T A v. Ann Johnston and Charlotte Rancourt dba Karma Farm (February 23, 2007)

STATE OF VERMONT
DEPARTMENT OF LABOR

T. A.	Opinion No. 05-07WC
v.	By: Phyllis Severance Phillips, Esq., Hearing Officer
Ann Johnston and Charlotte Rancourt, dba Karma Farm	For: Patricia Moulton Powden, Commissioner
	State File No. W-01682

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT

APPEARANCES:

Rebecca A. Rice, Esq., for the Claimant
David R. Bookchin, Esq., for the Defendant

ISSUES PRESENTED:

(1) Whether the doctrine of collateral estoppel bars Claimant from asserting that she was Defendants' employee at the time of her alleged work-related injuries, such that Defendants are entitled to judgment in their favor as a matter of law; and

(2) Whether an Internal Revenue Service determination that Claimant was Defendants' employee for some period of time in 2004 is conclusive on the issue of employment status, such that Claimant is entitled to summary judgment in her favor on this issue.

The relevant undisputed facts are as follows:

In June 2004 Claimant entered into a written agreement with Defendants Ann Johnston and Charlotte Rancourt, the co-owners of Karma Farm. Claimant was an experienced horse trainer and stable manager. Defendants hoped that her skills in stable management would help them attain their goal of creating a small working horse farm on their property. They anticipated that Claimant would perform the necessary preparation and maintenance work so that two horses could be safely stabled and trained on the farm.

The term of the agreement was for one year, from June 9, 2004 until July 1, 2005. The agreement provided for bartered room and board in Defendant's residence on the farm, initially for Claimant and her dog (valued at $500 per month), and beginning in August 2004, for Claimant's horse as well (valued at an additional $200 per month). In return for the bartered rent, Claimant was to provide both professional equine management services (valued at $35 per hour) and unskilled labor (valued at $10 per hour).

The agreement provided that Claimant's work for Defendants would entail at a minimum enough hours of work to cover the agreed-upon value of her bartered rent and horse board. Beyond that, it did not specify either the tasks Claimant was expected to perform or the hours she was expected to work. Instead, it provided as follows:

> The work for room, board and horse board shall be on work agreed to and planned at the beginning of each month by all three parties, for equal barter on farm expenses, so that no party is tax liable for any of this "board barter" exchange. Any work performed after the minimal hours agreed for board equivalency will be compensated by dollar payment (taxable income to Animal Answers[1]) at the aforesaid rates.

Defendants' Statement of Material Facts, Exhibit C.

Unfortunately, the parties' relationship did not develop as envisioned. A variety of disputes arose between them concerning such issues as the nature and extent of the work Claimant was doing around the farm, the status of her work-for-rent obligation, the parties' respective responsibilities for obtaining equine insurance and their respective rights to bales of hay in the barn. To resolve these disputes, the parties agreed to mediation.

The mediation culminated in a written agreement, which the parties executed on October 30, 2004. Under the terms of that agreement, Defendants paid Claimant the sum of $2,550. Claimant agreed to vacate the residential premises no later than December 31, 2004. Claimant also agreed to sign a lease to be presented to her by Defendants for continued use of the barn until June 30, 2005.

The mediation agreement did not specify the basis for the $2,550 payment from Defendants to Claimant. Nor did it provide for any further compensation to pass between the parties. Specifically, the agreement did not call for any further rental payments from Claimant, either for the remaining term of her residency (through December 31, 2004), or for the anticipated barn lease (through June 30, 2005). It also made no mention of any ongoing work relationship or employment agreement between the parties, either for Claimant's professional equine management services or for her unskilled labor.

In December 2004 Defendants filed an ejectment action against Claimant in Washington Superior Court. The cause was tried on January 18, 2005 and the court issued its decision on January 21, 2005.

---

[1] "Animal Answers" was the trade name that Claimant registered with the Vermont Secretary of State in anticipation of establishing her own equine management business.

In its decision, the Superior Court concluded that the $2,550 paid by Defendants to Claimant under the terms of the October 30, 2004 mediation agreement amounted to an accord and satisfaction. The legal effect of the payment, therefore, was to discharge all of the parties' obligations under the June 2004 contract and substitute the terms of the mediation agreement instead. Specifically, the court stated:

> The mediated agreement worked out and later signed by [the parties] provides for a termination of residential rights, and then stable access rights. Those were the ties between Artemis and Plaintiffs. It also provided for a substantial payment from Plaintiffs to Artemis, in circumstances in which she owed them – she was living in their property, not paying rent, and would continue to do so. The only reasonable interpretation of the mediated agreement, therefore, is that the payment to Artemis constituted satisfaction of any claims she may have harbored against Plaintiffs.

