AL-JAQUAN LEWIS

Plaintiff-Appellant,

-vs-

ISAIAH M. DICKS, RYDER TRUCK RENTAL, INC. and/or ABC CORP. (a fictitious entity), MIRANDA MICHEL and/or "JANE DOE" (a fictitious name), SOUTHERN GLAZERS, INC., SOUTHERN GLAZERS 1, LLC, SOUTHERN GLAZER'S LEASING, LLC, SOUTHERN GLAZER'S WINE AND SPIRITS OF NEW JERSEY, LLC, VINO TRUCKING, VINO'S TRUCKING CORP., ROYAL WINE CORPORATION, LEGEND SPIRITS, LLC, DAVID AHARON, "RICHARD ROE" (a fictitious name), and DEF-GHI CORP. (a series of fictitious entities)

Defendant(s)-Respondent(s).

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Brief
DOCKET NO.: **A-002781-23**

Civil Action on Appeal from
SUPERIOR COURT, LAW DIVISION,
ESSEX COUNTY
DOCKET NO.: ESX-L-1718-22

HONORABLE ANNETTE SCOCA, J.S.C.
SAT BELOW

BRIEF

FOR

APPELLANT AL-JAQUAN LEWIS

John E. Molinari, Esq.
BLUME, FORTE, FRIED,
ZERRES & MOLINARI
A PROFESSIONAL CORPORATION
ONE MAIN STREET
CHATHAM, NEW JERSEY 07928
(973) 635-5400
Jmolinar@njatty.com
NJ Attorney ID No.: 023571986

TABLE OF CONTENTS

TABLE OF JUDGMENTS iv

TABLE OF AUTHORITIES v

TABLE OF APPENDIX viii

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY 4

STATEMENT OF FACTS 7

STANDARD OF REVIEW 15

LEGAL ARGUMENT 16

POINT I. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE OF ROYALS POTENTIAL STATUS AS A GENERAL CONTRACTOR (Pa1; 2T8:13-16)……..……..16

Point A: Defendant Royal's Involvement In The Work That Led To Plaintiff-Appellant's Injuries Contains Genuine Issues Of Material Fact (2T8:13-16). 17

Point B: Defendant Royal's Potential Relationship With The Vino Defendants As A General Contractor Contains Genuine Issues Of Material Fact (2T8:22-24; 2T9:6-9). 20

POINT II. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE VINO DEFENDANTS BECAUSE THERE WAS NO PROOF OF REPAYMENT OF WORKERS' COMPENSATION BENEFITS AND THE VINO DEFENDANTS DID NOT ACT IN ACCORDANCE WITH THE WORKERS' COMPENSATION ACT, AS THEY DID NOT CARRY NEW JERSEY WORKERS' COMPENSATION INSURANCE, AND SHOULD THUS NOT BE AFFORDED ITS PROTECTIONS (Pa3; 4T23:2 – 25:13). 27

Point A: Royal Improperly Supplied Plaintiff-Appellant Workers' Compensation Benefits Through Travelers Because Vino Did Not Carry Workers' Compensation Insurance In New Jersey At The Time Of The Accident (4T23:2-22). 28

POINT III. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE VINO DEFENDANTS BECAUSE GENUINE ISSUES OF DISPUTED MATERIAL FACT REMAINED AS TO PLAINTIFF-APPELLANT'S EMPLOYER (Pa3; 4T22:20-25) ……..36

Point A: If Anything, Plaintiff-Appellant Was Working As A Casual Employee For Vino On The Subject Date, And There Is Sufficient Evidence To Be Left For A Reasonable Jury To Conclude That Plaintiff-Appellant Should Not Be Barred From Pursuing Civil Remedies Under The Act (4T14:18 – 15:8) ……..42

CONCLUSION ……...45

INDEX TO PLAINTIFF-APPELLANT'S FOUR-VOLUME APPENDIX

Vol. 1 – Pa1-Pa150
Vol. 2 – Pa151-Pa300
Vol. 3 – Pa301-Pa450
Vol. 4 – Pa 451-Pa524

TABLE OF JUDGMENT, ORDERS, AND RULINGS BEING APPEALED

1. Order Granting Summary Judgment to Defendant(s) Royal Wine Corp., filed June 27, 2023 .....Pa1

2. Order Granting Summary Judgment to Defendant(s) Vino Trucking, Vino's Trucking Corp., David Aharon, and Isaiah Dicks, filed October 13, 2023 .....Pa3

3. Order Denying Motion for Reconsideration of Order Granting Summary Judgment to Defendant(s) Vino's Trucking Corp., David Aharon, and Isaiah Dicks, filed April 26, 2024.....Pa5

TABLE OF AUTHORITIES

CASES **Page**

Abtrax Pharmaceuticals Inc. v. Elkins-Sinn Inc.,
139 N.J. 499 (1995)……26

Auletta v. Bergen Center for Child Development,
338 N.J. Super. 464 (App. Div. 2001) ……38, 40

Berkeyheiser v. Woolf,
71 N.J. Super. 171 (App. Div. 1961)…….....43

Bertucci v. Metropolitan Const. Co.,
21 N.J. Super. 318 (App.Div.1952)……24

Brill v. Guardian Life Ins. Co.,
142 N.J. 520 (1995)……15, 18, 22

Brygidyr v. Rieman,
31 N.J. Super. 450 (App. Div. 1954)……..30

Cassano v. Aschoff,
226 N.J. Super. 110 (App. Div. 1988)……24

DeMarco v. Bouchard,
274 N.J. Super. 197 (App. Div. 1994) ……..43

Eger v. E.I. Du Pont DeNemours Co.,
110 N.J. 133 (1988)……30

Fournier Trucking v. N.J. Mfrs. Ins. Co.,
No. A-1353-18T2, 2020 N.J. Super. Unpub. LEXIS 651 (App. Div. Apr. 9, 2020)……29, 30

Friedman v. Martinez,
242 N.J. 449 (2020)……26

Hollywood Café Diner, Inc. v. Jaffee,
473 N.J. Super. 210 (App. Div. 2022)……23

Kulbacki v. Sobchinsky,
38 N.J. 435 (1962)……...16, 20

Manalapan Realty, L.P. v. Twp. Comm. of Manalapan,
140 N.J. 366 (1995)……15

Millison v. E.I. de Pont de Nemours & Co.,
101 N.J. 161 (1985)……..28, 42

Mittan v. O'Rourke,
115 N.J.L. 177 (1935)……30

Mohamed v. Iglesia Evangelica Oasis De Salvacion,
424 N.J. Super. 489 (App. Div. 2012)……24

Oliviero v. Porter Hayden Co.,
241 N.J. Super. 381 (App. Div. 1990)……26

Pollack v. Pino's Formal Wear & Tailoring,
253 N.J. Super. 397 (App. Div. 1992)…….34, 35

Puckrein v. ATI Transport, Inc.,
186 N.J. 563 (2006)……23

R.A.C. v. P.J.S.,

192 N.J. 81 (2007)……..15

Rowe v. Bell & Gossett Co.,
239 N.J. 531 (2019)……15

Shanley & Fisher, P.C. v. Sisselman,
215 N.J. Super. 200 (App. Div.1987)……36

Templo Fuente v. Nat. Union Fire,
224 N.J. 189 (2016)……16

Williams v. A&L Packing &Storage,
314 N.J. Super. 460 (App. Div. 1998)……34

Willson v. Faull,
27 N.J. 105 (1958)……..31

STATUTES

N.J.S.A. 34:15-1……..27

N.J.S.A. 34:15-8……..27

N.J.S.A. 34:15-79……9, 12, 17, 24, 25, 28, 29, 30, 31, 33, 34, 35, 36, 38

NEW JERSEY COURT RULES

Rule 4:46-2(b) ……36

TRANSCRIPTS

DAVID AHARON DEPOSITION TRANSCRIPT DATED MAY 10, 2023……..……...1T

TRANSCRIPT OF MOTION HEARING DATED JUNE 23, 2023 ..... 2T

SHMUEL AHARON DEPOSITION TRANSCRIPT, DATED JULY 20, 2023…….3T

TRANSCRIPT OF MOTION HEARING DATED OCTOBER 13, 2023 ..... 4T

ISAIAH DICKS DEPOSITION TRANSCRIPT, DATED DECEMBER 12, 2023…….5T

TRANSCRIPT OF MOTION HEARING DATED APRIL 26, 2024……6T

TABLE OF APPENDIX

ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANT(S) ROYAL WINE CORP., FILED JUNE 27, 2023……..Pa1

ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANT(S) VINO TRUCKING, VINO'S TRUCKING CORP., DAVID AHARON, AND ISAIAH DICKS, FILED OCTOBER 13, 2023……...Pa3

ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANT(S) VINO'S TRUCKING CORP., DAVID AHARON, AND ISAIAH DICKS, FILED APRIL 26, 2024……Pa5

COMPLAINT, FILED MARCH 16, 2022 | ESX-L-1718-22 ..... Pa7

AMENDED COMPLAINT, FILED MARCH 24, 2022 .....Pa19

SUMMARY JUDGMENT FILINGS PER RULE 2:6-1(a)(1)*

DEFENDANT ROYAL WINE CORP.'S MOTION FOR SUMMARY JUDGMENT, FILED APRIL 3, 2023

DEFENDANT ROYAL WINE CORP'S NOTICE OF MOTION FOR SUMMARY JUDGMENT, FILED APRIL 3, 2023, ...Pa30

CERTIFICATION OF COUNSEL Pa33

PROPOSED ORDER.....Pa34

STATEMENT OF UNDISPUTED MATERIAL FACTS.....Pa36

BRIEF**…….. Pa38

EXHIBIT A: POLICE REPORT Pa39

EXHIBIT B: DEFENDANT ROYAL WINE CORP.'S ANSWERS TO FORM C AND C(1) INTERROGATORIES Pa42

EXHIBIT C: ROYAL WINE CORP.'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS Pa52

PLAINTIFF OPPOSITION TO DEFENDANT ROYAL WINE CORP.'S MOTION FOR SUMMARY JUDGMENT, FILED MAY 2, 2023

COVER LETTER.....Pa63

CERTIFICATION OF MAILING Pa65

CERTIFICATION OF PLAINTIFF'S COUNSEL.....Pa66

STATEMENT OF MATERIAL FACTS……Pa70

BRIEF EXCERPT*……Pa73

PROPOSED ORDER.....Pa76

EXHIBIT A: COMPLAINT, FILED MARCH 16, 2022…..…….Pa7

EXHIBIT B: PLAINTIFF'S REQUEST FOR DEFAULT AGAINST ROYAL WINE CORP., FILED JULY 28, 2022.....Pa78

EXHIBIT C: CONSENT ORDER VACATING DEFAULT, FILED AUGUST 25, 2022.....Pa84

EXHIBIT D: PLAINTIFF'S MOTION TO STRIKE AND SUPRESS AS TO DEFENDANT(S) RYDER TRUCK RENTAL, ET AL., FILED FEBRUARY 14, 2023.....Pa87

EXHIBIT E: PLAINTIFF'S MOTION TO STRIKE THE ANSWER AND SUPRESS DEFENSES OF DEFENDANT(S) VINO TRUCKING, ET AL., FILED FEBRUARY 14, 2023.....Pa122

EXHIBIT F: PLAINTIFF'S ACCEPTANCE TO CARRY THE MOTION, DATED FEBRUARY 28, 2023 .....Pa153

EXHIBIT G: PLAINTIFF'S REQUEST TO WITHDRAW THE MOTION TO STRIKE AND SUPPRESS AGAINST DEFENDANT(S) VINO TRUCKING, ET AL., FILED MARCH 23, 2023 .....Pa156

EXHIBIT H: PLAINTIFF'S REQUEST TO WITHDRAW THE MOTION TO STRIKE AGAINST DEFENDANT(S) RYDER TRUCK RENTAL, ET AL., FILED MARCH 28, 2023 .....Pa159

EXHIBIT I: DISCOVERY END DATE REMINDER, DATED MARCH 18, 2023 .....Pa162

EXHIBIT J: NOTICE TO TAKE ORAL DEPOSITION OF PLAINTIFF AL-JAQUAN LEWIS, DATED MARCH 15, 2023.....Pa164

EXHIBIT K: PLAINTIFF'S CROSS-NOTICE TO TAKE ORAL DEPOSITION OF A REPRESENTATIVE FOR ROYAL WINE CORP., DATED MARCH 23, 2023 .....Pa170

EXHIBIT L: NOTICE TO TAKE ORAL DEPOSITION OF DAVID AHARON, DATED APRIL 3, 2023 .....Pa173

EXHIBIT M: NOTICE TO TAKE ORAL DEPOSITION OF JOSIE GRAVES, DATED APRIL 3, 2023 .....Pa177

EXHIBIT N: POLICE REPORT ….. .....Pa39

EXHIBIT O: PLAINTIFF AL-JAQUAN LEWIS' ANSWERS TO FORM A INTERROGATORIES ..... ……Pa182

EXHIBIT P: RENTAL AGREEMENT RECIEPT, DATED JUNE 11, 2020.....Pa199

EXHIBIT Q: CERTIFICATE OF LIABILITY INSURANCE FOR VINO TRUCKING CORP Pa202

EXHIBIT R: DEFENDANT ROYAL WINE CORP.'S ANSWERS TO SUPPLEMENTAL INTERROGATORIES Pa204

EXHIBIT S: DEFENDANT ROYAL WINE CORP.'S RESPONSES TO PLANTIFF'S REQUEST FOR ADMISSIONS Pa52

EXHIBIT T: AGREEMENT BETWEEN DEFENDANTS ROYAL WINE CORPORATION AND VINO TRUCKING, DATED JANUARY 5, 2021 .....Pa208

EXHIBIT U: BILLS OF LADING.....Pa212

EXHIBIT V: DEFENDANT(S) VINO TRUCKING CORP.'S AND DAVID AHARON'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS Pa222

EXHIBIT W: DEFENDANT ROYAL WINE CORP.'S RESPONSE TO PLAINTIFF'S SUPPLEMENTAL NOTICE TO PRODUCE, DATED DECEMBER 9, 2022 .....Pa228

DEFENDANT RYDER TRUCK RENTAL, ET ALS' OPPOSITION TO DEFENDANT ROYAL WINE CORP.'S MOTION FOR SUMMARY JUDGMENT, FILED MAY 2, 2023

STATEMENT OF MATERIAL FACTS……..Pa237

BRIEF**……..……..Pa239

CERTIFICATION OF COUNSEL Pa240

PROPOSED ORDER.....Pa242

EXHIBIT A: ROYAL WINE CORP.'S RESPONSES TO PLANTIFF'S REQUEST FOR ADMISSIONS…….Pa52

EXHIBIT B: DEFENDANT ROYAL'S RESPONSES TO SUPPLEMENTAL INTERROGATORIES……...Pa204

DEFENDANT ROYAL WINE CORP.'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, FILED MAY 8, 2023

RESPONSE TO PLAINTIFF'S VERSION OF MATERIAL FACTS…….Pa244

BRIEF**……..……..Pa247

DEFENDANT(S) VINO TRUCKING, VINO'S TRUCKING CORP., DAVID AHARON AND ISAIAH DICK'S MOTION FOR SUMMARY JUDGMENT, FILED JULY 27, 2023

DEFENDANT(S) VINO TRUCKING, ET ALS' NOTICE OF MOTION FOR SUMMARY JUDGMENT DATED JULY 27, 2023 .....Pa248

PROPOSED ORDER.....Pa250

STATEMENT OF MATERIAL FACTS……..Pa252

BRIEF EXCERPT*.....Pa255

CERTIFICATION OF SERVICE.....Pa257

CERTIFICATION OF COUNSEL.....Pa258

EXHIBIT A: PLAINITFF AL-JAQUAN LEWIS' ANSWERS TO FORM A INTEROGATORIES Pa182

EXHIBIT B: DEFENDANT VINO TRUCKING CORP, ET ALS' ANSWERS TO PLAINTIFF'S DEMAND FOR SUPPLEMENTAL INTEROGATORIES Pa261

EXHIBIT C: CORRESPONDENCE FROM JOHN M. BURKE TO KEEVILY INSURANCE GROUP, DATED APRIL 28, 2020 .....Pa264

EXHIBIT D: EMPLOYEE CLAIM PETITION Pa267

EXHIBIT E: TRAVLERS WORKER'S COMPENSATION CLAIM HISTORY FOR PLAINTIFF AL-JAQUAN LEWIS Pa270

EXHIBIT F: CORRESPONDENCE FROM TRAVELERS TO COUNSEL FOR ROYAL WINE CORP., DATED APRIL 3, 2023.. .....Pa273

EXHIBIT G: TRAVELERS CLAIM INFORMATION STATEMENT DATED JANUARY 25, 2021 .....Pa275

EXHIBIT H: ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANT ROYAL WINE CORP., FILED JULY 27, 2023 ..... Pa1

EXHIBIT I: EXCERPT FROM DEPOSITION TRANSCRIPT OF DAVID AHARON Pa279
(1T:15:1-25) (1T:43:1-25) (1T:1) (1T:90:1-25, 1T91:1-22)

