STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: December 3, 2012)

MARCO CERA and DANIELLE CERA, Individually and as Natural Guardians of GABRIELLA CERA and NINA CERA	:	
	:	**C.A. No. PC-12-0678**
v.	:	
A.W. CHESTERTON COMPANY, et al.	:	

DECISION

GIBNEY, P.J. Before this Court is a Motion for Summary Judgment ("Motion"), pursuant to Super. R. Civ. P. 56(c), brought by Providence College ("Defendant") against Marco Cera ("Cera") and Danielle Cera, Individually and as Natural Guardians of Gabriella and Nina Cera (collectively "Plaintiffs"). Defendant contends that it is immune from civil suit in the instant matter under certain provisions of the Rhode Island Workers' Compensation Act (the "WCA"), G.L. 1956 §§ 28-29 et seq. Plaintiffs object to Defendant's Motion, arguing that there exists a genuine issue of material fact as to whether the WCA applies here at all. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

Cera, a New Jersey resident, moved to Providence, Rhode Island in 1991 to pursue a four-year course of study and obtain a bachelor's degree in history from Defendant. During his summer vacations in 1993 and 1994 (the "1993 and 1994 summers"), Cera worked for Defendant as a "summer helper" with its Heating,

Ventilation, and Air Conditioning crew (the "HVAC crew").[1] Defendant traditionally hired approximately twenty-five to thirty-five "summer helpers" during each summer vacation period, placing them among its HVAC, landscaping, and furniture moving crews as supplementary labor.[2] As part of the HVAC crew, Cera worked approximately thirty hours per week and performed cleaning, maintenance, and other "gofer" duties for the full-time crew members. Defendant paid Cera regular wages by check twice monthly.[3]

Plaintiffs allege that Cera was exposed to asbestos and asbestos-containing products while working as a "summer helper" for Defendant. Specifically, Plaintiffs claim that Cera inhaled breathable asbestos fibers that had been disturbed and released by Defendant and outside contractors from HVAC products and machinery that he worked with or around. Plaintiffs allege that Defendant breached duties it owed to Cera to warn him of the dangers of asbestos exposure, to inspect its premises to ascertain the toxicity of asbestos-containing products present, and to remediate any asbestos-related hazards. Plaintiffs contend that as a result of his exposure to breathable asbestos fibers while working for Defendant, Cera developed and eventually died from mesothelioma.[4]

Plaintiffs filed their Complaint on February 9, 2012, seeking, among other claims, to recover compensatory and punitive damages and pre- and post-judgment interest from

[1] Cera worked as a "summer helper" from approximately mid-May to early September during both the 1993 and 1994 summers. (Cera Dep. at 34 ¶¶ 15-20.)

[2] Defendant has hired "summer helpers" from as early as 1992 to at least 2006. (Lebeau Dep. at 21 ¶¶ 1-4.)

[3] According to extracts from Cera's Social Security records, Cera earned approximately $1748.26 in 1993 and $2592.00 in 1994 from Defendant for his work as a "summer helper." (Cera Soc. Sec. Doc. (Soc. Sec.) at 4-5.)

[4] Cera died from his disease on April 6, 2012. (Pls.'s Br. at 2.)

Defendant in connection with Cera's alleged exposure to asbestos during the 1993 and 1994 summers. Relative to the instant motion, both parties have appended numerous affidavits, deposition transcripts, and other documents to their briefs in support of their respective claims.

II

Standard of Review

Pursuant to Super R. Civ. P. 56(c),[5] our Supreme Court has held that "summary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the non-moving party, the court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." Mutual Development Corp. v. Ward Fisher & Co., LLP, 47 A.3d 319, 323 (R.I. 2012); Olamuyiwa v. Zebra Atlantek, Inc., 45 A.3d 527, 532 (R.I. 2012). "Conversely, summary judgment is not appropriate 'if there are any genuine issues of material fact or if the moving party cannot prevail as a matter of law.'" In re Estate of Dermanouelian, 51 A.3d 327, 331 (R.I. 2012) (quoting Narragansett Electric Co. v. Saccoccio, 43 A.3d 40, 44 (R.I. 2012)).

"The burden rests with the nonmoving party 'to prove the existence of a disputed issue of material fact by competent evidence; it cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.'" Mutual Development Corp., 47 A.3d

[5] Rule 56(c) provides in pertinent part:

> "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

at 323 (quoting Hill v. National Grid, 11 A.3d 110, 113 (R.I. 2011)); see Olamuyiwa, 45 A.3d at 532. Thus, "by affidavits or otherwise, nonmoving parties have an affirmative duty to set forth specific facts showing that there is a genuine issue of material fact for trial." Jessup & Conroy, P.C. v. Seguin, 46 A.3d 835, 839 (R.I. 2012). When considering a motion for summary judgment, our Supreme Court has counseled that a trial justice must "remain ever mindful . . . 'that summary judgment is an extreme remedy that warrants cautious application.'" Mutual Development Corp., 47 A.3d at 323; Olamuyiwa, 45 A.3d at 533.

