

Robert Ryan v. Dale Martin, Ronald Martin and Martin Brothers Trucking (April 29, 2009)

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Robert Ryan

Opinion No. 13-09WC

v.

By: Jane Gomez-Dimotsis  
Hearing Officer

Dale Martin, Ronald Martin  
and Martin Brothers Trucking

For: Patricia Moulton Powden  
Commissioner

State File No. X-04332

**RULING ON CLAIMANT'S MOTION FOR SUMMARY JUDGMENT**

**APPEARANCES:**

Thomas Nuovo, Esq. for Claimant

Frank Talbott, Esq. for Defendants Dale Martin and Martin Brothers Trucking

Keith Kasper, Esq. for Defendant Ronald Martin

**ISSUE:**

Whether Defendants Dale Martin and Martin Brothers Trucking are precluded from raising the defense that they were not Claimant's employer at the time of his work-related accident, such that Claimant is entitled to summary judgment on the issue under V.R.C.P. 56(c).

**EXHIBITS:**

Claimant's Exhibit 1: Employee's Notice of Injury and Claim for Compensation

Claimant's Exhibit 2: Certified letter from Department of Labor to Dale and

Ronald Martin and Martin Brother's Trucking, June 29, 2006

Claimant's Exhibit 3: Certified Mail Notice to Dale Martin and Martin Brothers  
Trucking

Claimant's Exhibit 4: Return of Service from Chittenden County Sheriff's Department  
to Dale Martin and Martin Brothers Trucking

Claimant's Exhibit 5: Enforcement complaint, Franklin Superior Court

Claimant's Exhibit 6: Defendants' Answer to Plaintiff's Complaint

## **FINDINGS OF FACT:**

Judicial notice is taken of all forms and correspondence contained in the Department's files relating to this claim. In addition, considering the evidence in the light most favorable to the non-moving party, based on the parties' respective pleadings I find the following facts:

1. Claimant was injured in an accident on March 26, 2006 while operating a semi tractor trailer in the course of his employment.
2. Claimant sustained severe injuries to both ankles in the injury and his wife, a passenger in the vehicle, was killed.
3. On June 6, 2006 Claimant filed an Employee's Notice of Injury and Claim for Compensation (Form 5) with the Department. On that form Claimant listed his employers as "Dale Martin and Ronald Martin, Martin Brothers Trucking, Maquam Shore Road, Swanton, Vermont." Claimant listed Ronald Martin as the employer's owner/supervisor.
4. On June 29, 2006 the Department sent letters via certified mail to Dale Martin, Ronald Martin and Martin Brothers Trucking, both to notify them of the claim and to inform them that Claimant's Notice of Injury was being treated as a request for hearing under Workers' Compensation Rule 4.1100. The letter further informed all three named employers that an informal telephone conference had been scheduled for July 27, 2006 to discuss the claim.
5. Workers' Compensation Rule 4.1300 requires that when an employer receives notice from the Department that a claimant has requested a hearing, it must serve an answer specifically stating its defenses within 21 days. The rule further states:

If specific facts sufficient to support the claim have been provided by an employee, failure to answer by the employer may be treated as an unreasonable denial subject to an order to pay compensation pursuant to 21 V.S.A. §662(b). This provision shall not be construed to bar the *timely* assertion of additional defenses *when justice requires*. (Emphasis added).

6. Defendants received the Department's June 29, 2006 letter on June 30, 2006. The letter addressed to Dale Martin, Martin Brothers Trucking, Georgia, Vermont, was signed for by Sis Martin, Dale Martin's wife and the trucking business' dispatcher. Ms. Martin accepted the letter as properly addressed by checking the box that so inquired.
7. A second copy of the Department's June 29, 2006 letter also was signed for on June 30, 2006, this time by Ronald Martin. In accepting the letter, Ronald Martin indicated that his delivery address was not simply "Maquam Shore Road," but "72 Maquam Shore Road."

8. Neither Dale Martin, Ronald Martin nor Martin Brothers Trucking filed any response to the Department's letter within the 21-day period specified. Nor did they participate in any way in the July 27, 2006 informal conference.
9. On July 27, 2006 the Department issued an Interim Order and sent a copy of it via certified mail to Dale Martin, Ronald Martin and Martin Brothers Trucking.<sup>1</sup> The order stated that there had been no response from any of them and that therefore an interim order to pay weekly temporary total disability benefits was appropriate. The order also imposed administrative penalties as a consequence of Defendants' failure to pay or otherwise respond in a timely manner.
10. In addition, the July 27, 2006 Interim Order specifically stated:

Dale Martin and Ronald Martin, DBA Martin Brothers Trucking, if you disagree with the Interim Order you may request a stay of the Interim Order and/or submit a written request for hearing. However, benefits shall be paid in the interim. Failure to comply with the Interim Order may result in the issuance of administrative fines of up to \$5,000.00. Any request for a stay shall be filed with the Commissioner at the time of the filing of an appeal. No stay shall exist unless granted by the Commissioner.

