

No. 1-11-3174

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

LEON TRIMBLE,)	
)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
)	Cook County, Illinois
v.)	
)	
(A&T Trucking Co, Inc.,)	
)	
Defendant).)	No. 10 L 1569
)	
PEOPLEASE CORP.,)	
)	
Defendant-Appellee.)	
)	
(Arista Thurman,)	The Honorable
)	Joan E. Powell,
Defendant).)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Quinn and Connors concurred in the judgment.

ORDER

Held: We hold the circuit court erred when it granted defendant's motion for summary judgment because plaintiff raised issues of material fact precluding the entry of summary judgment.

¶ 1 Plaintiff, Leon Trimble, filed a two count complaint against defendants A&T Trucking Company, Inc. (A&T), Peoplease Corporation (PLC), and Arista Thurman in which he alleged defendants violated Section 20 of the Illinois Whistleblower Act (Act) (740 ILCS 174/20 (West 2010)) and committed the common law tort of retaliatory discharge. PLC¹ filed a motion for summary judgment, which the circuit court initially denied. Upon reconsideration, the circuit court granted PLC's motion for summary judgment. At issue is whether the circuit court, upon reconsideration, properly granted PLC's motion for summary judgment. We hold the circuit court erred when it granted PLC's motion for summary judgment because Trimble raised issues of material fact precluding the entry of summary judgment.

¶ 2 JURISDICTION

¶ 3 On March 28, 2011, the circuit court denied PLC's motion for summary judgment. On April 21, 2011, PLC filed a motion to reconsider, which the circuit court granted on September 28, 2011. In its order granting PLC's motion for reconsideration, the circuit court ordered that PLC be dismissed with prejudice, and entered a finding that there was no just cause to delay enforcement or appeal pursuant to Illinois Supreme Court Rule 304(a). Ill. S. Ct. R. 304 (a) (eff. Feb. 26, 2010). Trimble timely appealed on October 26, 2011. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 304(a). Ill. S. Ct. R. 304 (a) (eff. Feb. 26, 2010).

¶ 4 BACKGROUND

¹Trimble's action against A&T and Thurman survived the circuit court's September 28, 2011, order, and they are not part of this appeal.

¶ 5 On February 4, 2010, Trimble filed his two count complaint against defendants. He alleged defendants employed him as a truck driver from July of 2006 until he was fired on October 17, 2008. On that date, Thurman, the owner of A&T, asked Trimble to make another delivery. Trimble alleged that he had already worked a full shift and he told Thurman "that his eyes were too tired to safely drive the truck anymore that day." Trimble's shift that day began "at 6:30 - 7:00 a.m." and "normally ended about 3:30 p.m." Trimble alleged that on that date, he drove to Northbrook, Illinois. While his truck was being loaded, "[t]here were chemicals in use in the area he was waiting." Upon his return to A&T at about 2:45 p.m. that day, Thurman told him that he had to pick up a load in Carol Stream, Illinois. According to Trimble, this "would have required him to continue driving until at least 9 p.m. that evening." Trimble told Thurman that "his eyes were burning and *** fatigued" and that he could no longer safely drive a truck that day. Thurman insisted that he pick up the load in Carol Stream or face immediate termination. After Trimble again told Thurman that he could not safely drive, Thurman immediately fired Trimble for refusing to make the delivery. Trimble alleged as a truck driver, he was subject to safety rules promulgated by both the federal and state governments.

¶ 6 In count one of his complaint, Trimble alleged defendants terminated him based on his refusal to violate federal commercial motor vehicle safety regulations which violated the Act. Specifically, Trimble alleged that defendants were at all times "employers" under the Act. Under section 20 of the Act (740 ILCS 174/20 (West 2010), defendants, as Trimble's employers, could not retaliate against him for refusing to violate state or federal law. Trimble alleged defendants asked him to violate the following safety regulations: Section 392.3 of the United States

Department of Transportation regulations (49 C.F.R. 392.3); which is incorporated by reference by the Illinois Department of Transportation (92. Ill. Adm. Code 390.1010 (a)), and section 31105(a)(1)(B)(I) of the federal Surface Transportation Assistance Act (49 U.S.C 31105(a)(1)(B)(I)). Trimble alleged that had he driven the truck on the day in question after 2:45 p.m., that he in good faith believed he would be violating those regulations.