III

Workers' Compensation Benefits as the Appropriate Remedy

"In a tort action by an employee to recover damages for a work-related injury," it is widely acknowledged that an employer asserting a workers' compensation statute as a defense carries the burden of proving that workers' compensation benefits are the appropriate and exclusive remedy for the plaintiff. 6 Larson's Workers' Compensation Law, § 100.01(2) at 100-3. The employer satisfies this burden by demonstrating "that the plaintiff was an employee entitled only to workers' compensation [benefits]" within the meaning of the applicable workers' compensation statute. Id. (Emphasis added.) "The controlling fact in establishing exclusiveness is the [employment] relationship of the parties at the time of occurrence of the injury." Id. at § 100.01(3) at 100-6; see also Gothreaux v. Gulf Oxygen Co., 289 So. 2d 235, 236 (La. App. 1974). (Emphasis added.) Thus, "if the injury occurred in the course of employment, it is of no consequence that the employment has since been terminated and that no employment relation exists at the time of the tort suit." 6 Larson § 100.01(3) at 100-7; see also Mitchell v. Hercules, Inc., 410 F.

Supp. 560, 571 (S.D. Ga. 1976). Pursuant to § 28-35-11 of the WCA,[6] jurisdiction of those cases in which the employer shows that workers' compensation benefits are the appropriate and exclusive remedy for the plaintiff properly lies with the Workers' Compensation Commission. See Labbadia v. State, 513 A.2d 18, 20 (R.I. 1986); Miles v. Bendix Corp., 492 A.2d 1218, 1219 (R.I. 1985); Silva v. James Ursini Co., 475 A.2d 205, 207-08 (R.I. 1984); DeNardo v. Fairmount Foundries Cranston, Inc., 121 R.I. 440, 447, 399 A.2d 1229, 1233 (1979); McAree v. Gerber Products Co., 115 R.I. 243, 249, 342 A.2d 608, 611 (1975).

IV

Discussion

Defendant contends that §§ 28-29-17 and 28-29-20 of the WCA grant it immunity from civil suit in the instant matter because Cera was Defendant's "employee" during the 1993 and 1994 summers within the meaning of § 28-29-2(4) of the WCA. Specifically, Defendant argues that Cera waived his right to sue Defendant in common-law tort for alleged work-related injuries per § 28-29-17. Moreover, Defendant asserts, § 28-29-20 provides Cera with the sole remedy—workers' compensation benefits—for his alleged work-related injuries. Thus, Defendant maintains, summary judgment is appropriate here because Cera cannot maintain any common-law tort claims against it.

Plaintiffs contend that while Cera worked for Defendant during the 1993 and 1994 summers, Cera was not Defendant's "employee" within the meaning of § 28-29-2(4) because he falls within the enumerated "casual employee" exception. Plaintiffs

[6] Section 28-35-11 provides in pertinent part that "[a]ll questions arising under chapters 29-38 of this title . . . shall, except as otherwise provided, be determined by the workers' compensation court in accordance with the provisions of those chapters."

assert that the "casual employee" exception applies here because Cera's hours, duties, and responsibilities were irregular. Moreover, Plaintiffs maintain, Cera's duties did not further Defendant's business—education—because they entailed simple maintenance, repair, and other "gofer" duties more common to a utility company than a college. Additionally, Plaintiffs argue that Cera's duties were superfluous tasks that were simply absorbed by Defendant's full-time staff when Cera returned to class. In fact, Plaintiffs assert, Cera was hired only because he had a "special relationship" with Defendant: he was Defendant's student, and Defendant was doing him a favor by hiring him. Thus, Plaintiffs contend, summary judgment is inappropriate here because there remains a genuine issue of material fact as to whether the WCA applies in the first instance.

Defendant responds that Cera was a full-fledged "employee" of Defendant during the 1993 and 1994 summers and the "casual employee" exception does not apply here. Defendant argues that Cera's hours, duties, and responsibilities were, in fact, regular and predictable over a definite number of weeks. Defendant also asserts that Cera's duties furthered Defendant's business because they aided Defendant in promoting and maintaining a safe and effective environment for its students and faculty. Finally, Defendant contends that even if it hired Cera only because he was its student, he nonetheless falls within the WCA's definition of "employee" and is subject to its provisions because the existence of an employer-employee relationship, not the employer's motivation for hiring the employee, is the controlling fact.