11. Neither Dale Martin, Ronald Martin nor Martin Brothers Trucking filed any request for stay until almost two years later.
12. On August 3, 2006 the Department received an unsigned First Report of Injury listing Ronald Martin as Claimant's employer on March 26, 2006, the date of injury. The First Report further stated that Claimant was hired in November 1994, that he began his shift at 8:00 a.m. in Georgia, Vermont on the date of the accident and that the accident occurred at 8:30 a.m.
13. The Department did not receive anything further from Dale Martin, Martin Brother's Trucking or Ronald Martin for more than eighteen months.
14. On September 6, 2006 Claimant's attorney filed a Complaint in Franklin Superior Court asking that the Department's July 27<sup>th</sup> Interim Order be enforced through the Court pursuant to 21 V.S.A. §675. Claimant asked the Court to attach the property and assets of the Defendants, specifically Dale Martin, Ronald Martin and Martin Brothers Trucking, to cover his temporary disability benefits, permanent partial benefits, medical expenses, associated penalties and attorney's fees and costs. Both Dale Martin and Ronald Martin were individually served with a copy of the Complaint, and in addition, Dale Martin was served with a copy as registered agent for Martin Brothers Trucking.

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<sup>1</sup> Although the Interim Order is dated June 27, 2006 it is clear from its context that this was in error and that it actually issued on July 27, 2006.

15. The Complaint alleged, in “Background Facts #7,” that “Robert Ryan has been an employee of the Defendants for over 12 years.” In its Answer to the Complaint, Defendants’ attorney responded: “Denied. [Claimant] has been an employee of the Defendants for over 11 years.”
16. In “Background Facts #8” the Complaint further alleged that “On March 26, 2006, [Claimant] suffered an accident while in the employment of the Defendants. As a result of the accident [Claimant] suffered bi-lateral ankle fractures and has significant emotional issues regarding both the accident and the loss of his wife who was a passenger in the vehicle at the time.” Defendants admitted these statements in their Answer. Defendants also admitted that they had no workers’ compensation insurance.
17. In their Answer to Claimant’s Complaint, Defendants also asserted that as of October 27, 2006 payments totaling \$12,852.62 in workers’ compensation benefits had been made to Claimant.
18. In the context of the Franklin Superior Court enforcement action, Claimant obtained trustee process against the bank account held by Martin Brothers Trucking. Claimant also moved for Writs of Attachment on Dale Martin’s property.
19. Jesse Bugbee, Esq. was the attorney of record for Defendants at the time they responded to Claimant’s Complaint. Through their current attorney, Frank Talbott, Esq., Dale Martin and Martin Brothers Trucking now state that Attorney Bugbee was not representing them at the civil court proceeding but was only authorized to represent Ronald Martin. Attorney Talbott has produced no evidence, by affidavit or otherwise, to support this allegation.
20. On its face, Attorney Bugbee’s pleading in the Franklin Superior Court enforcement action appears to indicate otherwise. It is captioned, “*Defendants*’ Answer to Plaintiff’s Complaint” (emphasis added). It specifically denies allegations as to both Dale Martin’s residence and the business address for Martin Brothers Trucking, and purports to allege more accurate addresses instead. It repeatedly refers to “Defendants” in responding to other allegations of the Complaint. As noted above, it expressly admits the allegation that Claimant “suffered an accident while in the employment of the *Defendants*.” (Emphasis added). In the section captioned “Affirmative Defenses,” it states, “For *their* affirmative defenses, *Defendants* state as follows,” (emphasis added), and the relief requested states that it is on behalf of “*Defendants*.” (Emphasis added). Last, it reflects that Attorney Bugbee carbon copied his filing to both Dale Martin and Ronald Martin.
21. Even if Attorney Bugbee was *not* representing Dale Martin and Martin Brothers Trucking, as they now allege, then in that case because they were named and served with the civil complaint but failed to answer, the judgment issued against them would be a default judgment under V.R.C.P. 4(b).

