STATE OF VERMONT
DEPARTMENT OF LABOR

Rodney Stearns

v.

Ricane Crossman/
A+ Handyman Services, LLC

and

Karen LaPoint

Opinion No. 21-21WC

By: Stephen W. Brown
Administrative Law Judge

For: Michael A. Harrington
Commissioner

State File No. JJ-309

RULING ON DEFENDANT KAREN LAPOINT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

Christopher McVeigh, Esq., for Claimant
Keith J. Kasper, Esq., for Defendant Karen LaPoint
Ricane Crossman, *pro se*, for Defendants Ricane Crossman and A+ Handyman Services, LLC

ISSUE PRESENTED:

Is Claimant's claim against Defendant Karen LaPoint barred by the statute of limitations and/or laches?

EXHIBITS:

Claimant's Exhibit 1: Emails between counsel
Claimant's Exhibit 2: Excerpts from Deposition of Ricane Crossman, dated June 24, 2020

BACKGROUND:

Considering the evidence in the light most favorable to Claimant as the non-moving party, *State v. Delaney*, 157 Vt. 247, 252 (1991), there is no genuine issue as to the following facts:

1. Defendants Ricane Crossman dba A+ Handyman and/or A+ Handyman Services, LLC employed Claimant between approximately 2006 and 2015. Claimant alleges[1] that he sustained an injury arising out of and in the course of that employment on September 14, 2015.

[1] The fact of Claimant's work-related injury on this date has been established as between Claimant and Defendants Ricane Crossman and A+ Handyman Services, LLC. *See* Opinion No. 11-21WC (June 14, 2021). However, because Defendant LaPoint was not a party to this case at the time of the formal hearing which led to that opinion, and thus had no opportunity to present evidence at that hearing, the factual findings and legal conclusions therein do not bind her.

2. On November 21, 2016, Claimant filed an Employee's Notice of Injury and Claim for Compensation (Form 5) and a Notice and Application for Hearing (Form 6) with the Department. In those filings, Claimant alleged that he sustained an injury arising out of and in the course of his employment with Defendants Ricane Crossman and A+ Handyman Services, LLC, and that those Defendants lacked workers' compensation insurance at the time of his injury.

3. On June 24, 2020, Claimant took Defendant Crossman's deposition. Defendant Crossman testified that Defendant LaPoint was the property owner of the worksite where Claimant alleges he was injured, that she had expressed displeasure with the speed of Claimant's work on that project, and that she requested—in Claimant's presence—for Claimant to be removed from the job. (Crossman Deposition, pp. 36-37). Claimant's counsel questioned Defendant Crossman extensively with respect to Defendant LaPoint's involvement in the job and whether she acted as the general contractor:

> Q. Did Karen LaPoint—what was the name of her business?
>
> A. Karen LaPoint.
>
> Q. Okay. Was she involved as a general contractor in these projects?
>
> A. No. Well, she thought so. She wasn't formally, but she was on the job a lot.
>
> Q. Was she directing activity?
>
> A. Yes.
>
> Q. Was she taking responsibility for supplying materials and things like that?
>
> A. Yes.
>
> Q. What was she supplying?
>
> A. She would actually have lumber delivered, materials delivered, tile. She bought everything online and she had it delivered.
>
> Q. So she would pay that out herself and then have it delivered to the site for you folks to use?
>
> A. Yes.
>
> Q. Was she the one who directed what should be done?
>
> A. Yes.
>
> Q. Did she have any other employment other than owning—

A. Did she, no.

Q. Did she have any other employment other than owning these houses?

A. No.

(*Id.*, pp. 44-45).

4. A formal hearing was held relative to Claimant's claim for workers' compensation benefits against Defendants Crossman and A+ Handyman Services, LLC, on December 14, 2020. Prior to that formal hearing, Karen LaPoint had received no notice of any workers' compensation claim for which she might be liable.

5. On March 17, 2021, Claimant's counsel requested that Karen LaPoint be placed on notice of the potential claim in this matter. Such notice was sent in June 2021, and the Department scheduled an informal conference for July 28, 2021.