A

An "Employee" under the WCA

An "employee" is defined in § 28-29-2(4) of the WCA as "any person who has entered into the employment of or works under contract of service or apprenticeship with any employer . . . ." Sec. 28-29-2(4). Our Supreme Court has consistently held that "[u]nder the [WCA] the relationship of employer and employee is contractual." Miles, 492 A.2d at 1219; Silva, 475 A.2d at 207-08. Thus, the Court has found that "in order to establish an employer-employee relationship, there must be an express or implied contract for hire." Spikes v. State, 458 A.2d 672, 674 (R.I. 1983). The "services performed must be voluntary on the part of the employees. Wages must be paid[,] and the two parties must be capable of giving their consent to enter into the relationship." Id.; see also Durand v. City of Woonsocket, 537 A.2d 129, 130 (R.I. 1988). Above all, the Court has counseled, "the determinative factor in the existence of an employer-employee relationship is the employer's right 'to exercise control and superintendence over his employees.'" Deus ex. rel. Deus v. S.S. Peter & Paul Church, 820 A.2d 974, 976 (R.I. 2003) (quoting Sorensen v. Colibri Corp., 650 A.2d 125, 129 (R.I. 1994)); see also Croce v. Whiting Milk Co., 102 R.I. 89, 92, 228 A.2d 574, 577 (1967); Martines v. Terminal Methods, Inc., 101 R.I. 599, 600, 225 A.2d 790, 791 (1967).

1

Cera's Employment Status

At the outset, this Court finds that Cera was Defendant's "employee" during the 1993 and 1994 summers within the meaning of § 28-29-2(4). Our Supreme Court has noted that for purposes of the WCA, an employer-employee relationship is established by

"an express or implied contract for hire." Spikes, 458 A.2d at 674. The Court has consistently found that a "contract for hire" exists when the parties have consented to entering an employment relationship, the employee voluntarily gives his services, wages are paid, and the employer exercises "control and superintendence" over the employee during working hours. See id.; Deus, 820 A.2d at 976; Durand, 537 A.2d at 130.

The evidence demonstrates that Cera and Defendant entered into an explicit "contract for hire" in Rhode Island during the 1993 and 1994 summers. Cera affirmatively sought employment from Defendant in order to "stay on-campus" in Providence and pay for his rent and other living expenses. (Cera Dep. at 33 ¶¶ 16-19.) Whatever motivated Defendant to hire Cera during the 1993 and 1994 summers,[7] the fact remains that Defendant twice chose to employ Cera as a "summer helper" with its full-time HVAC crew. Id. at 34 ¶¶ 22-24; see (Lebeau Dep. at 20 ¶¶ 1-17; 26, ¶¶ 17-24; 27 ¶¶ 1-9); (Lebeau Aff. at ¶ 5.) Thus, both parties voluntarily consented to and, in fact, entered into an explicit employment relationship during the 1993 and 1994 summers. Cf. Durand, 537 A.2d at 130-31 (agreeing with the Workers' Compensation Commission that a man participating in a state-mandated, work-fare program with the Woonsocket Park

[7] Plaintiffs argue that Defendant's only motivation to hire Cera was as a favor to Cera because he was one of Defendant's students and had a "special relationship" with Defendant. They contend that Defendant did not require Cera's labor to conduct its business; in fact, they assert Cera's labor was entirely superfluous to the functioning of Defendant's HVAC systems and was absorbed by the full-time HVAC staff after Cera returned to class. By contrast, Defendant maintains that whatever its motivation in hiring Cera, it formed an employer-employee relationship with him during the 1993 and 1994 summers. Defendant asserts that because the proper inquiry under § 28-29-2(4) is to consider whether an employment relationship existed and not to scrutinize the employer's motivation in hiring the individual, Cera was Defendant's "employee" within the statutory definition.

and Recreation Department was not an "employee" within the meaning of § 29-28-2(4) because there was no "contract for hire" and the parties' relationship was not voluntary).

This Court also finds that Defendant "exercise[ed] control and superintendence" over Cera during his term of employment as a "summer helper." Defendant set Cera's hours and outlined his duties. (Cera Dep. at 34 ¶¶ 6-11); (Lebeau Dep. at 22 ¶¶ 10-24; 23 ¶¶ 8-16.) Richard Lebeau, Jr., the HVAC crew's "head man" and Cera's superior, supervised Cera and the other "summer helpers" during the 1993 and 1994 summers as they performed those duties. (Cera Dep. at 74 ¶¶ 20-24; 75 ¶¶ 1-2); (Lebeau Dep. at 15 ¶¶ 5-7; 29 ¶¶ 19-24; 30 ¶¶ 1-11); (Lebeau Aff. at ¶ 4.) Cera voluntarily undertook his duties and performed them over a number of weeks. (Cera Dep. at 34 ¶¶ 6-24.) Defendant regularly paid Cera wages for his work and had the ability to terminate Cera's employment at will. (Cera Dep. at 78 ¶¶ 17-24.); (Soc. Sec. at 4-5.) Therefore, this Court finds that Defendant exercised "control and superintendence" over Cera during the 1993 and 1994 summers. See Deus, 820 A.2d at 976 (finding that an employer-employee relationship existed where "[a]t all times during [the plaintiff's] employment, defendant set her hours, supervised her, paid her and had the authority to terminate her employment at will"); see also Croce,102 R.I. at 92, 228 A.2d at 577; Martines, 101 R.I. at 600, 225 A.2d at 791. Based on these factors, this Court finds that Cera was Defendant's "employee" within the meaning of § 28-29-2(4). See Deus, 820 A.2d at 976; Durand, 537 A.2d at 130; Spikes, 458 A.2d at 674.