¶ 7 Under count two of his complaint, Trimble alleged he "was discharged by defendants in retaliation for his efforts to further public policy by refusing to drive a truck because his ability to drive safely had become impaired through fatigue." Trimble alleged defendants "acted with malice and in reckless disregard for the law." Trimble argued that there is a strong public policy in Illinois in favor of truck drivers, such as himself, refusing to drive trucks when they cannot do so safely. Trimble alleged further that allowing employers to terminate truck drivers for this type of action is against public policy.

¶ 8 Under both counts, Trimble alleged that due to defendants' actions, he "suffered loss of wages, loss of other employment benefits, loss of employment, emotional distress, loss of job opportunities and was otherwise damaged." He asked to be reinstated, or if that was not feasible, to be awarded "a reasonable amount of front pay." Additionally, he requested that he be awarded lost wages, lost benefits, compensatory damages in excess of \$50,000, punitive damages in excess of \$50,000, prejudgement interest on all amounts awarded, and "other relief as may be just and proper."

¶ 9 On November 5, 2010, PLC filed a motion for summary judgment pursuant to section 2-1005 of the Illinois Code of Civil Procedure (Code). 735 ILCS 5/2-1005 (West 2010). In its

motion, PLC alleged that it was an employee leasing company. Both PLC and A&T employed Trimble. According to PLC, it "controlled administrative matters such as *** payroll, but had no control over *** daily responsibilities for A&T Trucking such as dispatch or truck operation." PLC further maintained that it was not consulted by A&T "in any manner regarding the decision to terminate" Trimble, and that it was not advised of Trimble's termination until after the termination was final. Relying on section 45(2) of the Employee Leasing Company Act (215 ILCS 113/45(2) (West 2010)), PLC argued that the decision to terminate Trimble was "under the exclusive control of A&T." PLC admitted that "[w]hile the Employee Leasing Company Act deals with insurance coverage, it illustrates the distinction between the two types of employers involved here and suggests a leasing company should not be liable for the actions of a client company." Accordingly, PLC argued that since it was not aware of the decision to terminate Trimble, it could not have violated the Act. In regard to Trimble's claim of retaliatory discharge, PLC argued that Trimble had only been terminated from A&T, and that PLC never terminated him.² Instead of contacting PLC for a new assignment, Trimble sought unemployment benefits and new employment in violation of the terms of employment agreement that he had signed. According to PLC, this established that PLC did not terminate Trimble, rather, Trimble "abandoned" PLC. PLC argued that Trimble failed to establish that PLC had any control over his termination or that PLC terminated him.

² In its briefs before this court, PLC admits that this is untrue. In a footnote in its brief, PLC stated its "briefs before the trial court inaccurately stated [Trimble] was never fired from PLC. Prior to the ruling on its motion to reconsider, however, counsel for PLC notified [Trimble's] counsel in writing and orally advised the trial judge of the error."

¶ 10 PLC attached the following exhibits to its motion: Trimble's complaint; their answer to Trimble's complaint in which they deny all material allegations contained therein; an affidavit from Thurman; and a document titled "Peoplease Corporation Terms Of Employment."

Thurman attested that he is the president of A&T and that "neither I, nor anyone from A&T, contacted anyone from [PLC], regarding Leon Trimble's job performance before firing him." He attested further that PLC "was not consulted in any manner regarding the decision to terminate Leon Trimble," and that PLC "was not advised of the decision to terminate Leon Trimble until after he had been terminated." The terms of employment document first listed Trimble under the heading "Employee Responsibility." Under the heading "Client Company Responsibility," the hours, wage, and date of hire for the position of truck driver were discussed. The document contains the following clause:

"I also acknowledge by my signature that if, for any reason, my employment with the client company of [PLC] to whom I am currently assigned terminates, that I will immediately contact the Human Resources Department of [PLC] *** to secure alternate employment. Failure to immediately notify [PLC] may result in the denial of unemployment benefits. Note: [PLC] will, in its sole discretion, and dependent upon availability, make an effort to secure alternate employment for its leased employees."

