IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Melvin Ammons, Plaintiff, v. Canadian National Railway Company, a foreign corporation, and Wisconsin Central, Ltd., a foreign corporation, individually and as subsidiary of Canadian National Railway Company, Defendants.	)	21 L 6298 consolidated
Darrin Riley, Plaintiff, v. Wisconsin Central, Ltd., Defendant.	)	21 L 6300

MEMORANDUM OPINION AND ORDER

Summary judgment is proper only if there remain no questions of material fact and the moving party is deserving of judgment as a matter of law. In this instance, there remain questions of fact as to the plaintiffs and the defendants were participating in a joint enterprise. For that reason, the defendant's summary judgment motion must be denied.

Facts

On December 13, 2014, Melvin Ammons and Darrin Riley were injured when the train they were operating allided with a train that was standing on the same tracks. Ammons and Riley both filed complaints asserting claims of negligence against Wisconsin Central (WCL) and their cases were consolidated.[1] WCL, in turn, filed counterclaims alleging that Ammons and Riley were engaged in a joint enterprise, and were liable for the property damage caused by their negligence in operating the train. After this court dismissed WCL's counterclaims, WCL

[1] Ammons's complaint also named Canadian National Railway Company as a defendant. Canadian National is the parent company of WCL.

appealed, and the appellate court affirmed the judgment. The Illinois Supreme Court granted a petition for leave to appeal and reversed, ruling that the Federal Employers Liability Act (FELA) did not prohibit WCL's counterclaims. *Ammons v. Canadian Nat'l Ry. Co.*, 2019 IL 124454, ¶¶ 44-46; *see also* 45 U.S.C. § 55. WCL now seeks summary judgment on the claims brought against it by Ammons and Riley, as well as its counterclaims.

Analysis

The *respondeat superior* doctrine provides that an employer may be vicariously liable for the torts of employees who are acting within the scope of employment. *Vancura v. Katris*, 238 Ill. 2d 352, 375 (2010). WCL argues that one or both of its employees, Ammons and Riley, were negligent. It is undisputed that Ammons and Riley were acting within the scope of their employment; therefore, WCL is not entitled to summary judgment on the claims against it.

WCL's argument that Ammons and Riley were engaged in a joint enterprise is incoherent. For starters, WCL fails to explain how it—as Ammons's and Riley's employer—was not engaged in the same joint enterprise. The Restatement (2d) of Torts sets out the joint enterprise doctrine as follows:

> (1) Any one of several persons engaged in a joint enterprise, such as to make each member of the group responsible for physical harm to other persons caused by the negligence of any member, is barred from recovery against such other persons by the negligence of any member of the group.
> (2) Any person engaged in such a joint enterprise is not barred from recovery against the member of the group who is negligent, but is barred from recovery against any other member of the group.

Restatement (2d) of Torts § 491. By arguing that Ammons and Riley are jointly and severally liable for each other's negligence, WCL implicitly admits that a jury could reasonably conclude that only one was negligent. Given that the facts preclude this court from finding, as a matter of law, that WCL was not a member of the joint enterprise, summary judgment on either of WCL's counterclaims would be improper because WCL's participation in the joint enterprise would vitiate its counterclaim against Ammons in the event that only Riley were found negligent, just as it would vitiate the counterclaim against Riley in the event that only Ammons were found negligent. *See id.* ("Any one of several persons engaged in a joint enterprise . . . is barred from recovery against any [non-negligent] member of the group").

Second, the comments to Restatement section 491 rule out application of the joint enterprise doctrine to employees working together on the behalf of their employer. *See id.*, cmt. f. This principle makes common sense. If employers were

permitted to escape liability for the negligence of their employees simply by labeling their employees as joint enterprisers, they could effectively abrogate the doctrine of *respondeat superior* by foreclosing the ability of plaintiffs to sue the employers of negligent employees, and similarly foreclosing the ability of negligent employees to seek contribution from their employers. *See Citizens Sav. & Loan Assoc. v. Fischer*, 67 Ill. App. 2d 315, 326 (5th Dist. 1966) (quoting *B. F. Hirsch, Inc. v. C. T. Gustafson Co.*, 315 Ill. App. 56, 59 (1st Dist. 1942)) ("[I]t is well established that in an action for the recovery of damages, both the employer and the employee whose negligence while in the line of his employment caused the damage, may be sued and held liable."). This court is neither permitted nor inclined to overturn law that is so well-established.

The preceding discussion raises the issue, also raised in Ammons's and Riley's briefs, of whether FELA bars WCL's joint enterprise counterclaims. Before delving into this issue, it is helpful to provide additional background regarding the procedural history of this case and FELA jurisprudence. FELA provides, in pertinent part, that:

> [e]very common carrier by railroad while engaging in commerce . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier.

45 U.S.C. § 51. As the Illinois Supreme Court noted when it considered this case previously, FELA "eliminated several of the common-law defenses that had previously barred railroad workers from prevailing on their injury claims." *Ammons*, 2019 IL 124454, ¶ 16 (citing *Conrail v. Gottshall*, 512 U.S. 532, 542 (1994)). "For example, Congress 'abolished the fellow servant rule, rejected the doctrine of contributory negligence in favor of that of comparative negligence, and prohibited employers from exempting themselves from FELA through contract; a 1929 amendment abolished the assumption of risk defense.'" *Id.* (quoting *Conrail*, 512 U.S. at 542-43). To that end, section 55 of the statute prohibits "[a]ny contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this act[.]" 45 U.S.C. § 55.

When the Illinois Supreme Court considered this case previously, the court considered the question of whether a state law counterclaim, in the abstract, was a "device" intended to exempt WCL and its parent company from liability. *See generally Ammons*, 2019 IL 124454. Notably, the court did not address the issue of whether a counterclaim based specifically on a joint enterprise theory of recovery was within the statute's prohibition. This distinction between abstract and specific is key to the current dispute because the court's conclusion hinged on the possibility

that "Wisconsin Central could still be found liable to plaintiffs in their FELA claims," so they could not be considered "exempt . . . from any liability" under the statute. *Id.* ¶ 41. If this court were to accept WCL's attempt to cordon off the negligence in this case to Ammons and Riley as joint enterprisers, rather than as WCL employees, WCL would be left exempt from liability, in direct contravention of the United States Supreme Court's guidance and the statute. *See Conrail*, 512 U.S. at 542 ("[FELA] abolished the fellow servant rule[.]"[2]).

Conclusion

For the reasons presented above, it is ordered that:

Wisconsin Central's summary judgment motion is denied.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

MAR 27 2023

Circuit Court 2075

[2] The fellow servant rule provided that employers were not liable to employees injured as a result of another employee's negligence.