B

The "Casual Employee" Exception

Plaintiffs argue that, even if Cera were Defendant's "employee" within the statutory definition, the WCA nonetheless does not apply here because Cera falls within the "casual employee" exception enumerated in § 28-29-2(4). Plaintiffs contend that the "casual employee" exception applies to Cera because his hours, duties, and responsibilities were irregular and unpredictable and his work did not further Defendant's education business.

Defendant responds that the "casual employee" exception does not apply here because Cera's duties and hours were, in fact, regular and predictable over a definite period of time. Moreover, Defendant asserts, Cera furthered Defendant's business because he aided Defendant in offering a safe educational environment for its students, faculty members, and visitors.

The WCA's definition of "employee" contains, among others, a "casual employee" exception stating that "[t]he term 'employee' . . . does not include . . . a person whose employment is of a casual nature, and who is employed other than for the purpose of the employer's trade or business . . . ." Sec. 28-29-2(4). An individual falling within this exception who otherwise meets the definition of "employee" is nonetheless not covered by the WCA and is not entitled to workers' compensation benefits thereunder. See 4 Larson § 72.01 at 72-2 to 73-3, § 73.02 at 73-2 to 73-6.

Our Supreme Court has long recognized that the "casual employee" exception does not apply unless two prongs are satisfied: the employment (1) must be "casual in nature" and (2) must not be "for the purpose of the employer's trade or business." See

Leva v. Caron Granite Co., 84 R.I. 360, 370, 124 A.2d 534, 539 (1956) (finding that "[e]ven if [the petitioner] was [a casual employee], we are of the opinion that petitioner is entitled to recover unless his employment also was not for the purpose of the employer's business" (emphasis added)); Gibbons v. United Electric Rys. Co., 48 R.I. 353, 353, 138 A. 175, 176 (1927) (holding, similarly, that "[t]he employment of the petitioner might well be regarded as casual . . . but that circumstance is not sufficient to bar the petitioner from compensation under the act, unless the employment was also not for the purpose of the employer's business" (emphasis added)); see also 4 Larson § 73.01 at 73-2 ("Most states [including Rhode Island] apply the ["casual employee"] exception only when the employment is both casual and outside the usual business of the employer" (emphasis added)).

1

The "Casual Employee" Exception Does Not Apply to Cera

This Court finds that the "casual employee" exception does not apply to the instant matter. Our Supreme Court has long held that the exception does not apply unless two prongs are satisfied: the employment must be both casual in nature and must not concern the employer's trade or business. See Leva, 84 R.I. at 370, 124 A.2d at 539; Gibbons, 48 R.I. at 353, 138 A. at 176; see also 4 Larson § 73.01 at 73-2. A court considering the first prong of the exception must examine "[t]he duration, predictability and regularity of recurrence" of the employment. DiRaimo v. DiRaimo, 117 R.I. 703, 708, 370 A.2d 1284, 1287 (1977); see Laliberte v. Salum, 503 A.2d 510, 514 (R.I. 1986); see also 4 Larson § 73.02, at 73-2. When considering the second prong, "[i]t is also helpful to note whether the services are necessary to the conduct and furtherance of the

business." DiRaimo, 117 R.I. at 708, 370 A.2d at 1287; see Salum, 503 A.2d at 514; see also 4 Larson § 73.03(3), at 73-8 to 9.

Concerning the first prong of the "casual employee" exception, this Court finds that Cera's employment was not "casual in nature." Cera worked regular hours for Defendant, five days per week. His term of employment occurred over the 1993 and 1994 summers, for a period of some weeks between mid-May and early September in each instance.[8] (Cera Dep. at 34 ¶¶ 6-24); see also 4 Larson § 73.02 at 73-3 ("Ordinarily, very short employments, of a few hours or days, are considered casual, while duration for several weeks or months is usually in itself enough to remove a job from that category"). (Emphasis added.) Furthermore, Cera regularly performed predictable cleaning, maintenance, and related duties for Defendant while on the job. (Cera Dep. at 39 ¶¶ 17-24); (Lebeau Dep. at 23 ¶¶ 8-16); (Lebeau Aff. at ¶¶ 4-5); (O'Connell Aff. at ¶ 17); see also 4 Larson § 73.02 at 73-2 to 73-5 (courts should focus on the "regularity" of the work performed when considering whether employment is casual). Thus, this Court finds that the first prong of the "casual employee" exception does not apply based on "[t]he duration, predictability and regularity of recurrence" of Cera's employment with Defendant. DiRaimo, 117 R.I. at 708, 370 A.2d at 1287; see Salum, 503 A.2d at 514; see also 4 Larson § 73.02 at 73-2.