EXHIBIT J: EXCERPT FROM DEPOSITION TRANSCRIPT OF DAVID AHARON Pa284

(1T:58:1-25) (1T:1) (1T: 90:1-25, 1T91:1-22)

EXHIBIT K: EXCERPT FROM DEPOSITION TRANSCRIPT OF DAVID AHARON Pa288
(1T:51:1-25) (1T:1) (1T: 90:1-25, 1T91:1-22)

EXHIBIT L: AFFIDAVIT OF PETITIONER AL-JAQUAN LEWIS TO THE DEPARTMENT OF LABOR, DIVISION OF WORKER'S COMPENSATION UNIT, DATED JULY 2, 2020 .....Pa292

EXHIBIT M: DECISION FROM NEW YORK STATE WORKER'S COMPENSATION BOARD REGARDING ISAIAH MATTHEW DICKS, DATED MARCH 11, 2022 .....Pa295

DEFENDANT(S) RYDER TRUCK RENTAL, ET AL.'S MOTION FOR SUMMARY JUDGMENT DATED JULY 28, 2023

DEFENDANT(S) RYDER TRUCK RENTAL, ET AL.'S NOTICE OF MOTION FOR SUMMARY JUDGMENT, FILED JULY 28, 2023,.....Pa298

PROPOSED ORDER.....Pa301

STATEMENT OF UNDISPUTED MATERIAL FACTS.....Pa303

BRIEF**.....Pa308

CERTIFICATION OF COUNSEL Pa309

EXHIBIT A: COMPLAINT AND JURY DEMAND Pa7

EXHIBIT B: DEFENDANT(S) RYDER TRUCK RENTAL, ET AL.'S, ANSWER TO COMPLAINT Pa312

EXHIBIT C: POLICE REPORT Pa39

EXHIBIT D: PLAINITFF AL-JAQUAN LEWIS' ANSWERS TO FORM A INTEROGATORIES Pa182

EXHIBIT E: DAVID AHARON'S DEPOSITION TRANSCRIPT, DATED MAY 10, 2023..... 1T

EXHIBIT F: JOSEPHINE GRAVES DEPOSITION TRANSCRIPT DATED JUNE 22, 2023 .....Pa324

EXHIBIT G: DEFENDANT SOUTHERN GLAZERS' ANSWERS TO INTERROGATORIES Pa354

EXHIBIT H: AFFIDAVIT OF ROBERT WEISER.....Pa365

EXHIBIT I: ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANT ROYAL WINE CORP Pa1

PLAINTIFF OPPOSITION TO DEFENDANT(S) VINO TRUCKING, ET AL.'S MOTION FOR SUMMARY JUDGMENT, FILED AUGUST 28, 2023

COVER LETTER.....Pa369

CERTIFICATION OF PLAINTIFF'S COUNSEL.....Pa371

STATEMENT OF MATERIAL FACTS……..Pa373

BRIEF**……..……..Pa377

EXHIBIT A: EXCERPT FROM PLAINTIFF AL-JAQUAN LEWIS' ANSWERS TO FORM A INTERROGATORIES..... Pa183

EXHIBIT B: POLICE REPORT Pa39

EXHIBIT C: DAVID AHARON'S DEPOSITION TRANSCRIPT, DATED MAY 10, 2023..... 1T

EXHIBIT D: SHMUEL AHARON'S DEPOSITION TRANSCRIPT, DATED JULY 10, 2023 ..... 3T

EXHIBIT E: TRAVELERS INSURANCE COVERAGE LETTER DATED MARCH 8, 2022 .....Pa378

EXHIBIT F: DEFENDANT ROYAL WINE CORP.'S ANSWERS TO FORM C AND C(1) INTERROGATORIES AND PLAINTIFF'S REQUEST FOR DOCUMENTS..... Pa42, Pa380

EXHIBIT G: PLAINTIFF'S AFFIDAVIT DATED JULY 2, 2020..Pa292

EXHIBIT H: PLAINITFF'S REQUEST FOR ADMISSIONS TO DEFENDANT(S) VINO TRUCKING, ET AL., DATED OCTOBER 31, 2022.....Pa222

PLAINTIFF OPPOSITION TO DEFENDANT(S) RYDER TRUCK RENTAL, ET AL.'S MOTION FOR SUMMARY JUDGMENT, FILED AUGUST 28, 2023

COVER LETTER.....Pa392

CERTIFICATION OF PLAINTIFF'S COUNSEL.....Pa394

STATEMENT OF MATERIAL FACTS……..Pa396

BRIEF**……..Pa400

EXHIBIT A: EXCERPT FROM PLAINTIFF AL-JAQUAN LEWIS' ANSWERS TO FORM A INTERROGATORIES..... Pa183

EXHIBIT B: PLAINTIFF AFFIDAVIT.....Pa292

EXHIBIT C: ROBERT WEISER SIGNED CERTIFICATION Pa365

EXHIBIT D: DAVID AHARON'S DEPOSITION TRANSCRIPT, DATED MAY 10, 2023..... 1T

EXHIBIT E: SHMUEL AHARON'S DEPOSITION TRANSCRIPT DATED JULY 10, 2023 ..... 3T

EXHIBIT F : JOSEPHINE GRAVES DEPOSITION TRANSCRIPT DATED JUNE 22, 2023 .....Pa324

EXHIBIT G: POLICE REPORT.....Pa39

DEFENDANT(S) VINO TRUCKING, ET AL.'S, CORRESPONDENCE FILED SEPTEMEBER 14, 2023

CORRESPONDENCE.....Pa401

EXHIBIT: EXCERPT FROM SHMUEL AHARON'S DEPOSITION TRANSCRIPT, DATED JULY 10, 2023 .....Pa402
(3T:1) (3T:46:1-25) (3T:47:1-25) (3T:57:1-22)

DEFENDANT(S) VINO TRUCKING, ET AL.'S, REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 28, 2023

BRIEF**……..……..Pa406

EXHIBIT A: DEFENDANT VINO TRUCKING ET AL.'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSIONS, DATED MARCH 21, 2023 ..... Pa222

EXHIBIT B: PLAINTIFF'S REJECTION OF RFA RESPONSES, DATED APRIL 3, 2023 .....Pa407

EXHIBIT C: DEFENDANT(S) VINO TRUCKING, ET AL'S, MOTION TO ENLARGE TIME TO RESPOND TO REQUEST FOR ADMISSIONS, FILED SEPTMEBER 14, 2023 .....Pa409

PLAINTIFF CORRESPONDENCE REGARDING THE TIMELINE FOR SUBMITTING THE MOTION FOR RECONSIDERATION, FILED DECEMBER 21, 2023

CORRESPONDENCE.....Pa418

PLAINTIFF MOTION TO RECONSIDER, FILED JANUARY 8, 2024

COVER LETTER.....Pa420

NOTICE OF MOTION FOR RECONSIDERATION Pa422

PROPOSED ORDER.....Pa424

CERTIFICATION OF COUNSEL Pa426

BRIEF**.....Pa429

CERTIFICATION OF MAILING.....Pa430

EXHIBIT A: COMPLAINT AND AMENDED COMPLAINT…. Pa7, Pa19

EXHIBIT B: TRAVELERS INSURANCE COVERAGE LETTER.. .....Pa270

EXHIBIT C: ROBERT WEISER SIGNED CERTIFICATION Pa365

EXHIBIT D: DEFENDANT VINO TRUCKING, ET AL.'S MOTION FOR SUMMARY JUDGMENT Pa248

EXHIBIT E: PLAINITFF'S OPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT Pa369

EXHIBIT F: ORDER GRANTING VINO SUMMARY JUDGMENT... ..... Pa3

EXHIBIT G: ISAIAH DICK'S DEPOSITION TRANSCRIPT, DATED DECEMBER 12, 2023.....5T

DEFENDANT VINO'S ADJOURNMENT REQUEST FILED JANUARY 10, 2024

CORRESPONDENCE Pa431

DEFENDANT(S) VINO TRUCKING, ET AL.'S OPPOSITION TO PLAINITFF'S MOTION FOR RECONSIDERATION, FILED FEBRUARY 7, 2024

BRIEF**……..……..Pa432

EXHIBIT A: DEFENDANT(S) VINO TRUCKING, ET AL.'S MOTION FOR SUMMARY JUDGMENT....……...Pa248

EXHIBIT B: ISAIAH DICK'S DEPOSITION TRANSCRIPT, DATED DECEMBER 12, 2023..... 5T

DEFENDANT ISAIAH DICK'S OPPOSITION TO PLAINITFF'S MOTION FOR RECONSIDERATION, FILED FEBRUARY 7, 2024

BRIEF**……Pa434

EXHIBIT A: TRANSCRIPT OF MOTION HEARING DATED OCTOBER 13, 2023..... 4T

PLAINITFF REPLY TO DEFENDANTS' OPPOSITIONS TO PLAINTIFF'S MOTION FOR RECONSIDERATION, FILED FEBRUARY 12, 2024

BRIEF**……..……P436

*Per Rule 2:6-1(a)(2), brief excerpts included are germane to the appeal and reveal whether an issue was raised in the trial court.