Defendants' Statement of Material Facts, Exhibit B, Conclusion of Law C.

The Superior Court found that at the time of the October 30, 2004 mediation agreement, Claimant "had gone at least two months without any payment in money or labor toward her rent." *Defendants' Statement of Material Facts, Exhibit B, Finding of Fact #12.* It also noted, "We are not persuaded that Artemis engaged in any labor for the August and September period for which she was not reimbursed and for which she is entitled to further compensation. The wage issue clearly was on the table during the mediation." *Id., Finding of Fact #13.*

The Superior Court made no findings as to Claimant's employment status with Defendants, if any there was, after October 2004.

Claimant appealed the Superior Court's decision to the Vermont Supreme Court. The Supreme Court affirmed the Superior Court's decision on May 25, 2006. It denied Claimant's Motion for Reargument on June 20, 2006.

On January 5, 2005 Claimant filed a Notice of Injury and Claim for Compensation alleging that she injured her back and hip while employed by Defendants on November 30 and December 25, 2004 and on January 2 and January 4, 2005. All four injuries resulted from slips and falls on the driveways and walkways on Defendants' premises. Claimant alleged that the November 30, 2004 injury occurred when she was en route "from house to barn as daily job requires," that the December 25th injury occurred when she fell "on the driveway," and that the January 2nd and 4th injuries occurred while walking "from house to my truck." *Defendants' Statement of Material Facts, Exhibit A.*

On December 30, 2005 the Internal Revenue Service responded to Claimant's written request for determination of her employment status by concluding that Claimant was an employee of Defendants in 2004. The IRS determination notes that "remuneration to the worker was a negotiated bartering agreement for living quarters and barn space that was assigned a value of $700 a month," that Claimant's labor "was valued at $35 an hour for horse training and $10 per hour for all other manual labor," and that "the bartering relationship ceased in December 2004." *Claimant's Objection to Motion for Summary Judgment and Cross-Motion for Summary Judgment, Exhibit A.*

DISCUSSION:

Under V.R.C.P. 56(c), summary judgment is appropriate when the moving party demonstrates that there is no genuine issue as to any material fact and that the party is entitled to judgment as a matter of law. *Toy, Inc. v. F.M. Burlington Co.,* 155 Vt. 44, 48 (1990). The moving party has the burden of proof, and the opposing party must be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists. *Archie Corrow v. Ethan Allen, Inc. and Washington Central Supervisory Union,* Opinion No. 31-02WC (July 25, 2002), citing *Price v. Leland,* 149 Vt. 518, 521 (1988). The burden does not shift to the non-moving party until the moving party has met its burden that there are no material facts in dispute between the parties. *Id.,* citing *Pierce v. Riggs,* 149 Vt. 136 (1987).

1. **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants' motion for summary judgment is based entirely on the doctrine of collateral estoppel. Defendants claim that in their ejectment action against Claimant, the Washington Superior Court conclusively determined that the October 30, 2004 mediation agreement superseded the parties' June 2004 employment contract, and thereby extinguished any employment relationship between the parties. Defendants contend that Claimant was not their employee, therefore, in November or December 2004 or in January 2005, and that her workers' compensation claim for injuries suffered during those months necessarily must fail.

The doctrine of collateral estoppel, or issue preclusion, bars the subsequent relitigation of an issue that was actually litigated and decided in a prior case where that issue was necessary to the resolution of the dispute. *Scott v. City of Newport,* 177 Vt. 491 (2004), citing *Alpine Haven Property Owners Assn. v. Deptula,* 175 Vt. 559 (2003); *American Trucking Assn. v. Conway,* 152 Vt. 363 (1989). The doctrine serves to "protect the courts and parties against the burden of relitigation, encourages reliance on judicial decisions, prevents vexatious litigation and decreases the chances of inconsistent adjudication." *Berlin Convalescent Center, Inc. v. Stoneman,* 159 Vt. 53, 57 (1992), citing *Fitzgerald v. Fitzgerald,* 144 Vt. 549, 552 (1984); see also *Gillock v. Package It Systems, Inc.,* Opinion No. 46-04WC (Oct. 12, 2004), citing *Sheehan v. Dept. of Employment and Training,* 169 Vt. 304, 308 (1999) (doctrine of collateral estoppel applies to administrative agencies when acting in judicial capacity).