Concerning the second prong of the exception, this Court finds that Cera was not "employed other than for the purpose of [Defendant's] trade or business." As this Court

[8] Based on Cera's deposition testimony, data contained in extracts of Cera's Social Security records, and prevailing Rhode Island minimum-wage standards in 1993 and 1994, Defendant calculates that Cera worked approximately nineteen weeks during each of the 1993 and 1994 summers. (D.'s Reply Br. at 15 n.9.)

has already found, Cera performed regular cleaning, maintenance, and other related duties while employed by Defendant during the 1993 and 1994 summers. It is true, as Plaintiffs contend, that Defendant is a venerable college, the primary business of which is offering interested individuals educational and training opportunities, see generally Drans v. Providence College, 119 R.I. 845, 383 A.2d 1033 (1978), and Cera did not teach or train any students while working as a "summer helper." Cera's duties, nonetheless, furthered Defendant's "trade or business" because they constituted services necessary for Defendant to offer a safe and effective educational environment for its students and faculty. See 4 Larson § 73.03(3) at 73-8 to 73-9 ("[M]aintenance, repair, painting, cleaning, and the like are 'in the course' of [an employer's] business because business could not be carried on without them, and because they are an expectable, routine, and inherent part of carrying on any enterprise"). This Court finds that, because Cera's duties aided Defendant's commission of its business, the second prong of the exception is also not met here.[9] Therefore, this Court finds that the "casual employee" exception does not

[9] Plaintiffs rely on Mitchell v. Gamble, 86 P.3d 944 (Ariz. App. 2004) for the proposition that Cera was a "casual employee" because his duties constituted "menial jobs collateral to the core education process" that were not part of the "'usual course' of a . . . school's 'business.'" This Court finds that Plaintiffs' reliance on Mitchell is misplaced. In that case, two middle school students tasked with moving a book cart from one room to another during school hours ran into a teacher and injured her. The Court of Appeals of Arizona determined that the students were not "employees" of the school district within the meaning of Arizona's workers' compensation statute because "the record does not suggest that [the students] performed their errand pursuant to any election or contract of hire." Mitchell, 86 P.3d at 951. (Emphasis added.) Therefore, the Court found that the injured teacher could maintain a tort suit against the students because they did not fall within Arizona's workers' compensation statute in the first instance. Id. at 952-53. Here, this Court has already determined that Cera and Defendant entered into an explicit "contract for hire" during the 1993 and 1994 summers. Moreover, Cera performed regular and predictable duties over the course of some weeks for Defendant; he did not perform a single, irregular duty only once, as the students in Mitchell did. Thus, this

apply to the instant matter to push Cera outside the definition of "employee" as codified in § 28-29-2(4). See Salum, 503 A.2d at 514 (finding that an employee of a construction and remodeling business who was not a carpenter and worked only part-time as a cleaner and "gofer" was nonetheless not a "casual employee" within the meaning of the exception because "his duties did further Laliberte's remodeling business").

C

The WCA Applies to Cera

Pursuant to § 28-29-1.3, the WCA applies "to any and all employees, as defined in § 28-29-2(4), who are injured or hired in the state of Rhode Island." (Emphasis added.) This Court finds that the WCA applies to the instant matter. This Court has already determined that Cera and Defendant entered into an explicit employment relationship in Rhode Island during the 1993 and 1994 summers and the "casual employee" exception does not apply here. Cera was therefore Defendant's "employee" during the relevant times within the meaning of § 28-29-2(4). Based on these factors, this Court finds that all of the requirements of § 28-29-1.3 are met and the WCA applies to the instant matter. Cf. Miles, 492 A.2d at 1219 (finding that the WCA did not apply to a Rhode Island truck driver injured in Rhode Island while on the job because the last act necessary to effectuate his employment contract "was not made in Rhode Island"); Silva, 475 A.2d at 207. Thus Cera is subject to the WCA's provisions. See Iacampo v. Hasbro, Inc., 929 F. Supp. 562, 582-83 (D.R.I. 1996); see also Cianci v. Nationwide Insurance Co., 659 A.2d 662, 668 (R.I. 1995) (finding that, absent contrary evidence, a trial court justice must assume that an "employee" as defined in § 28-29-2(4) falls within the WCA's ambit).

Court finds that the Mitchell precedent is inapplicable to the instant matter and Plaintiffs' reliance thereon is of no moment.

D

The WCA's "Exclusivity" and "Waiver-of-Rights" Provisions

Defendant further argues that as an "employee" subject to the WCA's provisions, Cera is barred by the plain language of §§ 28-29-17 (the "waiver-of-rights" provision) and 28-29-20 (the "exclusivity" provision) of the WCA from maintaining any common-law tort claims against it. Therefore, Defendant contends, summary judgment is appropriate in the instant matter. Plaintiffs do not reach this argument, relying on their assertion that summary judgment is inappropriate here because the WCA does not apply in the first instance.