**Per Rule 2:6-1(a)(2), briefs that are not germane to appeal and do not reveal whether an issue was raised in the trial court are omitted.

NOTICE OF APPEAL
PURSUANT TO RULE 2:6-1(a)(1)(F)

NOTICE OF APPEAL, FILED MAY 15, 2024……..Pa438

AMENDED NOTICE OF APPEAL, FILED MAY 23, 2024…..……..Pa466

FACTUAL EXHIBITS

LETTER TO AMEND INTERROGATORIES, DATED FEBRUARY 14, 2023……Pa494

LETTER TO AMEND INTERROGATORIES, DATED MAY 18, 2023……..……..Pa500

Fournier Trucking v. N.J. Mfrs. Ins. Co.,
No. A-1353-18T2, (App. Div. Apr. 9, 2020)[1]……Pa506

[1] A copy of this opinion is included pursuant to Rule 1:36-3.

PRELIMINARY STATEMENT

This case arises from a commercial van accident that occurred on April 6, 2020, in Montclair, New Jersey. The Superior Court granted summary judgment to Defendants Royal Wine Corporation (hereinafter referred to as "Royal") and Vino Trucking, Vino's Trucking Corp., David Aharon, and Isaiah Dicks (hereinafter collectively referred to as "Vino"). The Superior Court granted Royal summary judgment determining that Royal was neither involved in nor able to be found liable for any of the events that gave rise to Plaintiff-Appellant's cause of action. The Superior Court also determined that Vino properly qualified for immunity from tort liability under the Workers' Compensation Act, and found that Plaintiff-Appellant, Al-Jaquan Lewis, was an employee of Vino.

The Superior Court based its holding for Royal, in part, upon the assertion that Royal was merely a customer of Vino and thus there was no relationship between Royal and Vino that could give rise to a theory of liability. The Superior Court accepted Royal's claim that they had no connection to the delivery in which Plaintiff-Appellant was injured, even in the face of evidence to the contrary. Plaintiff-Appellant argued that the discovery period had not yet ended, that very few depositions had been taken, and many defendants were delinquent with discovery requests. Plaintiff also presented genuine issues of material fact that remained regarding the relationship between Royal and Vino and Royal's

involvement in the delivery. Despite offering evidence that disputed Royal's testimony and theory of the case, the Superior Court found that any further discovery would be futile and granted Royal summary judgment.

Vino was granted summary judgment because Plaintiff-Appellant received workers' compensation benefits from Royal's insurance carrier. The Court found that was conclusive evidence that Plaintiff-Appellant was an employee of Vino and thus Plaintiff-Appellant could not bring a tort suit due to the immunity conferred upon employers by the Workers' Compensation Act. Plaintiff-Appellant argued Vino should not have received tort immunity under the Workers' Compensation Act as they failed to demonstrate proper compliance with the Act. Vino's assertions that they received workers' compensation from Royal as an uninsured subcontractor were later contradicted by Vino's own representations. Vino admitted that they came to a private agreement with Royal to be lent workers' compensation coverage in exchange for Vino reimbursing Royal for expenses paid out under the coverage with a maximum limit of $150,000 to reflect Royal's deductible. Not only is such a private agreement not contemplated by the Workers' Compensation Act, there is no evidence Vino ever reimbursed Royal or that such a private agreement actually exists. Further there remains an open question as to whether Royal, who claims to have no involvement in the delivery that caused Plaintiff-Appellant's injury, is able to

provide workers' compensation coverage as a general contractor to Vino for work that Royal claims they did not have involvement in, nor contract for, with Vino. Nonetheless the Superior Court held Vino's assertion that it would reimburse Royal for up to $150,000 for providing workers compensation coverage was dispositive evidence of Vino's immunity under the Workers' Compensation Act as well as a clear demonstration that Plaintiff-Appellant was properly considered an employee of Vino.

In both cases, summary judgment was granted despite genuine issues of material fact remaining which were best left for a jury to consider at the time of trial. Those include: (1) whether Plaintiff-Appellant was an employee of Vino, (2) what business relationship exists between Royal and Vino, (3) whether Vino is entitled to tort immunity if it did not carry workers' compensation insurance and was improperly granted coverage by Royal, (4) whether Royal is liable for the injuries suffered by Plaintiff-Appellant, and (5) whether the documentation provided by Royal and Vino substantiate the story presented by the parties.

As there are multiple genuine issues of material fact remaining, it is respectfully requested that the Superior Court's decisions granting summary judgment to Royal and Vino be reversed.

PROCEDURAL HISTORY[1]

The Complaint for the underlying action was filed on March 16, 2022, in the Superior Court of New Jersey, Law Division, Essex County, and an Amended Complaint was filed on March 24, 2022. (Pa7; Pa19). The underlying basis for said Complaint was a motor vehicle accident which occurred on April 6, 2020, injuring Plaintiff-Appellant. Ibid.

Concurrently to the civil proceedings below, Plaintiff-Appellant commenced an action in the Workers' Compensation Division, wherein Defendant Royal was identified as the Respondent Employer who would provide workers' compensation benefits, and an Order was entered on December 14, 2022, approving settlement as such. (Pa496-498). To that end, Plaintiff-Appellant received workers' compensation benefits from Travelers Prop. Cas. Co. of America (hereinafter referred to as "Travelers") on behalf of Defendant Royal. (Pa379). Correspondence from Travelers placed Plaintiff-Appellant's counsel on notice of Royal's workers' compensation benefits payment, and Travelers' protected subrogation interests in that respect, should Plaintiff-

---

[1] Pursuant to Rule 2:6-8:
1T is the May 10, 2023, David Aharon Deposition Transcript.
2T is the June 23, 2023, Transcript of Motion.
3T is the July 20, 2023, Shmuel Aharon Deposition Transcript.
4T is the October 13, 2023, Transcript of Motion.
5T is the December 12, 2023, Isaiah Dicks Deposition Transcript.
6T is the April 26, 2024, Transcript of Motion.

Appellant recover any monies as a result of the civil proceedings below. Ibid. Defendant Dicks also pursued a Workers' Compensation Division action, wherein Defendant Royal was again identified as the Respondent Employer, and an Order was entered on May 11, 2023, approving settlement as such. (Pa502).

On April 3, 2023, Defendant Royal moved for summary judgment. (Pa30). Plaintiff-Appellant filed an opposition to the motion on May 2, 2023. (Pa63). On June 23, 2023, Defendant Royal was dismissed with prejudice on summary judgment. (Pa1).

The Vino Defendants filed a Notice of Motion for summary judgment dated July 27, 2023. (Pa248). Plaintiff-Appellant filed an opposition to same on August 28, 2023. (Pa392). Oral argument was held on October 13, 2023, before the Honorable Annette Scoca, J.S.C. (2T:1).

On October 13, 2023, Judge Scoca granted the Vino Defendants' summary judgment motion. (Pa3). Judge Scoca included a condition precedent in the Order, which stated that:

> The Court will stay this order to allow for the Plaintiff to conduct the deposition of Mr. [Dicks], which must be taken within 14 days of the date of this Order. After the deposition, the Plaintiff shall have thirty days from the deposition to file a motion for reconsideration of this Motion if the deposition reveals contrary facts as to the employer of Plaintiff and it will be deemed filed timely.
>
> Ibid.

Plaintiff immediately noticed the deposition of Defendant Dicks for October 27, 2023, but it was adjourned by counsel, due to counsel being unable to locate Defendant Dicks; said deposition did not take place until December 12, 2023. (6T:1).

Plaintiff-Appellant subsequently filed a Notice of Motion for reconsideration of the October 13, 2023 Order on January 8, 2024. (Pa422). Plaintiff-Appellant's reconsideration motion was denied on April 26, 2024. (Pa5).

STATEMENT OF FACTS

Plaintiff-Appellant Al-Jaquan Lewis was a passenger in a commercial van traveling in Montclair, New Jersey that was involved in a motor-vehicle accident on April 6, 2020. (Pa20-21). The commercial van was operated by Defendant Dicks at the time of the accident. (Pa40). The commercial van was being operated for Defendant Vino, a trucking company that was delivering alcoholic products. (Pa293-294). Vino is owned, operated, and supervised by Shmuel and David Aharon. (1T14:7-11; 1T15:18-20; 3T10:13-14). The facility where the subject van was garaged was located in Bayonne, New Jersey, and owned and operated by Defendant Royal. (Pa293).