The document contained a signature box at the bottom of the document titled "Employee & Client Company Representative Responsibility: Acknowledgment." Trimble signed on the line

titled "Employee's signature," while it appears that Thurman's wife, Claudine Thurman (Claudine), signed on the line titled "Client Company Representative."

¶ 11 In response, Trimble argued that PLC and A&T jointly employed him as a truck driver. According to Trimble, Thurman did consult with PLC regarding his termination. Thurman completed an employee discharge form that had both PLC and A&T on the letterhead. As his joint employer, Trimble asserted that PLC is jointly and severally liable in this case. He characterizes PLC's reliance on the Employee Leasing Company Act as "misplaced" because the Employee Leasing Company Act only applies to worker's compensation claims. Before the circuit court, Trimble further argued that PLC admitted that it employed him and the question of whether or not Thurman and A&T acted alone in terminating him is a question of fact sufficient to deny PLC's motion for summary judgment. He asked that the circuit court not consider Thurman's affidavit because it is contradicted by his own deposition testimony. Trimble argued that the following questions of fact remained: when he was actually terminated; and whether A&T acted alone in the decision or whether it consulted with PLC.

¶ 12 As exhibits to his response, Trimble attached an "Employee Discharge Form" and excerpts from Thurman's deposition testimony. The employee discharge form had letter head naming both PLC and A&T. PLC's name was on top of A&T's name in the letterhead. The form named Trimble as the employee with a discharge date of October 17, 2008. The form stated the "reason" as: "[o]n Friday, October 17, 2008, approximately 2:45 PM, You were told by Arista Thurman that you still had another pickup to do. At this point you refused." The document stated further that "You are hereby discharged from duty effective October 17, 2008." Under the line

titled "Manager Signature," Thurman signed his name on October 17, 2008.

¶ 13 Thurman, in his deposition, attested that the following day after Trimble refused to drive, Trimble called him to see if he could get his job back. Thurman told Trimble "no." Thurman admitted that the employee discharge form had both PLC and A&T listed in the letterhead. However, it only listed A&T's address. He did not prepare the employee discharge form, but he attested that it "looks like" his wife did. He admitted, however, that he did sign the employee discharge form on October 17, 2008. Thurman attested that his wife "might have put this letter in his last check he got." When asked whether the paychecks came from PLC, Thurman answered that A&T "pass[es] the check out to the employee." The following exchange then occurred:³

"Q. But this document was typed and signed by you on

October 17; is that correct?

THURMAN: It was signed by me.

Q. But it was typed by your wife?

A. Yes.

Q. Did you sign it after it was typed up?

A. I don't recall. I would have to say afterwards because

she probably consult[ed] [PLC], and then she typed this up the way

³ Trimble only attached an excerpt of Thurman's deposition. Therefore, we cannot decipher from the record which attorney was asking Thurman the questions in the following exchange.

they told her to do it, and I signed it.

Q. Did you ask your wife if she had consulted with [PLC]?

A. I talked to [PLC] I know that for a fact, and then she talked to them.

Q. Let's talk about when was the first time you talked to [PLC] about the termination of Mr. Trimble?

A. About five minutes after I fired him.

Q. And why did you call [PLC]?

A. Reporting to them what I have done. My understanding is I'm supposed to report to them.

Q. Did the person - - who did you speak with at [PLC]?

A. Debbie I believe.

Q. Did Debbie say anything to you?

A. I don't recall what she said. I just told her what happened, he refused to go back out. She gave me the ok.

Q. She didn't say anything else?

A. She had a conversation going. I told her what I had done [sic], and she agreed with it.

Q. Do you remember anything else that she said?

A. No, I don't.

Q. Did Debbie tell you to type up an employee discharge

form?