The "waiver-of-rights" provision of the WCA provides in pertinent part:

> "Employees . . . of an employer . . . subject to or who [has] elected to become subject to the provisions of chapters 29-38 of this title as provided in § 28-29-8 shall be held to have waived his or her right of action at common law to recover damages for personal injuries if he or she has not given his or her employer at the time of the contract of hire or appointment notice in writing that he or she claims that right and within ten (10) days after that has filed a copy of the notice with the director [of labor] . . . ."

Sec. 28-29-17. (Emphasis added.) "This waiver continues in force until such time as the employee notifies the director of labor, within sixty days prior to any anniversary of the employer's becoming subject to the act, of his intentions to reclaim his common-law rights and within ten days a copy of the notice is sent to the employer." Lopes v. G.T.E. Products Corp., 560 A.2d 949, 950 (R.I. 1989) (citing Piccirillo v. Avenir, Inc., 517 A.2d 606, 607-08 (R.I. 1986)). Thus, our Supreme Court has held that "when an employee elects coverage under the WCA, he or she is deemed to have waived his or her common-law rights against the employer and its employees, officers, directors, and agents." Kaya

v. Partington, 681 A.2d 256, 259 (R.I. 1996) (citing Boucher v. McGovern, 639 A.2d 1369, 1375 (R.I. 1994)). Absent evidence that an employee preserved his or her common-law rights pursuant to the "waiver-of-rights" provision, then, Rhode Island courts must assume that an employee bringing an action to recover damages for a workplace injury is limited to workers' compensation benefits. See Iacampo, 929 F. Supp. at 582; Cianci, 659 A.2d at 668.

Furthermore, the WCA's "exclusivity" provision provides in pertinent part that "[t]he right to compensation for an injury under chapters 29–38 of this title . . . shall be in lieu of all rights and remedies as to that injury now existing, either at common law or otherwise against an employer . . . ." Sec. 28-29-20. Our Supreme Court has held that the "exclusivity" provision is "intended to preclude any common-law action against an employer, substituting a statutory remedy at the election of the employee when he enters employment." Folan v. State of Rhode Island D.C.Y.F., 723 A.2d 287, 290 (R.I. 1999) (quoting Hornsby v. Southland Corp., 487 A.2d 1069, 1072 (R.I. 1985)). Thus, "the practical effect of [the "exclusivity" provision] is that an employer is immune from suit when an injured employee is entitled to recovery under [the WCA]." Urena v. Theta Products, Inc., 899 A.2d 449, 452 (R.I. 2006); see also Kulawas v. R.I. Hospital, 994 A.2d 649, 657 (R.I. 2010). Interpreting the "waiver-of-rights" and "exclusivity" provisions together, our Supreme Court has consistently found that "[a]n employee who has not retained his or her common law rights under § 28-29-17 is barred by the prohibitions contained in § 28-29-20 from bringing a tort action against his or her

employer in situations in which 'workers' compensation benefits are appropriate.'"[10] Kulawas, 994 A.2d at 656 (quoting Lopes, 560 A.2d at 950); see also Cianci, 659 A.2d at 668; Hornsby, 487 A.2d at 1071. (Emphasis added.)

1

The WCA's "Exclusivity" and "Waiver-of-Rights" Provisions Apply to Cera

First, this Court finds that the WCA's "exclusivity" and "waiver-of-rights" provisions apply to Cera. The WCA's "exclusivity" provision applies to an "employee" who alleges "an injury under [the WCA]." Sec. 28-29-20. This Court has already determined that Cera was Defendant's "employee" during the 1993 and 1994 summers. Cera also alleges an "injury" under the WCA.[11] (Pls.' Compl. at ¶¶ 90, 98). Thus this

[10] Our Supreme Court's harmonization of the WCA's "waiver-of-rights" and "exclusivity" provisions reflects the policies underlying the enactment of the WCA. According to the Court, the Rhode Island General Assembly (the "Legislature") "established [the WCA] to provide expeditious relief to injured workers under a no-fault system of benefits replacing a cumbersome and often lengthy tort system." Kulawas, 994 A.2d at 656; see Nassa v. Hook-SupeRX, Inc., 790 A.2d 368, 371 (R.I. 2002); Volpe v. Stillman White Co., 415 A.2d 1034, 1035 (R.I. 1980). "In return for obtaining a speedy no-fault compensation remedy, the incapacitated employee 'gives up the right to pursue an action at law that, although potentially more remunerative, is likely to be protracted and may well be unsuccessful.'" Nassa, 790 A.2d at 371 (quoting DiQuinzio v. Panciera Lease Co., 612 A.2d 40, 42 (R.I. 1992)). The Court has also found that the Legislature "clearly intended that [the WCA] serve 'as the exclusive remedy available to injured workers, completely replacing all other remedies then available.'" Kulawas, 994 A2d at 656 (citing Kaya, 681 A.2d at 260).

