

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

BEACON MUTUAL INSURANCE)

)

VS.)

W.C.C. 03-03866

)

WAYNE LEAVITT)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the appeal of Beacon Mutual Insurance (hereinafter "Beacon") from the trial judge's denial of its request to vacate a Memorandum of Agreement (hereinafter "MOA") pursuant to which the respondent, Wayne Leavitt, was paid weekly workers' compensation benefits. Beacon alleged that Mr. Leavitt was not an employee of its insured, Premier Staffing, Inc. (hereinafter "Premier"), at the time of his injury on August 2, 2000. Although the trial judge found that the MOA had been issued based upon deliberate misrepresentations made to Beacon by Premier and another insured, Southern New England Temporary (hereinafter "SNET"), he also determined that Mr. Leavitt was without fault in the matter. The trial judge, therefore, concluded that Beacon was equitably estopped from vacating the MOA and ordered that it continue to pay weekly benefits to Mr. Leavitt.

While this appeal was pending before the Appellate Division, the parties submitted a petition for commutation of Mr. Leavitt's weekly benefits to a lump sum which was approved by the court. Due to this settlement of the employee's workers' compensation case, we find that Beacon's appeal in this matter is now moot and we therefore dismiss the appeal.

Beacon initially filed an insurer's notice of controversy on January 2, 2001, against Premier and Mr. Leavitt, alleging a dispute regarding insurance coverage and requesting that the MOA be vacated because it had been procured by fraud perpetrated by Premier. *See* W.C.C. No. 01-00012. Subsequently, SNET and Votta Construction, the company for whom Mr. Leavitt was working, were added as respondents. No one appeared or answered the petition on behalf of Premier and SNET and they were defaulted. The claim against Mr. Leavitt in W.C.C. No. 01-00012 was dismissed by agreement of the parties. The present petition was filed by Beacon against Mr. Leavitt on June 5, 2003, and consolidated with the prior matter for hearing and decision by the trial judge.

Premier and SNET were what are commonly referred to as "employee leasing" companies. They would basically take over a company's employees, providing payroll service and any necessary insurance coverage for a fee, and lease the employees back to the company. Frequently, the employees were not even aware of such arrangements.

Apparently, Votta Construction contracted initially with SNET to handle all payroll and necessary insurance services, including workers' compensation coverage, for its employees. Based upon records from the Rhode Island Department of Labor and Training, SNET was insured by Beacon at least from September 16, 1999 through June 5, 2000. Premier was to take over SNET's business in June 2000, and obtained insurance coverage from Beacon on June 3, 2000. Some problems developed and, despite not having any insurance coverage as required by law, SNET continued to operate and issue payroll checks until October 2000, when Premier finally took over its business. Unfortunately, Mr. Leavitt sustained his work-related injury while working for Votta Construction on August 2, 2000. It was also established during the trial that SNET and Premier had the same business address and at least some of the same principals.

Cliff Wieland, an adjuster employed by Beacon in 2000, testified that after speaking with a woman who identified herself as the office manager for Premier, he issued an MOA documenting Mr. Leavitt's injury and agreeing to pay him weekly workers' compensation benefits. This document was dated September 25, 2000 and listed Premier as the employer. Premier even completed a form with wage information for Mr. Leavitt and returned it to Beacon. A few months later, Beacon received a request from Mr. Leavitt's attorney to amend his average weekly wage. Enclosed with the request were copies of paychecks issued by SNET, not Premier, for the period immediately preceding the work injury. At that point, Beacon realized there was a problem because SNET was not insured by Beacon at the time of the injury, and Mr. Leavitt was apparently not on Premier's payroll.

Leslie Cronan, an auditor for Beacon, testified that when she was finally able to meet with Dunia Cifelli, the office manager, and William Bryson, who was apparently in a position of authority in both SNET and Premier, she learned that Premier's first payroll was the week of October 20, 2000 and prior to that time, the payroll was coming from SNET.

After reviewing the testimony and documentary evidence, the trial judge found that the MOA issued by Beacon regarding Mr. Leavitt's injury was procured by fraud on the part of both Premier and SNET. He indicated that both companies had made deliberate and intentional misrepresentations to Beacon regarding their respective payrolls and employees. Furthermore, he determined that Mr. Leavitt had no knowledge of the misrepresentations made by Premier and SNET. Consequently, in W.C.C. No. 01-00012, the trial judge ordered that the workers' compensation insurance policies issued by Beacon to Premier and SNET be vacated and that Premier and SNET were liable to Beacon in the sum of Seventy-three Thousand Seven Hundred Fifty-two and 85/100 (\$73,752.85) Dollars for payments made by Beacon to, or on behalf of, Mr.

Leavitt as of September 23, 2003. The claim against Votta Construction was denied and dismissed. In W.C.C. No. 03-03866, the trial judge found that Beacon was equitably estopped from vacating the memorandum of agreement and he ordered Beacon to continue to pay weekly workers' compensation benefits to Mr. Leavitt, as well as any medical expenses for treatment of his injury. Beacon promptly filed a claim of appeal.