22. Attorney Talbott did not enter his appearance before the Department on behalf of Defendants Dale Martin and Martin Brothers Trucking until April 2008, more than two years after the accident. In seeking relief from the Department's July 2006 Interim Order Attorney Talbott argued that Dale Martin and Martin Brothers Trucking were not Claimant's employers on the date of his accident, but rather that Ronald Martin was the responsible employer. Attorney Talbott asserted that the reason neither Dale Martin nor Martin Brothers Trucking had raised this defense earlier was because they had assumed that Ronald Martin would pay whatever benefits were owed. Attorney Talbott also asserted that Ronald Martin has his own trucking business although Dale Martin does hire him at times to run hauls.
23. The Department denied Attorney Talbott's motion for relief from the Interim Order on May 5, 2008. As grounds for doing so, it cited Defendants' "unaccountable delay in asserting any defense." The Department also noted that the contrary representations as to Claimant's relationship with Dale Martin and Martin Brothers Trucking on the date of his accident "preclude finding reasonable basis to disturb the Order."
24. Attorney Talbott's motion for relief having been denied, the claim was forwarded to the formal hearing docket on the question whether Dale Martin and Martin Brothers Trucking are barred from raising the defense that neither was Claimant's employer. Claimant's motion for summary judgment on the issue followed and is now pending.
25. On August 4, 2008, Keith Kasper, Esq., representing Defendant Ronald Martin, informed the Department that his client had filed for bankruptcy. On August 31, 2008 Attorney Kasper notified the Department that in light of the bankruptcy proceeding Defendant Ronald Martin would not be appearing at either the pre-trial conference or the formal hearing, and presumably would take no active role in these proceedings.

## **CONCLUSIONS OF LAW:**

1. Under V.R.C.P. 56(c), summary judgment shall be awarded to the moving party if it can demonstrate that there is no genuine issue as to any material fact and it is entitled to judgment as a matter of law. In evaluating the propriety of a summary judgment motion, the non-moving party is entitled to the benefit of all reasonable doubt and inferences. *Murray v. White*, 155, 621 (1991); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).
2. Applying that standard to the current claim, I conclude first of all that Defendants Dale Martin and Martin Brothers Trucking received proper notice of Claimant's claim, their right to defend against it, the informal conference process in which such defenses would be heard and the possibility that an interim order might issue should their defenses prove unconvincing. The Department's June 29, 2006 letter to this effect was sent to all three Defendants by certified mail, and all three Defendants signed to indicate their receipt.
3. Similarly, the Department's July 27, 2006 Interim Order was mailed to all three Defendants by certified mail, and all three Defendants signed to indicate their receipt.

4. Workers' Compensation Rule 4.1300 allows the Department to issue an interim order to pay compensation against a defendant who has failed to answer a claimant's claim for benefits. While the rule does not bar such a defendant from later asserting additional defenses, the right to do so is clearly qualified in two important respects. First, the additional defenses must be asserted "in a timely manner," and second, they must only be allowed "when justice requires."
5. As to the first requirement, I find that Defendants have failed to assert their defenses "in a timely manner." I simply cannot countenance a delay of nearly two years in raising a factual defense that should have been apparent to Defendants from the outset. Particularly in light of subsequent events, Defendant Ronald Martin now having declared bankruptcy and become judgment-proof, the prejudice to Claimant that would result if I were to do so is too glaring to ignore.
6. Nor can I conclude that under the circumstances of this claim "justice requires" that Defendants be given yet another opportunity to assert defenses that they should have raised long ago. In reaching that conclusion, I am mindful, first of all, that in the context of administrative proceedings, due process grants to each party the right to be heard. That right can be waived, however, which means that due process is satisfied so long as each party has been furnished an *opportunity* to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).
7. Clearly Defendants Dale Martin and Martin Brothers Trucking were given an opportunity to be heard here, and clearly they opted not to take advantage of it. The reason stated for their failure to respond – that they thought Ronald Martin was taking care of matters – does not in any way change the legal ramifications of their decision not to defend themselves.
8. Not only did Defendants fail to defend themselves in the context of the Department's initial proceedings, furthermore, but they also remained silent throughout the course of enforcement proceedings brought against them in superior court, proceedings that even went so far as to result in trustee process against their bank account.
9. Against this backdrop, I simply cannot conclude that "justice requires" that Defendants be allowed now to assert the defense that they were not Claimant's employer on the date of his accident. In fact, exactly the opposite is true. By their inaction, Defendants lulled Claimant into a false sense of security on the issue. Now they point the finger instead at Ronald Martin, who since has declared bankruptcy and therefore likely will have no resources with which to pay Claimant the benefits to which he is entitled. Unfortunately, what injustice there is likely will land on Claimant's shoulders, therefore, not Defendants'.
10. Furthermore, this entire scenario has played out in the context of Defendants having failed to maintain workers' compensation insurance, a serious violation of 21 V.S.A. §687 that may subject them to fines and penalties. The intent of that law is to protect injured workers from the very situation Claimant now faces.

11. I conclude, therefore, that Defendants Dale Martin and Martin Brothers Trucking are precluded from raising the defense that they were not Claimant's employer on the date of his injury. The only issue for hearing shall be the amount of compensation due Claimant, taking into account both the medical and indemnity benefits to which he proves his entitlement and the amount of any applicable administrative penalties previously imposed, less credit for any amounts already paid.

**ORDER:**

Based on the foregoing findings of fact and conclusions of law, Claimant's Motion for Summary Judgment is hereby **GRANTED**.

DATED at Montpelier, Vermont this 29<sup>th</sup> day of April 2009.

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Patricia Moulton Powden  
Commissioner

**Appeal:**

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.