In order for the doctrine of collateral estoppel to apply in a case, the following criteria must be satisfied: (1) preclusion is asserted against one who was a party or in privity with a party in the earlier action; (2) the issue was resolved by a final judgment on the merits; (3) the issue is the same as that raised in the later action; (4) there was a full and fair opportunity to litigate the issue in the earlier action; and (5) applying preclusion in the later action is fair. *Owen v. Bombardier Corp.,* Opinion No. 01SJ-99WC (Jan. 4, 1999), citing *Trepanier v. Getting Organized, Inc.,* 155 Vt. 259 (1990); see also *Gillock v. Package It Systems, Inc., supra* (citing 5 factors).

Applying the above test to the current claim, there appears to be no dispute that the first two criteria are met. The critical determination is whether the third, fourth and fifth criteria have been satisfied. If any of these criteria are unmet, then collateral estoppel cannot be applied, and the Defendants' summary judgment motion must fail.

The issue litigated and decided in the earlier action, being one of ejectment and breach of lease, was primarily to determine what rights, if any, Claimant had to continued occupation and use of Defendants' premises, either under the parties' original June 2004 agreement or under the October 30, 2004 mediation agreement. In finding that there had been an accord and satisfaction of the June 2004 contract, the court determined that all rights and obligations arising under the earlier contract had been discharged. Any ongoing rights and responsibilities between the parties were governed either by the October 30, 2004 mediation agreement or by the parties' subsequent course of conduct.

The issue raised in the current action is quite different. At issue here is whether Claimant was acting as Defendants' employee on any of the specific injury dates she alleged – November 30 and December 25, 2004, January 2 and 4, 2005. Establishing an employment relationship is a prerequisite to a claim for benefits under Vermont's workers' compensation statute. *21 V.S.A. §§601(14), 618.* If Claimant was not engaged in the course and scope of some employment for Defendants on at least one of the days when she injured herself, then her claim for workers' compensation benefits fails as a matter of law. On the other hand, if on any of those days she was working for Defendants under a contract for hire, either express or implied, *21 V.S.A. §601(14),* then she might meet the statutory definition of employee for workers' compensation purposes and her claim survives Defendants' summary judgment challenge.[2]

Had the mediation agreement specifically addressed the issue whether Claimant's employment relationship with Defendants was to continue or not, its terms would have controlled the outcome in this forum as well. Unfortunately for Defendants, it did not.

---

[2] Even where a putative employment relationship exists, there are various statutory exceptions to workers' compensation coverage which, if established, could defeat Claimant's claim. *See, e.g., 21 V.S.A. §§601(14)(A)(casual employment),601(14)(C)(farm employment), 601(14)(E)(private dwelling).* Defendants have not addressed any such exceptions in their summary judgment motion, and therefore they are not at issue here.

Similarly, had the court in the earlier action made any findings as to either the termination of the parties' employment relationship with the signing of the October 30, 2004 mediation agreement or as to any work performed by Claimant for Defendants in the ensuing months that too might have precluded Claimant from relitigating the issue here. Again, unfortunately for Defendants, it did not.

Both the mediation agreement and the court's decision being silent on the issue, there are a number of factual scenarios that, if proven, would sustain Claimant's status as Defendants' employee from November 2004 through January 2005. Perhaps the parties contemplated that the $2,550 that Defendants paid Claimant under the terms of the October 30, 2004 mediation agreement included consideration for both past *and future* work to be performed by Claimant while she remained on the premises. Perhaps they entered into a new, oral employment agreement at some point after the October 30th agreement was signed. Perhaps Defendants acquiesced by their conduct to Claimant's continuing to do chores around the premises, and perhaps by their acquiescence Claimant reasonably believed that an implied employment contract existed. Admittedly, these possibilities may be unlikely, even highly so. There is no evidence, however, to establish that the facts necessary either to prove or disprove them were litigated, considered or at issue in the earlier action.[3]