Plaintiff-Appellant's Transient Work Status

At the time, Plaintiff-Appellant worked "as needed" for Vino as a "helper" and was paid off-the-books in cash on the days he worked, which were generally Tuesday through Friday. (3T26:12; 3T30:11-16; 3T31:4-7). David Aharon testified that there is no record maintained of the dates when Plaintiff-Appellant actually worked, or any record of payments made to him, since Plaintiff-Appellant "was only paid in cash." (1T72:4-18). Shmuel Aharon confirmed that Plaintiff-Appellant was paid only in cash, was off the books, and was not granted any benefits at all, including health insurance. (3T31:12 – 32:3). He further explained that the reason for this was due to the fact that he did not know how

long Plaintiff-Appellant was going to be around, as Vino usually had helpers "coming and going like crazy. By the time you put them on the books, you have to take them off the books. They come for in-between jobs." (3T32:4-8).

Plaintiff-Appellant Was Not Authorized To Work On The Day Of The Accident

David Aharon testified that individuals working as assistants or helpers on delivery trucks, such as Plaintiff-Appellant, would be contacted by him directly, or through a driver who was authorized by him, and would usually work Tuesday through Friday. (1T46:18-24). Plaintiff-Appellant was neither contacted by Defendant Dicks (the driver), nor Shmuel and David Aharon, to work on the day of the accident. (1T49:1-5; 3T39:1-18). Neither Dicks, nor anyone from Vino, authorized Plaintiff-Appellant to work on the date of the accident. Ibid.; see also (5T13:5-25-14:1-7). David Aharon testified that he did not authorize Plaintiff-Appellant to be on the truck on the date of the accident. (1T57:5-10). David Aharon further stated that not only did he not ask Plaintiff-Appellant to work on the date of the accident, but he also did not permit anyone else, including the driver of the truck, Defendant Dicks, to hire Plaintiff-Appellant to work on that day. (1T49:1-5). Defendant Dicks confirmed that he did not hire Plaintiff-Appellant to work that day. (5T13:5-25-14:1-7).

Plaintiff-Appellant's Compensation

Because Plaintiff was not hired to work on the date of the accident, he did not receive compensation for his work until after the accident occurred. (1T51:6-7; 3T42:10-11; 3T43:17-19). There was no indication that David or Shmuel Aharon intended to pay Plaintiff-Appellant on the date of the accident, and no indication that Defendant Dicks planned to share any of his earnings with Plaintiff-Appellant for his time on the truck that day. (1T51:9-14; 5T13:23-14:3). David Aharon testified that if Defendant Dicks, or any driver for Vino, wanted a helper that had not been hired, due to an increased amount of deliveries that day, the driver could technically reach out to a helper, but if they were "seeking compensation for that helper, that would be a problem at the end of the week because I didn't tell him to get one." (1T47:10-18).

Defendant Vino's Lack Of Workers' Compensation Insurance, And Defendant Royal's Provision Of Workers' Compensation Benefits To Plaintiff-Appellant

Defendant Vino did not maintain a workers' compensation insurance policy at the time of the accident. (Pa253). When Defendant Dicks and Plaintiff-Appellant filed workers' compensation claims in response to the accident, Royal's workers' compensation insurance carrier, Travelers Insurance Company ("Travelers"), fulfilled the claims. (Pa379). Defendant Royal represented themselves to Travelers as a general contractor who was paying the workers' compensation benefits for an uninsured subcontractor Vino, under N.J.S.A. 34:15-79. (Pa277). Defendant Royal, acting as the Respondent Employer in both

workers' compensation actions, settled both workers' compensation actions with Defendant Dicks and Plaintiff-Appellant. Ibid.

Despite Defendant Royal representing themselves to Travelers as a general contractor for the delivery, obligated to pay workers' compensation for an uninsured subcontractor, Vino later claimed Royal's fulfilment of the workers' compensation benefits occurred in accordance with an alleged agreement between Vino and Royal, and that Royal was actually not involved in the delivery at all. (Pa253; 3T49:5-9). The agreement, which was not produced in evidence, supposedly set forth Royal's promise to pay up to $150,000 in workers' compensation benefits if anything were to happen with Vino's trucks. (3T49:10-12). When Shmuel Aharon was asked to clarify if there was a verbal agreement between the two entities that Vino would repay Royal for anything that happened, he stated "that's the first time in 33 years that it happened. I never heard of such a thing in my life." (3T54:16-21).

Defendant Royal's Summary Judgment Motion

In Defendant Royal's April 3, 2023, summary judgement motion for which oral argument was heard on June 23, 2023, and decided the same day, Royal represented themselves as "merely a customer of Vino" and denied involvement or knowledge of the delivery that gave rise to Plaintiff-Appellant's cause of action. (2T5:15-16). Generally, Royal asserted that because of its lack

of involvement with the delivery and lack of relationship to the parties, that there was "no basis to hold Defendant Royal Wine Corp. liable" and it should be dismissed with prejudice. (Pa37; 2T5:5-11). Plaintiff-Appellant noted for the Court that Royal's involvement in the delivery was unclear because although Royal denied being involved in any capacity, Plaintiff-Appellant presented bills of lading indicating the goods he was transporting on that delivery were from Royal. (Pa212). Plaintiff-Appellant then argued that summary judgment was premature, as "there [were] still significant questions outstanding…in terms of control and agency…[and] relationships…that we just don't know at this point…." between Defendant Royal, Defendant Vino, and Plaintiff-Appellant. (2T8:13-16). Plaintiff-Appellant further argued that "I don't think [Royal's] counsel can just summarily say that there is nothing left to be gained from further discovery when there is a question of agency and relationships here." (2T12:25-13:3). The Court responded by stating "were surmising here that discovery may reveal something" and that "[discovery] doesn't have to be completed if future discovery would be futile…." (2T10:13-14; 2T11:12-13). Ultimately, Defendant Royal was dismissed with prejudice, as the Court found "that no genuine issue of material fact exists as there is no indication that there is an agency relationship or employment between Royal Wine and the involved parties….[and] plaintiff…failed to establish what relevant facts will be provided

by…completing discovery that could lead to a different outcome." (2T14:24-15:2; 2T15:25-16:3). As Royal was dismissed before Plaintiff-Appellant could engage in further discovery, he was denied the opportunity to question how Defendant Royal was able to provide workers' compensation benefits under N.J.S.A. 34:15-79 if they were not involved with the delivery and did not contract for the work that gave rise to Plaintiff-Appellant's injuries.

Defendant Vino's Summary Judgment Motion

Defendant Vino filed a motion for summary judgement dated July 27, 2023. (Pa248). During oral argument for the summary judgment motion, Vino argued, in part, that it was Plaintiff-Appellant's employer, and thus "[t]he exclusivity provisions of the Workers Compensation Act bar this action, and require the dismissal of all claims asserted herein." (Pa255; 4T21:5-13). In support of its position that it employed Plaintiff-Appellant, and was immune from tort suit, Vino primarily relied upon the assertion that it paid Plaintiff-Appellant workers' compensation benefits through Royal, who both Defendants claim was the general contractor for the delivery. (2T16:9-25). Vino argued that although it did not carry workers' compensation insurance and did not directly pay for Plaintiff-Appellant's workers' compensation benefits, the aforementioned reimbursement agreement between Royal and Vino for Plaintiff-Appellant's workers' compensation benefits was fulfilled and

represented proof of Vino's status as Plaintiff-Appellant's employer. (Pa253-254).

Vino cited to correspondence from Travelers, stating that Travelers determined Vino to be responsible for Plaintiff-Appellant's injuries and expected reimbursement for the workers compensation benefits paid. (Pa274). Defendant Vino also cited to a Travelers Workers Compensation "Claim History" ledger to explain why Royal was the one who paid workers' compensation benefits, and why Vino is covered under the Workers' Compensation Act despite Royal paying, with the document stating that Vino "had no NJ WC cover for loss [so] we are accepting [the claim] under Sec. 79…." (Pa271). In his deposition, Shmuel Aharon testified that he found out in "a very hard way" that the workers' compensation insurance obtained in New York State by Vino did not transfer as coverage for work in New Jersey. (3T45:5-11). While Shmuel Aharon placed the blame of the oversight on his broker, there have not been any documents presented that Vino even applied for such coverage. (3T45:5-25). Regardless, the documents Vino produced to support its position that it was protected from tort suit under the Workers' Compensation Act only further highlighted that Royal represented themselves to Travelers as being Vino's general contractor for the delivery that gave rise to Plaintiff-Appellant's injuries, a claim that is contradicted by Vino's own

testimony before the Court that Royal was not involved in the delivery. (Pa271; Pa253).