[11] The WCA defines "injury" in § 28-29-2(7)(i) as a "personal injury to an employee arising out of and in the course of his or her employment, connected and referable to the employment." Sec. 28-29-2(7)(i). The phrase "personal injury" encompasses the term "occupational disease" as defined in § 28-34-1, which includes, among others, "[d]isability arising from silicosis or asbestosis." Sec. 28-34-2. Our Supreme Court has recently determined that "malignant mesothelioma is an occupational disease." Gallagher v. Nat'l Grid USA/Narragansett Electric, 44 A.3d 743, 749 (R.I. 2012). Here, Cera claims that his mesothelioma arose from exposure to asbestos fibers while working for Defendant during the 1993 and 1994 summers. This Court therefore finds that Cera alleges an "injury" within the meaning of the WCA. See id.

Court finds that the "exclusivity" provision applies to Cera. See Kulawas, 994 A.2d at 653-56 (finding that the "exclusivity" provision still applied to a hospital worker injured on the job because she was an "employee" and alleged an "injury" as defined by the WCA, even though she executed a settlement agreement stating that the claimed injury did not occur in the course of her employment).

The "waiver-of-rights" provision applies to an "employee" who works for "an employer . . . subject to . . . the provisions of [the WCA]." Sec. 28-29-17. Again, Cera was Defendant's "employee" during the relevant times. Moreover, it is undisputed that Defendant is an "employer" subject to the WCA pursuant to § 28-29-6.[12] Therefore, this Court finds that the "waiver-of-rights" provision applies to Cera as well. See Kulawas, 994 A.2d at 656-57 (finding that the "waiver-of-rights" provision applied to a hospital

[12] Section 28-29-6 provides in pertinent part:

> "Every person, firm and private corporation, including any public service corporation . . . that regularly employs employees in the same business or in or about the same establishment under any contract of hire, express or implied . . . shall constitute an employer subject to the provisions of chapters 29–38 of this title."

Sec. 28-29-6. Defendant is a private corporation organized under the laws of the State of Rhode Island. (Pls.' Compl. at 9 ¶ 47); see generally Drans, 119 R.I. 845, 383 A.2d 1033. Defendant regularly employed "summer helpers" from as early as 1992 to at least 2006. (Lebeau Dep. at 21 ¶ 1-4.) This Court has already determined that Cera worked for Defendant under an explicit "contract for hire" and performed predictable duties that enabled Defendant to conduct its education business safely and effectively during the 1993 and 1994 summers. See 4 Larson § 73.03(3) at 73-8 to 73-9. Thus, this Court finds that Defendant is an "employer" subject to the WCA. See McCain v. Town of North Providence ex rel. Lombardi, 41 A.3d 239, 243 (R.I. 2012) (recognizing that when statutory language is "clear and unambiguous" Rhode Island courts "must interpret the statute literally and must give the words of the statute their plain and ordinary meanings").

employee injured on the job because, among other factors, the hospital was her "employer" within the meaning of the WCA).

2

Cera's Common-law Tort Claims Against Defendant are Barred by the "Exclusivity" and "Waiver-of-Rights" Provisions

Second, this Court finds that the "exclusivity" and "waiver-of-rights" provisions bar Cera from maintaining common-law tort claims against Defendant in the instant matter. An "employee" subject to the "exclusivity" provision may only seek to recover workers' compensation benefits for alleged work-related personal injuries; moreover, this recovery "shall be in lieu of all rights and remedies as to that injury now existing, either at common law or otherwise against an employer . . . ." Sec. 28-29-20. Similarly, an "employee" covered by the "waiver-of-rights" provision waives his or her common-law rights to sue his or her employer for damages for personal injuries unless he or she gives the proper notices.[13] Sec. 28-29-17; see Lopes, 560 A.2d at 950. Our Supreme Court has found that, interpreted together, these two provisions bar an "employee" from bringing common-law claims against his or her employer "in situations in which 'workers' compensation benefits are appropriate.'" Kulawas, 994 A.2d at 656 (quoting Lopes, 560 A.2d at 950); see also Cianci, 659 A.2d at 668; Hornsby, 487 A.2d at 1071.

This Court has already determined that Cera is subject to the WCA's "exclusivity" provision. Concerning the "waiver-of-rights" provision, there is no

[13] Specifically, the "employee" must give written notice to his or her employer at the time of hiring, along with written notice to the Director of Labor within ten days of hiring. The employee's waiver remains effective unless the employee notifies the Director of Labor in writing of his or her decision to reclaim his or her common-law rights and within ten days sends similar written notice to his or her employer as well. Sec. 28-29-17; see Lopes, 560 A.2d at 950.

evidence in the record to demonstrate that Cera executed the proper notices to Defendant or the Director of Labor when he was hired during the 1993 and 1994 summers. Nor is there any evidence showing that Cera attempted to regain his common-law rights with proper notice after his hiring. Thus, this Court finds that Cera waived his common-law rights to seek damages for personal injuries pursuant to the "waiver-of-rights" provision. See Iacampo, 929 F. Supp. at 582-83; Kaya, 681 A.2d at 259; Boucher, 639 A.2d at 1375.