Before precluding relitigation of an issue, a court must "examine the first action and the treatment the issue received in it." *State v. Pollander,* 167 Vt. 301, 304 (1997), citing *J. Cound, et al.,* Civil Procedure 1228 (6th ed. 1993). Claimant's status as employee from November 2004 until January 2005 certainly could have existed separate and apart from her status as either residential tenant or barn lessee after October 30, 2004. The parties could have intended to maintain their employment relationship as part of the mediation agreement, or they could have resumed it on some date thereafter. At this point in the current proceedings, and with only the mediation agreement and the court's findings in the earlier action as evidence, there simply is no way to know whether the key issue to be decided here – Claimant's employment status at the time of her injuries – was raised or litigated earlier. For that reason, there can be no collateral estoppel.

The sole purpose of summary judgment review is to determine if a genuine issue of material fact exists. If such an issue does exist, it cannot be adjudicated in the summary judgment context, no matter how unlikely it seems that the party opposing the motion will prevail at trial. *Fonda v. Fay*, 131 Vt. 421 (1973). However tenuous or unlikely the evidence in support of Claimant's employment status on the dates of injury may be, Claimant is entitled nonetheless to present the evidence and litigate the question. Summary judgment against her is not appropriate.[4]

---

[3] It is worth noting that on appeal of the Superior Court's decision, the Supreme Court declined to consider any of Claimant's arguments relating to the current workers' compensation claim on the grounds that they were "based on facts outside the record." *Johnston and Rancourt v. Artemis,* Supreme Court Docket No. 2005-211, Entry Order (May 25, 2006) at p. 4, *Defendants' Statement of Material Facts Exhibit G.* It is reasonable to conclude from this remark that the facts germane to Claimant's workers' compensation claim, including her employment status on the dates of injury she alleged, either were not at issue or were not litigated below.

[4] In their Reply to Claimant's Objection to Motion for Summary Judgment, Defendants argue that Claimant's reply is fatally defective because it was not supported by affidavits and did not include the requisite statements of material undisputed and/or disputed facts. V.R.C.P. 56 does not absolutely require the opposing party to produce

2. **CLAIMANT'S MOTION FOR SUMMARY JUDGMENT**

Claimant's motion for summary judgment asserts that an Internal Revenue Service determination that she was Defendants' employee for some period of time in 2004 is conclusive on the issue of employment status and that therefore she is entitled to a finding in her favor on that issue as a matter of law.

Claimant's motion fails for two reasons, one factual and the other legal. First, as noted above, the critical factual determination is quite specific – was Claimant an employee of Defendant on any of the particular injury dates she alleged, November 30 and December 25, 2004 and January 2 and 4, 2005? The IRS determination states only that the bartered employment relationship between the parties "ceased in December 2004." Clearly the November 30, 2004 injury date falls within this time frame, and clearly the January 2 and 4, 2005 injury dates fall outside of it, but it is unclear where the December 25, 2004 date falls. As a factual matter, therefore, the IRS determination is deficient in resolving conclusively the issue of Claimant's employment status on three of the four key dates that are relevant to her workers' compensation claim.

As a legal matter, furthermore, this Department previously has held that an IRS determination of employment status is not controlling in the context of a workers' compensation claim. See *R.B. v. Skyline Corp.,* Opinion No. 31-05WC (May 3, 2005); *Mario Forcier v. LaBranch Lumber Co. and Simon's Chipping, Inc.,* Opinion No. 04-02WC (Feb. 12, 2002). As Defendants correctly noted, the IRS determination in Claimant's case was limited to a review of written submissions only, and therefore afforded the parties only the most limited opportunity to present evidence in their favor and no occasion to challenge contrary evidence. Under these circumstances, it would be unfair to give the ruling conclusive effect here.

ORDER:

Defendants' motion for summary judgment is DENIED. Claimant's cross-motion for summary judgment is DENIED.

Dated at Montpelier, Vermont this 23rd day of February 2007.

____
Patricia Moulton Powden
Commissioner

---

affidavits in support of its position; "mere allegations" are insufficient, but "other evidence" that raises a factual dispute is enough to comply with the rule. *Alpstetten Assn., Inc. v. Kelly,* 137 Vt. 508, 514 (1979). Besides, where the evidentiary matter in support of a motion for summary judgment does not establish the absence of a genuine issue of material fact, summary judgment must be denied *even if no opposing evidentiary material is presented. Id. at 515 (*emphasis in original).