2019 IL App (1st) 182196-U
No. 1-18-2196
June 10, 2019

FIRST DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

SILVIA RIVERA, Plaintiff-Appellant, v. EDWARD G. VIVIT and MARY VIVIT, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court Of Cook County. No. 18 L 381 The Honorable Christopher Lawler, Judge Presiding.

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: An employer who owns the land where an employee suffered a work-related injury retains the protections of the exclusive remedy provisions of the Worker's Compensation Act.

¶ 2 Silvia Rivera sued Edward and Mary Vivit for injuries Rivera suffered when she slipped and fell in a parking lot Edward owned. The circuit court dismissed the complaint based on the exclusive remedy provisions of the Worker's Compensation Act (Act) (820 ILCS 305/5(a); 305/11 (West 2016)). Rivera argues on appeal that the dual capacity doctrine

allows her to sue her employer in his second capacity as the owner of the parking lot. We find that Edward's duties to Rivera as owner of the lot did not differ significantly from his duties to Rivera as Rivera's employer. We affirm the judgment dismissing Rivera's complaint.

¶ 3 I. BACKGROUND

¶ 4 Edward and Mary, as partners, owned and operated the Montrose Family Dental Center (Dental Center) on West Montrose Avenue in Chicago. The Dental Center rented the land, including a parking lot and a building, from Edward. Rivera worked for the Dental Center as a dental assistant. On January 11, 2016, Rivera fell in the parking lot. She obtained worker's compensation benefits for her injuries.

¶ 5 On January 11, 2018, Rivera filed a complaint against Edward and Mary, claiming that they permitted an unnatural accumulation of ice and snow to remain in the parking lot, and their failure to maintain the premises in a reasonably safe condition caused her injuries. Edward and Mary moved to dismiss the complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2016)), arguing that the Act's exclusive remedy provision barred Rivera's claim. 820 ILCS 305/5(a); 305/11 (West 2016).

¶ 6 The circuit court granted the motion to dismiss. Rivera now appeals.

¶ 7 II. ANALYSIS

¶ 8 On appeal, Rivera argues that the dual capacity doctrine allows her to sue her employer in his second capacity as the owner of the parking lot. We review *de novo* the dismissal of a complaint under section 2-619 of the Code. *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 43.

¶ 9 The Act specifies that "[n]o common law or statutory right to recover damages from the employer [or] his insurer" is available to "any employee who is covered by the provisions of this Act." 820 ILCS 305/5(a) (West 2016). The Act "shall be the measure of the responsibility of any employer." *McCormick v. Caterpillar Tractor Co.*, 85 Ill. 2d 352, 356-57 (1981); see 820 ILCS 305/11 (West 2016).

¶ 10 Rivera argues that Edward, in his capacity as owner of the parking lot, remains liable despite her recovery of worker's compensation. "[A]n employer normally shielded from tort liability by the exclusive remedy principle may become liable in tort to his own employee if he occupies, in addition to his capacity as employer, a second capacity that confers on him obligations independent of those imposed on him as employer." *Smith v. Metropolitan Sanitary District of Greater Chicago*, 77 Ill. 2d 313, 318 (1979), quoting 2A A. Larson, Workmen's Compensation sec. 72.80, at 14-112 (1976). "A plaintiff has the burden of *** establishing [that] the second capacity generates obligations unrelated to those flowing from the first, that of the employer." *Stewart v. Jones*, 318 Ill. App. 3d 552, 565 (2001).

¶ 11 In *Reynolds v. Clarkson*, 263 Ill. App. 3d 432 (1994), the defendant leased land to the plaintiff's employer, Clarkson. The defendant also worked for the employer, serving as the plaintiff's boss. The plaintiff suffered an injury at work on the leased land, recovered worker's compensation, then sued his boss. The *Reynolds* court said, "As an agent of Clarkson, defendant's duties as plaintiff's boss were to furnish him with a safe place to work which is related to the common law duty of the landowner to provide safe premises and *** does not cause loss of immunity from suit." *Reynolds*, 263 Ill. App. 3d at 435; see also *Stewart*, 318 Ill. App. 3d at 565.

¶ 12 As owner of the premises, Edward had a duty to keep the premises reasonably safe. As partners in the Dental Center, Edward and Mary had duties to furnish a safe workplace for Rivera. The obligations are closely related. Because Rivera cannot establish that Edward's status as owner of the premises generated obligations unrelated to his obligations as employer, the dual capacity doctrine does not apply. See *Reynolds*, 263 Ill. App. 3d at 435; *Stewart*, 318 Ill. App. 3d at 565. The Act bars Rivera's further recovery from Edward and Mary for the injuries. Accordingly, we affirm the dismissal of the complaint.

¶ 13 III. CONCLUSION

¶ 14 We find that Edward's duties to Rivera as owner of the lot did not differ significantly from his duties to Rivera as Rivera's employer. We affirm the judgment dismissing Rivera's complaint.

¶ 15 Affirmed.