The Court found that Plaintiff-Appellant receiving workers' compensation benefits from Royal, with Vino allegedly repaying Royal for said benefits, was proof that Plaintiff-Appellant was an employee of Vino, and that Plaintiff-Appellant was barred from proceeding against Vino under the Workers' Compensation bar. (4T21:5-8; 4T22:20-22; 4T27:3-4).

Plaintiff-Appellant's Reconsideration Motion

On January 8, 2024, Plaintiff-Appellant filed a motion for reconsideration of the October 13, 2023, Order granting summary judgment to Defendant Vino. (Pa422). During oral argument held on April 26, 2024, Plaintiff-Appellant argued that Vino was improperly granted summary judgment as there remained a genuine dispute of material fact as to whether Plaintiff-Appellant was an employee of Vino and whether Vino was properly covered by tort immunity under the Workers' Compensation Act. (6T5:6-11; 6T5:16-22). The court again found that because Plaintiff-Appellant was paid workers' compensation benefits by Travelers on behalf of Vino that he was therefore properly considered an employee of Vino and thus Vino received the protections of the Workers' Compensation Act. (6T12:3-8). Based upon these findings the court denied Plaintiff-Appellant's motion for reconsideration. (Pa5).

STANDARD OF REVIEW

The standard by which motions for summary judgment are decided is well-settled. Motions for summary judgment may only be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the Affidavits, if any, show that there is no issue as to any material fact challenged and that the moving party is entitled to judgment or order as a matter of law." R. 4:46-2; Brill v. Guardian Life Ins. Co., 142 N.J. 520, 528-529 (1995) (emphasis added). Further, "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

When the party opposing the summary judgment motion points to disputed issues of fact that are of a "substantial nature," the proper disposition is to deny the motion. Id. at 539. The non-moving party, Plaintiff-Appellant in this case, is entitled to the benefit of all favorable inferences to be drawn from the facts. R. 4:46-2(c); Brill, 142 N.J. at 540; see also R.A.C. v. P.J.S., 192 N.J. 81, 87 n.2 (2007) (noting that "we must view the facts in the light most favorable to the non-moving party . . . and give him the benefit of all favorable inferences in support of [his] claim") (internal quotation omitted). As a result, where there are competing interpretations of a particular set of facts, the Court is bound to accept

the version most favorable to the Plaintiff-Appellant's position in deciding this motion. To that end, the Court in Kulbacki v. Sobchinsky, 38 N.J. 435, 452 (1962), explained that where "there was reasonable support in the proofs for either thesis," a court finding one theory more credible than another "necessarily usurped the prerogative of the jury." Id.

When assessing a grant of a summary judgment motion on appeal the standard of review is *de novo*. Templo Fuente v. Nat. Union Fire, 224 N.J. 189, 199 (2016) ("[W]e review the trial court's grant of summary judgment *de novo* under the same standard as the trial court").

LEGAL ARGUMENT

I. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE OF ROYALS POTENTIAL STATUS AS A GENERAL CONTRACTOR (Pa1; 2T8:13-16).

In the instant matter Defendant Royal Wine ("Royal") has provided inconsistent information giving rise to issues of material fact regarding their involvement in the work that led to Plaintiff-Appellants severe and permanent injuries, their potential general contractor and subcontractor relationship with Defendant Vino Trucking ("Vino") on the day of the accident, and whether there is a basis for liability against Royal for the harm that befell Plaintiff-Appellant. Royal has claimed to Travelers insurance that they were a general contractor on the day of the accident in order to provide Plaintiff-Appellant with workers'

compensation benefits. (Pa275). Royal was also represented to be a general contractor by Vino to explain why Vino is able to claim tort immunity under N.J.S.A. 34:15-79 of the Workers' Compensation Act (WCA). (Pa253). These representations are contradicted by claims made before the Superior Court by both Royal and Vino that Royal was not involved in the delivery that gave rise to Plaintiff-Appellant's injuries. (Pa253; 2T5:5-19).

The Court granted summary judgment to Defendant Royal early in the discovery process before Plaintiff-Appellant or any representative of Royal was able to be deposed. Much of the discovery Plaintiff-Appellant received post Royal's June 23, 2023, summary judgment dismissal contradicts Royal's representations to the Superior Court, giving rise to genuine issues of material fact. As multiple genuine issues of material fact remain unresolved, the Superior Court's decision to grant Royal summary judgment was in error.

A. Defendant Royal's Involvement In The Work That Led To Plaintiff-Appellant's Injuries Contains Genuine Issues Of Material Fact. (2T8:13-16).

The initial cause of action was brought by Plaintiff-Appellant for the injuries he received in an automobile accident while delivering goods in a box truck. Plaintiff-Appellant would sometimes work as a "helper" and assist drivers from Vino Trucking to deliver alcohol products. (3T30:20-23). Plaintiff-Appellant entered the box truck at 63 Lefante Way, Bayonne, New Jersey—the corporate

address of Defendant Royal. (Pa293). Plaintiff-Appellant claims that on the date of the accident he was delivering Royal Wine products and substantiated his claim with evidence in the form of bills of lading that show "Royal Wine Company" goods were to be delivered to various liquor retailers on "04/06/2020", the day of the accident. (Pa212).

Defendant Royal claimed they "ha[ve] no knowledge of the items that were on the truck." (Pa229). Further representations were made that "Royal was not involved in the delivery on the date of the accident…." (Pa253). These representations are inconsistent with Royal's claim to Travelers' insurance that they were the general contractor for the job that gave rise to Plaintiff-Appellant's injuries and therefore able to provide Plaintiff-Appellant workers' compensation benefits on behalf of Vino. (Pa277).

There is a genuine dispute of material fact as to whether or not Defendant Royal, as a general contractor, was involved in, or exercised control over, the delivery which led to Plaintiff-Appellant's severe injuries. Under Brill, summary judgment may not be granted where a rational fact finder could find a genuine issue of material fact in favor of the non-moving party, in this case Plaintiff-Appellant, after viewing the competent evidential material in the light most favorable to the non-moving party. Brill, 142 N.J. at 540. As Plaintiff-Appellant presented competent evidential material that he began his job at Royal's

warehouse facility, that Royal had deliveries to be made to local liquor retailers on the day Plaintiff-Appellant was injured delivering goods to local liquor retailers, and that Royal claimed to be the general contractor for the delivery to Travelers' insurance, there is a sufficient dispute of material fact that arises from the conflicting evidence and testimony put forth by the parties. When viewed in the light most favorable to non-movant it is clear that a reasonable factfinder could find that Royal was involved as a general contractor in the delivery that gave rise to Plaintiff-Appellants injuries. Plaintiff-Appellant is entitled to have a jury assess the credibility of both parties' testimony and engage in further meaningful discovery to explore Defendant Royal's involvement and extent of said involvement in the incident.

During oral argument Plaintiff-Appellant opposed Royal's summary judgment motion arguing that the conflicting evidence showed a genuine issue of material fact regarding Royal's involvement in the delivery. (2T9:2-9). The Court did not find Plaintiff-Appellant's argument compelling and stated "the parties highlight that the bills of lading indicate that Royal Wine Corp's product was present on the box truck, but the corporation claims it had no knowledge of this. The opposing parties do not explain how that would be considered material or how this dispute in fact would show that there was a duty owed from Royal Wine Corp to the plaintiff." (2T17:5-11). However, Plaintiff-Appellant had

explained multiple times throughout oral argument and in their opposition brief that the extent of Royal's involvement in the delivery was critical to determine whether they retained control over the job and owe Plaintiff-Appellant a duty. (2T8:22-25). Due to Plaintiff-Appellant and Defendant Royal presenting conflicting evidence and testimony regarding Royal's involvement in the delivery, it was inappropriate for the court to grant summary judgment. As explained by the New Jersey Supreme Court, when a court is assessing a motion for summary judgment, finding one theory more credible than another "necessarily usurp[s] the prerogative of the jury." Kulbacki v. Sobchinsky, 38 N.J. 435, 452 (1962).

B. Defendant Royal's Potential Relationship With The Vino Defendants As A General Contractor Contains Genuine Issues Of Material Fact. (2T8:22-24; 2T9:6-9).

There is a genuine dispute of material fact as to whether Defendant Royal was a general contractor who subcontracted the April 6, 2020, delivery to Defendant Vino. Whether or not Royal was properly a general contractor is critical to determining the duty or duties owed by Defendant(s) to Plaintiff-Appellant.

During oral argument before the Honorable Judge Scoca J.S.C., Defendant Royal denied any legal relationship between themselves and Vino, telling the court "Royal Wine was merely a customer of Vino [Trucking]." (2T5:15-16).