A. She might have told my wife. We both were talking to her.

Q. And you believe that your wife may have given this form to Mr. Trimble with his last paycheck?

A. I'm not sure. I know he had one paycheck left. I know he did not get a form the day he left. If he had direct deposit, then he never got it. So he might have direct deposit. I don't know."

¶ 14 In reply, PLC asserted that it is a "leasing employer" and A&T was a "borrowing employer." PLC maintained Trimble was obligated to contact them immediately upon his termination, Thurman "unilaterally" fired Trimble, and there were no questions of fact regarding when Trimble was actually fired.

¶ 15 On March 28, 2011, after a hearing, the circuit court denied PLC's motion for summary judgment.⁴

¶ 16 On April 21, 2011, PLC filed a motion to reconsider. According to PLC, the circuit court indicated it "was hesitant to deny the motion, but expressed concern with an 'Employee Discharge Form' which listed both A&T and PLC on the letter head;" and "denied the motion (at least in part) because the record did not establish which defendant created the form and whether the form was created on the day [Trimble] was fired, contemporaneous with his termination." In

⁴ The record did not contain a transcript of the proceedings, nor did the circuit court make any written findings in its order.

response to these concerns, PLC attached to its motion to reconsider an affidavit from Claudine, A&T's office manager and Thurman's wife, which PLC alleged proved that PLC did not create the form. PLC additionally attached an affidavit from Deborah Hiott, a "Human Resources/Benefits Manager of PLC."

¶ 17 Claudine attested that she "typed up the *** 'Employee Discharge Form' the day after Leon Trimble was fired, despite the fact that the document is dated a day earlier." She attested that Thurman "told" her "to prepare the form and what to type in the form." She created the document "from scratch and received no input from" PLC. She attested further that PLC "was not consulted in any manner regarding the 'Employee Discharge Form' and did not instruct me to prepare it." Additionally, she attested that it is not a PLC document or provided by PLC.

¶ 18 Deborah Hiott attested that "I did not create the *** 'Employee Discharge Form' and that I have never seen anyone from PLC create a document with the same form/ heading." She attested that "[u]pon information and belief, the *** form was created unilaterally by A&T ***, and no one from PLC requested its creation," and that "[u]pon information and belief, no one from PLC requested or authorized the creation of the attached form." She did not have any input in the creation of the document. Additionally, Hiott attested that she did not even see the employee discharge document until after Trimble was terminated.

¶ 19 In response, Trimble argued that PLC's motion for reconsideration should be denied because it was untimely and not based on newly discovered evidence. Trimble asked that the circuit court strike PLC's motion for failure to comply with section 1-109 of the Code (735 ILCS 5/1-109 (West 2010)), or with Illinois Supreme Court Rule 191 (Ill. S. Ct. R. 191 (eff. July 1,

2002)). Trimble argued that PLC failed to present any legal argument which would entitle it to summary judgment. Trimble maintained that PLC and A&T were joint employers and, thus, PLC was liable for A&T's actions. Trimble additionally argued that PLC was liable under principles of agency, and because it ratified his termination. As an exhibit, Trimble attached a March 12, 2003, "Service Agreement," between PLC and A&T. The service agreement states that "PLC is a professional employer organization *** engaged in the business of leasing its employees to various businesses," and that "PLC desires to lease its employees to [A&T] on the terms and conditions herein contained." Under the heading "Responsibilities and Obligations of PLC," the agreement states:

"PLC reserves the right of direction and control over Assigned Employees and retains the authority to hire, establish wages, fire, discipline and reassign Assigned Employees. PLC may consult with [A&T] in the performance of these responsibilities."

Under the heading "Responsibilities and Obligations of [A&T]," the agreement states:

"Although PLC assumes the rights, responsibilities and duties as the co-employer of the Assigned Employees ***, [A&T] retains the right to reject and/or seek the termination of any worker assigned to it by PLC, so long as that rejection or termination does not violate Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act ***, the Age Discrimination Employment

Act, or any similar law, rule or regulation governing employment relationships generally as amended, enacted now or later by any federal, state, or local government entity."