On February 24, 2005, while the appeal was pending, the parties filed a petition for commutation, W.C.C. No. 05-01233, pursuant to R.I.G.L. § 28-33-25. In the petition, the employer is listed as Premier Staffing and Beacon is named as the insurer. The petition also states that Mr. Leavitt sustained personal injuries while in the employ of Premier Staffing. On February 28, 2005, the petition for commutation was granted by the trial judge and on May 5, 2005, a final decree was entered stipulating that all payments have been made and discharging Premier Staffing and Beacon from any further liability under the Workers' Compensation Act regarding the injury sustained by Mr. Leavitt on August 2, 2000.

After reviewing the relevant case law and Beacon's supplemental memorandum, we find that this matter is now moot. The Rhode Island Supreme Court has repeatedly held that "a case is moot if the original complaint raised a justiciable controversy, but events occurring after the filing have deprived the litigant of a continuing stake in the controversy." Associated Builders & Contractors of Rhode Island, Inc. v. City of Providence, 754 A.2d 89, 90 (R.I. 2000). The Court has allowed an exception to this general rule "only if the matter is of extreme public importance and likely to recur in such a way as to evade judicial review." Id. "[C]ases demonstrating extreme public importance are usually matters that relate to important constitutional rights, matters concerning a person's livelihood, or matters concerning citizen voting rights." Id. at 91.

The petition filed by Beacon in this matter states as follows: “The insurer requests that the memorandum of agreement be vacated as the employee never worked for the insured, Premier Staffing.” This contention is in direct contravention of the assertions contained in the commutation petition which state that Mr. Leavitt was injured while in the employ of Premier Staffing. The commutation was approved in accordance with R.I.G.L. § 28-33-25 which is predicated upon the fact that liability for the injury has been accepted by the employer/insurer and the parties have agreed to commute the employee’s future weekly benefits to a lump sum. This is in contrast to R.I.G.L. § 28-33-25.1 which allows for the approval of settlements in disputed cases. Beacon cannot concede liability for purposes of the commutation and then attempt to vacate the very memorandum of agreement which formed the basis for the commutation.

By virtue of the commutation, Beacon and Premier Staffing were discharged from any further liability to Mr. Leavitt under the Workers’ Compensation Act and the memorandum of agreement in question. The approval of the commutation and entry of the final decree terminated any relationship that Beacon had with Mr. Leavitt. Consequently, even if we were to entertain the request to vacate the memorandum of agreement, such an order would not afford Beacon any relief at this point in time. As such, we are guided by the holding of the Rhode Island Supreme Court in City of Cranston v. Rhode Island Laborers’ District Council, Local 1033, 960 A.2d 529 (R.I. 2008). “If this Court’s judgment would fail to have a practical effect on the existing controversy, the question is moot, and we will not render an opinion on the matter.” Id. at 533.

Furthermore, this case does not fall within the very limited exception to the mootness doctrine. The issue raised in this matter is not of extreme public importance and capable of repetition yet evading review. It does not involve any important constitutional rights, a person’s

livelihood, or citizen voting rights. This case involved a unique set of circumstances – two (2) employee leasing companies with intermingled assets, client companies and officers or principals. It is highly unlikely that such a situation will present itself again. In addition, Beacon can likely institute internal procedures to verify that a claimant is actually an employee of their insured.

For the foregoing reasons, in particular the entry of the final decree approving the commutation of the employee's weekly benefits and discharging Beacon of any further liability to the employee, Beacon's claim of appeal is denied and dismissed as moot. Pursuant to R.I.G.L. § 28-35-32, counsel for the employee is awarded a counsel fee in the amount of Two Thousand and 00/100 (\$2,000.00) Dollars for services rendered before the Appellate Division regarding Beacon's appeal. We recognize that pursuant to the commutation approved by the court, Beacon and Premier Staffing were discharged from any further liability to the employee under the Workers' Compensation Act arising out of the employee's work-related injury; however, the services in question were rendered while the matter was pending before the Appellate Division prior to the approval of the commutation. The employee, Mr. Leavitt, executed a release as to any future benefits, such as weekly benefits, specific compensation for disfigurement, and medical expenses. His attorney did not, as part of the commutation, waive any compensation that may be due him for services previously rendered. As such, we believe that the employee's attorney is entitled to be compensated for services rendered in accordance with the statute.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Bertness and Sowa, JJ. concur.

ENTER:

Olsson, J.

Bertness, J.

Sowa, J.

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WAYNE LEAVITT)

FINAL DECREE OF THE APPELLATE DIVISION

This matter came on to be heard before the Appellate Division upon the claim of appeal of the petitioner, Beacon Mutual Insurance, and upon consideration thereof, the appeal is denied and dismissed as moot, and it is

ORDERED, ADJUDGED, AND DECREED:

1. That the findings of fact and the orders contained in a decree of this Court entered on October 14, 2003 be, and they hereby are, affirmed.

2. That the petitioner, Beacon Mutual Insurance, shall pay a counsel fee in the sum of Two Thousand and 00/100 (\$2,000.00) Dollars to Daniel R. Sumner, Esq., attorney for the employee, Wayne Leavitt, for the successful defense of the petitioner's appeal.

Entered as the final decree of this Court this day of

PER ORDER:

John A. Sabatini, Administrator

ENTER:

Olsson, J.

Bertness, J.

Sowa, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to James T. Hornstein, Esq., and Daniel R. Sumner, Esq., on