6. On July 15, 2021, Karen LaPoint, through counsel, filed an answer denying that she was Claimant's statutory employer at the time of his injury and asserting the affirmative defenses of the statute of limitations and laches. This motion followed.

CONCLUSIONS OF LAW:

1. To prevail on a summary judgment motion, the moving party must show that there exist no genuine issues of material fact, such that it is entitled to judgment in its favor as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). In ruling on such a motion, the non-moving party is entitled to the benefit of all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 252 (1991); *Toys, Inc. v. F.M. Burlington Co*., 155 Vt. 44, 48 (1990). Summary judgment is appropriate only when the facts in question are clear, undisputed, or unrefuted. *State v. Heritage Realty of Vermont*, 137 Vt. 425, 428 (1979). It is unwarranted where the evidence is subject to conflicting interpretations, regardless of the comparative plausibility of the facts offered by either party or the likelihood that one party or the other might prevail at trial. *Provost v. Fletcher Allen Health Care, Inc.*, 2005 VT 115, ¶ 15.

2. Under Vermont law, a workers' compensation claim "may not be commenced after three years from the date of injury." 21 V.S.A. § 660(a). The "date of injury" for the purpose of this statute of limitations is "the point in time when an injury becomes reasonably discoverable and apparent." *Hartman v. Ouellette Plumbing & Heating Corp.*, 146 Vt. 443, 447 (1985). A litigant "need not have an airtight case before the limitations period begins to run," but merely "should have obtained information sufficient to put a reasonable person on notice that a particular defendant may have been liable" for his or her injuries. *Rodrigue v. Valco Enterprises*, 169 Vt. 539, 540-41 (1999); *Stoddard v. Northeast Rebuilders*, Opinion No. 30SJ-03WC (July 8, 2003).

3. Importantly, actual knowledge of a claim's accrual is not necessary for a limitations period to begin; inquiry notice is sufficient. *See Jadallah v. Town of Fairfax*, 2018 VT 34, ¶ 17. Such notice exists once the claimant knows of the "facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery." *Id.*

4. Generally, the date by which an injury has become reasonably discoverable and apparent is a question of fact, but it may be determined as a matter of law when the evidence is sufficiently clear. *See Smiley v. State of Vermont*, Opinion No. 15-13WC (June 3, 2013), *aff'd* 2015 VT 42 (granting defendant's motion for summary judgment on limitations grounds as to claim for permanent partial disability benefits where the evidence demonstrated that "as of July 1996 [the claimant] knew, or should have known, that he had reached an end medical result, and that whatever deficits he was left with were likely permanent in nature") (citing *Kraby v. Vermont Telephone Co.*, 2004 VT 120 and *Lillicrap v. Martin*, 156 Vt. 165 (1989)).

5. At the outset, Defendant LaPoint accurately notes that she was first placed on notice of this claim against her well over three years after the date of Claimant's alleged injury.

6. In response, Claimant contends that he did not have notice of Defendant LaPoint's potential status as his employer until Defendant Crossman's June 24, 2020 deposition. It was that deposition, he argues, that first alerted him to the extent of Defendant LaPoint's actual involvement in the construction work he was performing and "provided the factual basis for identifying a potentially legally responsible individual." (Claimant's Response at 4-5). Thus, Claimant argues that his claim against Defendant LaPoint did not begin to accrue for limitations purposes until June 24, 2020.

7. In reply, Defendant LaPoint notes, *inter alia*, that Defendant Crossman's deposition testimony describes a close working relationship between Claimant and Defendant LaPoint, suggesting that Claimant certainly would have known of Defendant LaPoint's involvement well before that deposition. However, it would be inappropriate on summary judgment to credit all the factual details as described by Defendant Crossman, especially since neither side has set forth the particulars of his characterization in statements of undisputed material fact. *See, e.g.*, *Delaney*, *supra*, 157 Vt. at 252.

