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

Andrew Massengill and Mary Massengill Plaintiffs, v. Downtown Entertainment LLC and Ameritus, LLC and 213 W. Institute Owner LLC, Defendants.	)	No. 18 L 13879

MEMORANDUM OPINION AND ORDER

An employee who receives workers' compensation benefits from his employer for injuries suffered on the job is barred from bringing a cause of action against that employer. The plaintiff in this case received workers' compensation benefits from a defendant, but the record presents questions of material fact as to whether that defendant employed the plaintiff. The defendant's summary judgment motion must, therefore, be denied.

Facts

Headquarters Beercade is an arcade bar located at 213 West Institute Place in Chicago. Downtown Entertainment, LLC (DTE), owns Headquarters Beercade. DTE is, in turn, owned by Chireal Jordan, Brian Galati, and Wexmore Investments, a company owned by Bruce Wexler. Headquarters 213, LLC, manages DTE. Headquarters 213 is, in turn, managed solely by Machine Hospitality Group, LLC (MHG), another corporation owned by Jordan and Galati.

In November 2016, Jordan and Galati hired Andrew Massengill. On October 30, 2017, Massengill tripped on a table located in Headquarters Beercade's storage room. Massengill fell and was injured. Massengill filed a workers' compensation claim for his injuries with the Industrial Commission, listing MHG as his employer. Yet when Galati later submitted a Form 45 reporting Massengill's injury, Galati listed Massengill's employer as DTE.

MHG and DTE share the same workers' compensation insurance policy with Amtrust as the provider. When Massengill later filed a second workers' compensation claim, he erroneously listed "Industrial Hospitality" as his employer. Despite this error, Amtrust attorneys appeared before the Industrial Commission. Amtrust ultimately paid Massengill's workers' compensation claims pursuant to

DTE's policy. Melissa Finn, Amtrust's representative, averred that she used Galati's Form 45 prepared in her handling of Massengill's claims.

On July 15, 2019, Massengill and Mary, his wife, filed their six-count first amended complaint. Counts one and two are negligence claims against DTE for Massengill's injuries and Mary's loss of society and services, respectively. Counts three through six asserted similar claims against Ameritus, LLC, and 213 W. Institute Owner, LLC, the apparent owners of the building where Headquarters Beercade is located. On March 8, 2022, this court dismissed Ameritus pursuant to a settlement agreement. On April 12, 2022, the Massengills voluntarily dismissed their claims against 213 W. Institute Owner, LLC. Accordingly, DTE is the only defendant remaining in the case.

On October 15, 2021, DTE filed a summary judgment motion, which the parties have fully briefed. The available record indicates that Jordan and Galati both testified in their depositions that the e-mail containing Massengill's employment offer was an offer from MHG for its controller position. Further, when Massengill was hired, his contract contemplated a bonus on the opening of Headquarters Tennessee, a planned additional location with which Wexmore Investments was not involved. Wexmore Investments did not want to pay Massengill's wages if he worked at a location in which it was not an investor. For that reason, MHG paid Massengill's salary.

Massengill testified in his deposition that he was DTE's controller, but that his duties included handling Jordan and Galati's requests pertaining to Headquarters Tennessee. Regardless, MHG continued to pay Massengill's salary and maintained tax forms for him. It is undisputed that Jordan and Galati controlled Massengill's work in some capacity and the manner in which it was performed. Galati and various DTE employees indicated that Massengill was regularly involved in managing DTE and Headquarters Beercade. DTE had contracted MHG to provide management services, for which MHG took management fees in the form of a percentage of sales revenue. Relevant portions of Jordan's deposition testimony confirm and elaborate on many of these facts:

> Q: Is it true that Andrew was the sole employee of Machine Hospitality Group in October, November, and December of 2017?
> A: I believe so.
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> * * *
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> Q: How many employees did Machine Hospitality have in October of 2017, October 1, 2017?
> A: I would say we had one employee. I believe that's the person in question, Andrew Massengill[.]
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> * * *

Q: It's your testimony that Machine Hospitality Group hired Andrew to be a controller?
A: Machine Hospitality Group hired Andrew to be a controller for Downtown Entertainment, yes.
Q: And Machine Hospitality paid Andrew to be a controller for Downtown Entertainment?
A: Correct.

* * *

Q: Do you have employment records for Downtown Entertainment's employees?
A: Yes, we do as far as taxation or is that what you're referring to?
Q: Tax is one, but do you also keep records of attendance and records of good deeds and bad deeds, absentees?
A: Yes, we do.
Q: And where are those kept?
A: In files from back in the day, but most of them are digital now.
Q: I'm sorry. Most of them are what?
A: Digital now. Sorry.
Q: And you have access to them on your computer?
A: Correct.
Q: Does Downtown Entertainment have an employment file for Andrew Massengill?
A: I do not believe it does.
Q: Was Andrew Massengill on Downtown Entertainment's payroll?
A: No, I don't believe he was.
Q: Downtown Entertainment has an operating account?
A: Yes, it does.
Q: And it has, I think we said a payroll account, right?
A: It's within the same.

