IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DIANE BLACK, Plaintiff vs. LABOR READY, INC., WILLIAMSPORT STEEL CONTAINER CORP. and RHEEM MANUFACTURING COMPANY, INC., Defendants	: : : : : : : : :	NO. 06 – 01,679 CIVIL ACTION

OPINION IN SUPPORT OF ORDER OF FEBRUARY 6, 2009, IN COMPLIANCE WITH RULE 1925(A) OF THE RULES OF APPELLATE PROCEDURE

Plaintiff appeals from this Court's Order of February 6, 2009, which granted summary judgment in favor of Defendant Williamsport Steel after finding that Williamsport Steel was Plaintiff's employer at the time of her accident and thus immune from suit under the worker's compensation exclusivity provision. In her Statement of Reasons Complained of on Appeal, Plaintiff contends that a worker's compensation judge's adjudication, that Defendant Labor Ready was Plaintiff's employer, judicially, collaterally and equitably estopped this Court from finding Defendant Williamsport Steel to be Plaintiff's employer.

As was noted in this Court's opinion issued in support of its Order of February 6, 2009, the Court believes the issue of which entity was Plaintiff's employer for purposes of making worker's compensation payments to be separate from the issue of which entity was her employer for purposes of civil liability. The facts showed that Defendant Williamsport Steel paid amounts to Defendant Labor Ready to cover the cost of worker's compensation insurance and that Defendant Labor Ready actually carried the insurance. In determining that Defendant Labor Ready should be responsible for making the worker's compensation payments to Plaintiff for her work-related injury, the worker's compensation judge simply found Labor Ready to be Plaintiff's employer for purposes of that obligation, but did not, contrary to Plaintiff's assertion, find Defendant Williamsport Steel to *not* be Plaintiff's employer.[1] Therefore, the Court did not believe it was precluded from considering the issue.

1 Indeed, such a finding would not have been relevant to the issue before the judge.

The Court also wishes to note that, in effect, Plaintiff is arguing that there cannot be two employers, both immune from suit under the worker's compensation exclusivity provision. In the case of a temporary labor agency, however, the employee is directed to the work site by one entity and performs the work for another. The employee's worker's compensation insurance coverage is provided for by the temporary labor agency, but the cost of such is paid by the company for whom the employee is actually performing the work, and that entity should be able to reap the benefit of paying for that coverage. It does not make sense that an employee who worked directly for Williamsport Steel and who was injured by the same machine as was Plaintiff would be unable to sue for that work-related injury, but that Plaintiff could sue for such because she worked for Williamsport Steel through a temporary agency. By finding both entities to be employers the Court recognizes the reality of the situation: the temporary agency should not be liable because it has no control over the machinery used by the employee, and the company for whom the employee actually performs the work should not be liable because it paid for worker's compensation insurance to cover such an event.

Dated: March 18, 2009 Respectfully submitted,

Dudley N. Anderson, Judge

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