8. More persuasively, Defendant notes that Claimant had actual knowledge of his alleged injury and its relationship to his employment with Defendants Crossman and A+ Handyman Services, LLC by November 21, 2016, when he initiated his workers' compensation claim against them, and that his initial filings note that those Defendants lacked workers' compensation insurance. As such, Defendant argues that Claimant had a strong motive at that time to investigate whether any other parties might be legally responsible for his injuries.

9. Claimant disagrees that the uninsured status of his immediate employers put him on inquiry notice to investigate other potentially responsible parties. According to Claimant, this argument implies that "if a contractor is working without workers'

compensation insurance, then an injured worker must file a claim against the owner of the property where the work is being performed, regardless of any knowledge of whether the owner was involved in a general contractor role regarding the project." (Claimant's Sur-Reply Brief, p. 5).

10. This response is unpersuasive. An employer's uninsured status should create doubts as to its ability to satisfy a judgment for a workers' compensation claim. That doubt significantly increases a reasonable claimant's motive to investigate whether other parties may share some of the financial responsibility for a workplace injury. That does not mean that an injured worker should immediately sue everyone who had anything to do with a project before performing any investigation; that would be wildly inappropriate. It simply means that a part of an injured worker's reasonable diligence after knowledge of an employer's lack of insurance coverage includes investigating other parties' roles in a project. Such an investigation might include, for instance, asking questions of the same sort that Claimant's counsel asked Defendant Crossman on June 24, 2020.

11. From the current record, it is not clear whether Claimant knew of Defendants Crossman's and A+ Handyman Services, LLC's uninsured status at the time of his alleged injury. However, he certainly knew of their status as such by the time he filed his workers' compensation claim against them on November 21, 2016, as his initial filings with the Department demonstrate. *See* Finding of Fact No. 2, *supra*.

12. Claimant offers no reason why he could not have investigated the existence of other potentially responsible parties within the three years after that date. Nor does he offer any reason why he could not have deposed Defendant Crossman during that period and asked the very same questions that he asked on June 24, 2020, just seven months later than the three-year anniversary of his initial filing with the Department.

13. Even resolving every inference in Claimant's favor, I conclude that he had sufficient information on November 21, 2016[2] to put him on reasonable notice of an inquiry which, if pursued, would have led him to discover the same information concerning Defendant LaPoint that he learned during Defendant Crossman's June 24, 2020 deposition. Thus, as a matter of law, any relationship between his injury and any putative employment relationship he may have had with Defendant LaPoint was reasonably apparent and discoverable by that date. More than three years elapsed between that date and Claimant's assertion of any claim against Defendant LaPoint. Therefore, the statute of limitations bars this workers' compensation claim against her. *See* 21 V.S.A. § 660(a); *Jadallah*, 2018 VT 34; *Kraby*, 2004 VT 120; *Lillicrap*, 156

[2] This is not to say that the limitations period for Claimant's claim against Defendant LaPoint might not have begun earlier. Depending on the totality of information known or reasonably discoverable to Claimant, the limitations period relative to Defendant LaPoint might have begun at the moment of his alleged injury, or sometime between then and the filing of his initial workers' compensation claim. However, the record establishes without a doubt that the limitations period as to Defendant LaPoint began no later than November 21, 2016. Because that claim would be time-barred using that date as the accrual date for limitations purposes, I need not assess whether it accrued for limitations purposes by any earlier date.

Vt. 165; *Hartman*, 146 Vt. 443; *Rodrigue*, 169 Vt. 539; *Stoddard*, Opinion No. 30SJ-03WC; *Smiley*, Opinion No. 15-13WC.

14. Because the statute of limitations completely resolves Claimant's claim against Defendant LaPoint, I need not consider whether the equitable doctrine of laches also applies.

ORDER:

For the reasons stated above, Defendant LaPoint's Motion for Summary Judgment is **GRANTED** and Claimant's claim against her is **DISMISSED**.

DATED at Montpelier, Vermont this 18th day of November 2021.

_____
Michael A. Harrington
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.