The agreement further provided the following clauses regarding terminating employees and the status of employees:

"4.6 Termination of a Specific Employee Lease

PLC shall have the exclusive right to terminate Assigned Employees covered by this Agreement. Immediately upon notice from [A&T] of its decision to no longer lease any specific PLC employee, Customer shall provide ***notice to PLC's operations department, listing the name, social security number and reason for its decision." Immediately upon termination of any Employee by PLC, for any reason, PLC shall provide fax notice to [A&T's] operations department listing the name, social security number and reason for termination of such employee.

4.7 Status of Assigned Employees

Assigned Employees shall be considered the employees of PLC in all respects including but not limited to unemployment compensation***, workers' compensation, employer's FICA, group life insurance (if any), group health insurance (if any), 401(K) retirement program (if any), and other such employee-related payroll and benefits duties and obligations."

Under the heading, "General Provisions," the agreement states that PLC is an independent contractor, stating "PLC shall be an independent contractor of [A&T] and shall not be its

principal, director, agent, master, servant, employer or employee." The president of PLC and a secretary signed the agreement on its behalf. Thurman signed the agreement on A&T's behalf. Claudine was a witness to Thurman's signature.

¶ 20 According to Trimble, he applied for unemployment benefits immediately after his termination. PLC protested his application, and Trimble attached a copy of the protest to his response. On the top of the document, it lists PLC as the claim filer. The form states Trimble was "Discharged for Misconduct," and explained that Trimble "was told by Arista Thurman, the owner of company, that he still had another pick up to do. At this point he refused." The document listed the contact name as "Arista or Claudine Thurman."

¶ 21 In reply, PLC maintained that the facts were not in dispute and that its affidavits were proper. PLC argued that its affidavits had a proper foundation, that it is not subject to liability as a joint employer because leasing employers are not liable in Illinois under the tort of retaliatory discharge, that common law agency principles do not apply to its relationship with A&T, and that it could not have ratified A&T's conduct because it did not know about it until after it happened.

¶ 22 On August 18, 2011, the circuit court granted PLC's motion for reconsideration. The circuit court ordered that PLC be dismissed with prejudice, and entered a finding that there was no just cause to delay enforcement or appeal pursuant to Illinois Supreme Court Rule 304(a). Ill. S. Ct. R. 304 (a) (eff. Feb. 26, 2010). Trimble timely appealed on October 26, 2011.

¶ 23 ANALYSIS

¶ 24 Before this court, Trimble argues that the circuit court erred in granting PLC's motion for summary judgment because PLC, as his joint employer, is jointly and severally liable for his

termination. Trimble asserts that PLC's involvement in his termination is a disputed matter of fact precluding summary judgment. Additionally, Trimble argues that PLC is liable under agency principles, regardless of whether or not it was directly involved in Trimble's termination, because it retained control over his employment relationship. Finally, Trimble argues that it presented facts that PLC both participated in and ratified his termination, thus raising an issue of fact precluding summary judgment.

¶ 25 In response, PLC argued the circuit court's entry of summary judgment in its favor was proper because Trimble failed to rebut PLC's evidence that it had no input in the decision to terminate his employment or that A&T acted unilaterally. It maintains that it could not have ratified Trimble's termination because it did not know about the termination until after it occurred. Further, PLC characterizes itself as a "professional employer organization" who leases its employees to clients, such as A&T in this case; as opposed to being a joint employer as Trimble alleged. Accordingly, it asserts that it exercises no control over A&T's daily business activities. Additionally, PLC argues that joint employers should not be jointly and severally liable under either the Act or the tort of retaliatory discharge.