Royal further argued being "only a customer" of Vino with no connection or involvement in the incident means "there is absolutely no basis to hold Defendant Royal Wine Corp. liable for the alleged incident." (Pa37; 2T12:6-7).

Plaintiff-Appellant argued that granting summary judgment in light of the factual evidence which disputes Royal's claim, and before discovery could be completed, was premature and in error. (2T12:25-13:9). Plaintiff-Appellant presented an agreement between Royal and Vino wherein Royal had engaged Vino as an independent contractor to transport and deliver Royal's products, and allowed Vino to park its trucks on Royal's premises during overnight hours. (Pa209). Plaintiff-Appellant was unable to determine from the agreement whether Royal had a general contractor and subcontractor relationship with Vino at the time of Plaintiff-Appellant's accident as Royal's testimony before the court and provided documentation seemed to suggest two different theories. The agreement provided by Royal also had several inconsistencies including: (1) the effective date of the agreement provided by Defendant Royal was January 5, 2021, therefore subsequent to April 6, 2020, the date of the crash, yet it was provided to Plaintiff-Appellant upon request for all agreements in place between the two Defendants at the time of the accident occurred; and (2) the year "2020" was manually crossed-out from the effective date. (Pa209). From the limited information Plaintiff-Appellant was able to acquire during discovery, there was

no way ascertain whether Defendant Royal was a general contractor and Defendant Vino working as a subcontractor, or whether Royal was "merely a customer" and Vino was a carrier engaged in work that did not involve Royal and thus left them separate from this cause of action. (2T5:15-16). The relationship between these two entities, Royal and Vino, is a material issue and a subject of "substantial nature" that Plaintiff-Appellant should have been able to explore through discovery. Brill v. Guardian Life Ins. Co., 142 N.J. 520, 528-529 (1995). Plaintiff-Appellant not being afforded the opportunity to explore the nature of the business relationships between Royal and Vino during discovery prevented Plaintiff-Appellant from presenting a substantiated argument of what duties Royal owed Plaintiff-Appellant.

In ruling on the summary judgment motion Judge Scoca found that there is "no genuine issue of material fact [and]…no indication…[of a] relationship…between Royal Wine and involved parties." (2T14:24-15:2). The court further elaborated, "opposing parties fail to show how the additional evidence, if any, would allow a rational fact-finder to…see a duty owed by Royal Wine." (2T16:7-9). In response to Plaintiff-Appellant's concerns that discovery was still ongoing the Court held that, "questions [] remain, but those questions still fall short of showing how Royal Wine Corp could potentially share any fault" and that "[discovery] doesn't have to be completed if future discovery

would be futile…." (2T11:12-13; 2T16:4-6). Given the extensive case law Plaintiff-Appellant presented supporting the theory that a principal can be held vicariously liable for the acts of an independent contractor or subcontractor in certain circumstances, and thus Royal could be liable as a principal, this determination is an error. (Pa73-75). Plaintiff-Appellant argued before the court, among other things, that there are "three exceptions to the general rules that principals are not liable for the actions of independent contractors: (1) where the principal retains control over the manner and means of doing the work subject to the contract; (2) where the principal engages an incompetent contractor; or (3) where the activity constitutes a nuisance per se." See Puckrein v. ATI Transport, Inc., 186 N.J. 563, 574 (2006). (Pa74-75; 2T10:17-21). As Plaintiff-Appellant was denied the opportunity to thoroughly examine the extent to which Defendant Royal retained control over the manner and means of the delivery that occurred on April 6, 2020, the Court's conclusion that Plaintiff-Appellant had "fail[ed] to show how…a rational fact-finder… [could] see a duty owed by Royal Wine" was premature and inappropriate. (2T16:7-9). New Jersey courts have consistently held that "in general, 'summary judgment is inappropriate prior to the completion of discovery'" for precisely this reason. See Hollywood Café Diner, Inc. v. Jaffee, 473 N.J. Super. 210 (App. Div. 2022) (quoting

Mohamed v. Iglesia Evangelica Oasis De Salvacion, 424 N.J. Super. 489, 498 (App. Div. 2012)).

Further genuine issues of material fact regarding Royal's involvement in the delivery arise from the claims Royal made to their insurance carrier in order to provide Vino with workers' compensation insurance coverage. In particular, the claim they made to Travelers contradicted representations Royal had made to Plaintiff-Appellant and the Court. (Pa37; Pa277). In the claim made to the insurance carrier, Royal represented themselves as a "General Contractor" who was required to provide workers' compensation coverage under "Section 79" to subcontractor Vino. (Pa277). However, in doing so Royal presented information that there is a relationship between the two entities that goes beyond "merely a customer of Vino [Trucking]" and contradicts the claim that Royal had no involvement with the delivery in which Plaintiff-Appellant was injured. (Pa271; 2T5:15-16). As held by the Appellate Division, "the legislature has embraced a limited form of secondary liability for employers of uninsured subcontractors, *N.J.S.A.* 34:15-79, thus far it has opted to confine that responsibility to general contractors **who hire them**." See Cassano v. Aschoff, 226 N.J. Super. 110, 118 (App. Div. 1988) (quoting Bertucci v. Metropolitan Const. Co., 21 N.J. Super. 318 (App.Div.1952)) (emphasis added). As Defendant Royal denies any involvement with the events that gave rise to Plaintiff-

Appellant's injury, it is unclear how Defendant Royal could provide workers' compensation insurance under N.J.S.A. 34:15-79 to Vino, an uninsured carrier, for work Vino was doing outside of the contractual relationship it had with Vino. This genuine issue of material fact regarding Royal's relationship with Vino is another open question Plaintiff-Appellant is entitled to present before a factfinder.

Finally, Defendant Vino later represented that Royal granted Plaintiff-Appellant workers' compensation coverage on behalf of Vino because Royal and Vino had entered into a private agreement in which Royal would supply up to $150,000 in workers compensation benefits if anything would happen to Vino's trucks, further obscuring whether Royal had a general contractor relationship with Vino. (3T49:10-12). Defendants fail to provide any documentation of such an agreement. Additionally, the supposed private agreement between Royal and Vino is contradicted by a Travelers letter sent to Vino demonstrating they will be pursuing subrogation for the workers' compensation payments they made on behalf of Royal, meaning Vino would be paying Travelers and not Royal. (Pa379). These contradictory representations reveal the many genuine issues of material fact and law regarding what relationship exists between Royal and Vino. Royal's representation to Travelers of maintaining a "General Contractor" and subcontractor relationship with Vino during the delivery and later

representations of being "merely a customer of Vino [Trucking]" to Plaintiff-Appellant and the Court are directly at odds and in contradiction with the testimony and evidence that arose later in the case. (Pa277; 2T5:15-16). Due to Royal being granted summary judgment Plaintiff-Appellant was denied the opportunity to engage in discovery and was confronted with the "concealment and surprise" of contradicting representations that discovery is "designed to eliminate." See Abtrax Pharmaceuticals Inc. v. Elkins-Sinn Inc., 139 N.J. 499, 512 (1995) (quoting Oliviero v. Porter Hayden Co., 241 N.J. Super. 381, 387 (App. Div. 1990).

As held by the New Jersey Supreme Court, the summary judgement rule "is not meant to shut a deserving litigant from his or her trial…it is inappropriate to grant summary judgment when discovery is incomplete and critical facts are peculiarly within the moving party's knowledge." Friedman v. Martinez, 242 N.J. 449 (2020) (internal citation omitted). The instant matter presents a situation in which Defendant Royal was dismissed early in the case and the subsequent discovery gave rise to many of the issues Plaintiff-Appellant anticipated and communicated in its opposition to the motion for summary judgment. It is clear that there is a genuine issue of material fact and law with regard to: (1) Royal's involvement in the events that gave rise to the cause of action; and (2) whether Royal maintained a general contractor/subcontractor

relationship with Vino for the work that led to Plaintiff-Appellant's injuries. As the critical facts that could resolve these genuine issues are "peculiarly within the moving party's", Royal's, "knowledge", the grant of summary judgment should be reversed and Plaintiff-Appellant should be given the opportunity to engage in discovery and argue before a jury. Id.

II. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE VINO DEFENDANTS BECAUSE THERE WAS NO PROOF OF REPAYMENT OF WORKERS' COMPENSATION BENEFITS AND THE VINO DEFENDANTS DID NOT ACT IN ACCORDANCE WITH THE WORKERS' COMPENSATION ACT, AS THEY DID NOT CARRY NEW JERSEY WORKERS' COMPENSATION INSURANCE, AND SHOULD THUS NOT BE AFFORDED ITS PROTECTIONS (Pa3; 4T23:2 – 25:13).