Based on the evidence presented, this Court finds that Defendant carries its burden of demonstrating that workers' compensation benefits are the appropriate and exclusive remedy for Plaintiffs in the instant matter. See 6 Larson § 100.01(2) at 100-3, § 100.01(3) at 100-6 to 100-7 (an employer demonstrates that workers' compensation benefits are the exclusive remedy in a tort case brought by its employee when the employer shows "that the plaintiff was an employee entitled only to workers' compensation" within the meaning of the applicable workers' compensation statute); see also Hercules, Inc., 410 F. Supp. at 571 (holding that, under the provisions of the Georgia workers' compensation statute, which are nearly identical to the WCA, a former employee was barred from suing his former employer in tort because his alleged injuries occurred during the course of his employment with the former employer). Accordingly, Cera is barred by the WCA's "exclusivity" and "waiver-of-rights" provisions from asserting common-law tort claims against Defendant. See Kulawas, 994 A.2d at 656; Cianci, 659 A.2d at 668; Hornsby, 487 A.2d at 1071.

E

This Court Lacks Jurisdiction Over the Instant Matter

Plaintiffs cannot maintain a civil tort action against Defendant in the instant matter because Defendant has demonstrated that Cera was Defendant's "employee" subject to the WCA's "waiver-of-rights" and "exclusivity" provisions, and workers' compensation benefits are the appropriate and exclusive remedy for Plaintiffs. This Court therefore finds that jurisdiction of this controversy properly rests with the Workers' Compensation Commission because it involves "questions arising under [the WCA]." Sec. 28-35-11; See Lombardo v. Atkinson-Kiewit, 746 A.2d 679, 688 (R.I. 2000); Branco v. Leviton Mfg. Co., Inc., 518 A.2d 621, 622 (R.I. 1986); see also Rastella v. State Dept. of Public Works, 102 R.I. 123, 126-27, 229 A.2d 43, 45 (1967); 6 Larson § 100.01(2) at 100-3, § 100.01(3) at 100-6 to 100-7. Thus, this Court must transfer this case to the Workers' Compensation Commission as it is the proper forum to adjudicate the dispute. See Labbadia, 513 A.2d at 20; Miles, 492 A.2d at 1219; Silva, 475 A.2d at 207-08; DeNardo, 121 R.I. at 447, 399 A.2d at 1233 (recognizing that "the Legislature delegated to the Workers' Compensation Commission the express authority to determine all compensation questions"); McAree, 115 R.I. at 249, 342 A.2d at 611 (acknowledging same); cf. Cady v. IMC Mortgage Co., 862 A.2d 202, 211-12 (R.I. 2004) (finding that the Superior Court properly had jurisdiction of a workers' compensation action where "[t]he majority of plaintiff's claims are beyond the purview of the WCA").

V

Conclusion

Based on the foregoing analysis, this Court finds that Plaintiffs fail to carry their burden of establishing a genuine issue of material fact that would preclude summary judgment in the instant matter. Cera was Defendant's "employee" during the 1993 and 1994 summers and does not fall within the "casual employee" exception as defined in § 28-29-2(4) of the WCA. As Defendant's "employee," Cera is subject to the WCA's provisions, including the "waiver-of-rights" and "exclusivity" provisions. Interpreting these two provisions together, this Court finds that Cera is barred from maintaining any common-law tort claims against Defendant because Defendant has demonstrated that workers' compensation benefits are the appropriate and exclusive remedy for Plaintiffs in the instant matter. This Court lacks subject-matter jurisdiction over this case pursuant to § 28-35-11 of the WCA and will transfer the matter to the Workers' Compensation Commission for proper adjudication in that forum. In so transferring this matter, this Court has not determined whether Cera has suffered a compensable "personal injury" actually entitling him to recover workers' compensation benefits within the meaning of § 28-33-1 of the WCA. Said issue is a question of fact within the exclusive jurisdiction of the Workers' Compensation Commission pursuant to § 28-35-11. Thus, this Court finds that there is no genuine issue of material fact that the WCA applies to the instant matter, and Defendant is entitled to judgment as a matter of law. See Mitchell v. Burrillville Racing Association, 673 A.2d 446, 447 (R.I. 1996) (finding, in a workers' compensation case, that a Superior Court justice properly granted summary judgment for

a defendant-employer where "there was no issue of material fact raised concerning the employment of plaintiff by [defendant]").

Counsel shall submit the appropriate Order for entry.