¶ 26 Summary judgment is proper where "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(c) (West 2008). In ruling on a motion for summary judgment, the circuit court is to determine whether a genuine issue of material fact exists, not try a question of fact. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Admissions, affidavits, depositions, and pleadings will be construed strictly

against the movant and liberally in favor of the nonmovant when determining whether a genuine issue as to any material fact does exist. *Bagent v. Blessing Car Corp.*, 224 Ill. 2d 154, 162 (2007). "A triable issue precluding summary judgment exists where the material facts are disputed or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts." *Id.* at 162-63. "Although summary judgment can aid in the expeditious disposition of a lawsuit, it remains a drastic means of disposing of litigation and, therefore, should only be allowed where the right of the moving party is clear and free from doubt." *Williams*, 228 Ill. 2d at 417. We review summary judgment rulings *de novo*. *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 113 (1995).

¶ 27 The Act provides "[a]n employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation." 740 ILCS 174/20 (West 2010). The Act, in relevant part, defines employer and employee as such:

" ' Employer' means: an individual, sole proprietorship, partnership, firm, corporation, association, and any other entity that has one or more employees in this State, including a political subdivision of the State; a unit of local government; a school district, combination of school districts, or governing body of a joint agreement of any type formed by two or more school districts; a community college district, State college or university, or any State agency whose major function is providing educational

services; any authority including a department, division, bureau, board, commission, or other agency of these entities; and any person acting within the scope of his or her authority express or implied on behalf of those entities dealing with its employees.

'Employee' means any individual who is employed on a full-time, part time, or contractual basis by an employer." 740 ILCS 174/5 (West 2010).

¶ 28 When reviewing a statute, we must "ascertain and give effect to the legislature's intent." *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101, 106 (2005). "The most reliable indicator of such intent is the language of the statute, which is to be given its plain and ordinary meaning." *Solon v. Midwest Medical Records Assoc., Inc.*, 236 Ill. 2d 433, 440 (2010). The statutory language's plain and ordinary meaning must be used where such language is clear. *Vancura v. Katris*, 238 Ill. 2d 352, 378 (2010). Our review of a statute is *de novo*. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009).

¶ 29 Our supreme court has held that "[t]o state a valid claim for retaliatory discharge, a plaintiff must establish that he was (1) discharged, (2) in retaliation for his activities, and (3) that the discharge violated a clear mandate of public policy." *Dixon Distributing Co. v. Hanover Insurance Co.*, 161 Ill. 2d 433, 443 (1994).

¶ 30 Initially, we note that instead of analyzing Trimble's claims of violations of the Act and for retaliatory discharge separately, we have chosen to address the issues of fact that apply to both counts, *i.e.* what was PLC's relationship to both Trimble and A&T and what role did PLC

play in Trimble's termination. The Act provides a very broad definition of employer, stating:

" 'Employer' means: an individual, sole proprietorship, partnership, firm, corporation, association, and any other entity that has one or more employees in this State." (Emphasis added). 740 ILCS 174/5 (West 2010). Depending on what PLC's role was in both Trimble's employment and eventual termination, a reasonable factfinder could conclude PLC was an employer under the Act. Similarly, under Trimble's retaliatory discharge claim, he would have to establish that he was discharged by PLC. *Dixon Distributing Co.*, 161 Ill. 2d at 443. ("To state a valid claim for retaliatory discharge, a plaintiff must establish that he was (1) discharged, (2) in retaliation for his activities, and (3) that the discharge violated a clear mandate of public policy."). Construing the pleadings strictly against PLC as the movant and liberally in favor of Trimble, the nonmovant, we hold that Trimble has raised genuine issues of material fact regarding what PLC's relationship to him and A&T was and what role PLC played in his termination. *Bagent*, 224 Ill. 2d at 162.

