between Barbazon and some other third party, in this case the tenants themselves.

In holding that apartment owners who contract with a property management company to provide custodial services by way of a subcontract are the "principal contractors," and thus the statutory employer of a custodian injured during the course of his employment, the court has expanded the meaning of statutory employer under § 62 of the Worker's Compensation Act to encompass apartment building owners. The decision of the court thus extends the protections inherent in the Act to apartment building owners who subcontract for custodial services under a pre-existing property management contract. Employees injured through the employer's negligence who have previously elected to seek benefits under § 15 of the Act, will continue to be precluded from bringing suit against a statutory employer as defined under § 62 of the Act.

–Kenneth S. Savell