Analysis

The Code of Civil Procedure authorizes the issuance of summary judgment "if the pleadings, depositions, 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 a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002). If the movant presents facts that, if not contradicted, are sufficient to support summary judgment as a matter of law, the nonmoving party cannot rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). Rather, a plaintiff creates a genuine issue of material fact only by presenting

enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.* On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. *See First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

DTE argues that it is entitled to summary judgment because Massengill received workers' compensation benefits from DTE through his own affirmative action and is, therefore, barred from bringing a cause of action against DTE for the same injuries. This argument implicates the Workers' Compensation Act, which was enacted "to abrogate the system of common law rights and liabilities which previously governed an injured employee's ability to recover against his employer." *Garland v. Morgan Stanley & Co.*, 2013 IL App (1st) 112121, ¶ 24. The policy underlying the Act was "to provide certainty of remedy gained in return for limiting the liability of the employer." *Id.* The exclusive remedy portion of the Act provides that:

> No common law or statutory right to recover damages from the employer . . . for injury or death sustained by an employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act.

820 ILCS 305/5(a). The statute applies to employees who take "any affirmative act" to receive benefits, *see Wren v. Reddick Cmty. Fire Prot. Dist.*, 337 Ill. App. 3d 262, 266 (3d Dist. 2002), but does not bar individuals who receive benefits from suing non-employers. *Cooley v. Power Constr. Co., LLC*, 2018 IL App (1st) 171292, ¶ 12; 820 ILCS 305/5(b).

As an initial matter, this court disagrees with DTE's assertion that Massengill undertook an affirmative act to receive benefits from DTE because neither of his applications for workers' compensation benefits listed DTE as his employer. Moreover, Finn, Amtrust's representative, clarified that she relied on Galati's Form 45, rather than anything Massengill represented, in deciding to pay the claim pursuant to DTE's policy. Notwithstanding the fact that DTE paid Massengill's workers' compensation benefits, the relevant question is whether the

record contains evidence sufficient for a jury to find that Massengill was not a DTE employee.

Whether an employment relationship exists is generally a question of fact. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 174 (2007). To answer that question, Illinois courts analyze five factors: "(1) who has the right to control an individual; (2) who controls the manner in which work is performed; (3) the method of payment; (4) who has the right to discharge; and (5) who furnishes the tools, materials, and equipment." *Kay v. Centegra Health System*, 2015 IL App (2d) 131187, ¶ 11 (citing *Dildine v. Hunt Transp., Inc.*, 196 Ill. App. 3d 392, 394 (3d Dist. 1990)). "While no single factor is dispositive, the most important single factor is the right to control the work." *Id.*

Illinois courts construe the Workers' Compensation Act's exclusive remedy provision to extend immunity to joint employers. *Ioerger v. Halverson Constr. Co.*, 232 Ill. 2d 196, 203 (2008). A joint employer relationship exists if "two or more employers exert significant control over the same employee[]—where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment." *Village of Winfield v. Illinois State Labor Relations Bd.*, 176 Ill. 2d 54, 60 (1997) (citations omitted). To determine whether an entity is a joint employer, the trier of fact must consider the five factors of employment relationship listed above, as well as "the separate corporate existence of each of the purported joint employers." *Floyd v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 130617WC, ¶ 36 (citing *Schmidt v. Milburn Bros., Inc.*, 296 Ill. App. 3d 260, 266 (1998)). If purported joint employers are in a parent-subsidiary or affiliate relationship, federal and state courts will generally not allow both entities to claim workers' compensation immunity. *Schmidt*, 296 Ill. App. 3d at 267-68 (citations omitted). Courts reason that corporate identities are presumably created to produce legal benefits; therefore, disregarding these separate corporate identities whenever it is convenient for the corporations would be unjust. *Id.*

Here, construing the record in a light most favorable to Massengill, analysis of the employment relationship factors produces a question of material fact as to whether DTE employed Massengill. DTE argues that it controlled Massengill and the manner in which he worked because Massengill worked at Jordan and Galati's behest and was largely responsible for managing DTE's operations. This argues too much. While Massengill, indeed, worked at Jordan and Galati's behest, such an arrangement would be consistent with Massengill being an MHG employee because Jordan and Galati owned MHG. That Massengill worked regularly at DTE is easily explained by the facts that DTE and MHG shared the same location and DTE contracted MHG to provide manager services. Further, Jordan and Galati gave Massengill responsibilities pertaining to the Headquarters Tennessee location, which was not a DTE project. In sum, the first two factors favor finding that MHG was Massengill's employer. This conclusion is bolstered by the fact that DTE did

not have an employment record for Massengill despite ordinarily keeping such records for all of its employees.

The payment factor clearly favors finding that MHG employed Massengill because MHG paid him. Notably, DTE maintained a payroll separate from MHG, and Massengill was not on it. DTE argues that Jordan and Galati had the right to discharge Massengill but, again, this fact is equally consistent with Massengill being an MHG employee. DTE does not argue that Wexmore Investments—which owned 50 percent of DTE—could make or initiate a decision to fire Massengill. The only factor that, perhaps, favors finding that DTE employed Massengill is that DTE arguably furnished the materials, tools, and equipment Massengill needed to do his job. That single factor is, however, certainly not enough to support summary judgment.

DTE argues alternatively that Massengill was a joint employee. Once again, the record—particularly the DTE-MHG contract—raises a question of fact as to whether DTE exerted the sort of significant control over Massengill that would be required to establish a joint employment relationship. *See Village of Winfield*, 176 Ill. 2d at 60. Moreover, this court may not simply disregard DTE's and MHG's separate corporate identities. *See Schmidt*, 296 Ill. App. 3d at 267-68 (citations omitted). It would be unjust to allow DTE and MHG to pierce their own corporate veils for Massengill's workers' compensation claim to avoid liability on his common law tort claims that would otherwise not be subject to immunity if the entities were not so closely related. *See id.*

Conclusion

For the reasons presented above, it is ordered that:

The defendant DTE's summary judgment motion is denied.

John H. Ehrlich

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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