¶ 31 First, it is disputed what PLC's relationship was to both A&T and Trimble. PLC alleges that it is an employee leasing company, whereas Trimble alleges it is his joint employer with A&T. The service agreement, which Trimble attached to his response to PLC's motion to reconsider, does not clarify PLC's status. The service agreement states that it leases its employees. However, it also states it "reserves the right of direction and control over Assigned Employees and retains the authority to hire, *to fire*, discipline and reassign Assigned Employees;" and that it "shall have the *exclusive right to terminate* Assigned Employees." (Emphasis added). The agreement further provides that A&T "retains the right to reject and/or *seek* termination of

any worker assigned to it by PLC." (Emphasis Added). In regard to the status of assigned employees, the agreement provides, that "Assigned Employees shall be considered the employees of PLC in all respects." These facts lend credence to Trimble's contention that PLC was his employer under both counts of his complaint. However, the agreement also states "PLC shall be an independent contractor of [A&T] and shall not be its principal, director, agent, master, servant, employer or employee." Additionally, the terms of the employment contract, which PLC attached to its motion for summary judgment, state that Trimble must immediately contact PLC "to secure alternate employment" if A&T terminated him. These facts lend credence to PLC's contention that it should not be considered Trimble's employer under either count of his complaint. Accordingly, PLC's relationship to both A&T and Trimble is disputed by the parties.

¶ 32 Next, it is disputed what role PLC played in Trimble's actual termination. PLC claims that it played no role, and points to affidavits supplied by Thurman, Claudine, and its own employee Deborah Hiott. These affidavits all attest that PLC played no role in Trimble's termination. Specifically that PLC was not consulted nor did they order Claudine to type the employee discharge form that listed both PLC and A&T in the letterhead. These facts show that PLC did not play any role in Trimble's termination. However, Trimble provided Thurman's deposition testimony, his employee discharge form, and the filing protesting his request for unemployment benefits. Thurman stated in his deposition that he called PLC five minutes after he terminated Trimble and told a PLC representative "what happened" and that "[s]he gave me the ok." Thurman also testified regarding his conversation with the PLC representative, "I told her what I had done [sic], and she agreed with it." When asked whether his wife had consulted

with PLC, he answered "I talked to [PLC] I know that for a fact, and then she talked to them."

The letterhead on Trimble's employee discharge form named both PLC and A&T in the letterhead. The protest filed against his claim for unemployment benefits lists the filer as "PLC" but the contact person as "Arista or Claudine Thurman." These facts could lead a reasonable factfinder to conclude PLC played a role in Trimble's termination. Accordingly, PLC's role in Trimble's termination is also disputed.

¶ 33 Trimble has raised significant issues of material fact regarding both what his relationship was to PLC, what PLC's relationship was to A&T, and what role PLC played in his termination. Doing so precluded summary judgment at this stage of the proceedings under either count of his complaint. Therefore, summary judgment was improper in this case.

¶ 34 Additionally, we would like to point out another unresolved factual dispute. According to PLC, it only terminated Trimble for misconduct after A&T terminated him. This is contrary to what it argued before the circuit court. In its motion for summary judgment, it argued that it never terminated Trimble and that Trimble "abandoned" PLC. In its motion for reconsideration, PLC still maintained "[n]o person from PLC ever fired [Trimble]." However, in its brief before this court, PLC stated that it did eventually terminate Trimble, stating, "[o]n a later date, after [Trimble] failed to return to PLC, PLC also discharged him for 'misconduct' because he refused to follow Mr. Thurman's directions." In a footnote, PLC stated "[p]lease note PLC's briefs before the trial court inaccurately stated the plaintiff was never fired from PLC. Prior to the ruling on its motion to reconsider, however, counsel for PLC notified plaintiff's counsel in writing and orally advised the trial judge of the error." This information, which is not in the record, further supports

our conclusion because it raises more questions of fact to be resolved. Namely, why did PLC terminate Trimble? Was it because he refused to drive, which Trimble claims would have been unsafe but PLC claims is misconduct? Or was it because Trimble failed to report to PLC after A&T terminated him? When was Trimble actually fired from PLC? PLC had to show that its right to summary judgment was "clear and free from doubt." *Williams*, 228 Ill. 2d at 417. Based on the numerous issues of fact left to be resolved, we cannot say PLC has done so in this case. Accordingly, the circuit court erred when it granted summary judgment in PLC's favor.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court is reversed.

¶ 37 Reversed and remanded.