The New Jersey Workers' Compensation Act ("the Act") sets forth employees' rights to recover from negligent injury "when personal injury is caused to an employee by accident arising out of and in the course of his employment, of which the actual or lawfully imputed negligence of the employer is the natural or proximate cause, he shall receive compensation therefore from his employer." N.J.S.A. 34:15-1. When an employee is granted workers' compensation, he or she foregoes any other avenues of remedial measure, thus creating the workers' compensation bar. N.J.S.A. 34:15-8. Moreover, the statute details that "such agreement shall be a surrender by the parties thereto of their

rights to any other method, form, or amount of compensation or determination thereof than as provided in this article." Ibid.

The Act serves to protect both employer and employee when an accident arises out of and in the course of employment, creating a mutually beneficial exchange system that assures "relatively swift and certain compensation payments" from the employer, in turn relinquishing the rights of the employee in pursuing a potentially larger recovery in a common-law action. Millison v. E.I. de Pont de Nemours & Co., 101 N.J. 161, 174 (1985).

A. Royal Improperly Supplied Plaintiff-Appellant Workers' Compensation Benefits Through Travelers Because Vino Did Not Carry Workers' Compensation Insurance In New Jersey At The Time Of The Accident (4T23:2-22).

Under New Jersey Workers' Compensation law:

> "Any contractor ***placing work with*** a subcontractor shall, in the event of the subcontractor's failing to carry workers' compensation insurance as required by this article, become liable for any compensation which may be due to an employee or the dependents of a deceased employee of a subcontractor. The contractor shall then have a right of action against the subcontractor for reimbursement."

See N.J.S.A. 34:15-79(a) (emphasis added).

There remains a genuine issue of material fact as to whether Royal properly provided workers' compensation coverage to Plaintiff-Appellant on behalf of Vino. There are multiple substantial issues with Defendants contradictory representations and evidence provided by Vino during pre-trial discovery which indicates an improper application or outright misuse of N.J.S.A. 34:15-79.

Vino was improperly provided with coverage under N.J.S.A. 34:15-79 and should not have been given tort immunity under the WCA. The representations of both Vino and Royal that "Royal was not involved with the delivery on the date of the accident" and "Royal and Vino have an agreement whereby Vino is reimbursing Royal…for workers compensation benefits" demonstrate that Vino was lent workers' compensation coverage by Royal without complying with N.J.S.A. 34:15-79. (Pa253-254).

Vino's representation that the job on which Plaintiff-Appellant was injured was not connected to any contractual work given to Vino by Royal should have precluded Vino from receiving workers' compensation coverage and tort immunity under N.J.S.A. 34:15-79 of the WCA. An illustrative example of the importance of Vino's claim that Royal had no connection to the delivery is found in Fournier Trucking v. N.J. Mfrs. Ins. Co., No. A-1353-18T2, 2020 N.J. Super. Unpub. LEXIS 651 (App. Div. Apr. 9, 2020). (Pa506). In Fournier, a trucking company, and workers' compensation policy holder, Fournier Trucking, Inc.

argued that the carriers it had hired to haul goods were independent contractors and not subcontractors within the meaning of N.J.S.A. 34:15-79. Id. at *1-2. The Appellate Division found that "[a]lthough the word 'subcontractor' is not defined in the WCA, our courts have described a contractor under that statute as 'one who enters into a contract with a person for the performance of work which such person had already contracted with another to perform.'" Id. at *35 (quoting Brygidyr v. Rieman, 31 N.J. Super. 450, 453-54 (App. Div. 1954). It was further specified that, "[t]o the extent that the carriers maintain employees, those carriers are statutorily obligated to maintain workers' compensation coverage…to the extent those carriers fail to satisfy their statutory obligation, Fournier Trucking, as the general contractor is obliged to provide benefits to any carrier employee who suffers an injury **while providing services under Fournier Trucking's general contract**." Id. at *36 (citing Eger v. E.I. Du Pont DeNemours Co., 110 N.J. 133, 137 (1988). New Jersey Courts have been consistent on the criteria that qualifies a party as a subcontractor. As held by the New Jersey Supreme Court in 1935, "a subcontractor" is "[o]ne who has entered into a contract, express or implied, for the performance of an act with the person who has already contracted for its performance." See Mittan v. O'Rourke, 115 N.J.L. 177, 179 (1935). By Vino denying that Royal had any involvement in the April 6, 2020, delivery, they demonstrate Vino was not working on anything

Royal had "already contracted for" and thus do not meet the definition of a subcontractor who can be lent workers' compensation coverage under N.J.S.A. 34:15-79. Id.

It is important to note that a general contractor is only granted a right of reimbursement or subrogation from an uninsured subcontractor if the general contractor hired the subcontractor for the work that gave rise to an injury and is liable to provide compensation payments under N.J.S.A. 34:15-79. See Willson v. Faull, 27 N.J. 105, 113 (1958). In this case Royal's insurance provider is pursuing a subrogation claim against Vino. (Pa379). Defendant Vino has expressly stated as much in documents submitted to the court, stating, "Travelers…is subrogating directly against Vino for any payments made." (Pa253). This evidence shows Vino is making contradictory claims that allow them to receive the benefit of WCA tort immunity protection, while also providing cover for Royal who apparently lent them workers' compensation coverage without having any connection to the incident beyond wanting to help Vino. Vino's representations that they are subcontractor and immune from tort suit under N.J.S.A. 34:15-79 and yet simultaneously deny that Royal had any involvement and thus could not have maintained a general contractor and subcontractor relationship during the subject delivery raises a genuine issue of

material fact and law as to whether Vino was properly granted workers' compensation coverage and immunity for tort suits under the WCA.

Further issues arise from Defendant Vino's representations made to Plaintiff-Appellant and the Superior Court. As represented in Vino's brief in support for their own motion for summary judgment, Vino claims that Royal paid Plaintiff-Appellants workers' compensation benefits due to a private agreement between Royal and Vino and that Vino will be paying Royal back for the money spent to provide Plaintiff-Appellant with workers' compensation coverage. (Pa253-254; 3T46:5-9). Neither party ever produced any documentation of such an agreement nor explained how such an agreement would allow Royal to provide Vino with workers' compensation coverage for work Vino was doing outside of the contractual relationship shared with Royal, as both Vino and Royal claim Royal had no involvement in the delivery. (Pa253). Vino's private agreement claim also raises the question as to why Vino would pay Royal since Travelers is the one who paid the claim and as stated earlier, Defendants claim Royal had no involvement with the delivery that gave rise to the cause of action. (Pa253). In addition to not providing evidence of the claimed private agreement, Vino has also never provided any evidence it has actually repaid either Royal or Travelers. Further when Vino owner was asked to clarify as to the supposed agreement between Vino and Royal for the compensation benefits, he testified, "that's the

first time in 33 years that it happened. I never heard of such a thing in my life." (3T54:16-21). In support of their motion for summary judgment Vino then again represented that there is an existing "agreement whereby Vino is reimbursing Royal for all monies paid by Royal to Plaintiff for workers compensation benefits up to the limit of Royal's deductible, $150,000…." (Pa253-254). It is unclear how these alleged agreements are being created, what their relevance is to Plaintiff-Appellant's cause of action, and raises genuine questions of material fact that should be examined. Additionally, no evidence of these agreements was ever provided to Plaintiff-Appellant despite requests to Royal provide "[c]opies of any and all agreements that were in effect between April 6, 2020 between Royal Wine Corporation and…Vino Trucking,…." (Pa231).

Given the representations made by Defendants, there are two possibilities explaining how Vino was able to receive workers compensation coverage from Royal. The first is that Royal represented themselves to Travelers as a general contractor, Vino represented themselves as a subcontractor, and Vino received coverage under N.J.S.A. 34:15-79. If correct, then Vino misrepresented critical factual issues before the Court when claiming "Royal was not involved with the delivery on the date of the accident…." (Pa253). The second possibility is that Vino and Royal misrepresented themselves as general contractor and subcontractor to Travelers Insurance and had struck an agreement between

themselves wherein Vino was to be able to borrow Royal's workers' compensation insurance for a fee, avoiding the premium payment that would be demanded from a proper insurer. Under both scenarios, Vino was improperly granted workers' compensation coverage by Royal and should not enjoy the benefit of tort immunity under the WCA.

Even if a private agreement existed between Royal and Vino, it is not in compliance with the Workers' Compensation Act. The idea that it is sufficient for a party to engage in private agreements with others, wherein a single entity purchases workers' compensation insurance and provides that coverage to uninsured employers for private reimbursement is directly in opposition to the directive of N.J.S.A. 34:15-79 that "an employer who fails to provide this protection prescribed in this article….shall be guilty of a disorderly persons offense." As explained by the Appellate Division the purpose of N.J.S.A. 34:15-79 is "to protect the injured employee directly, as well as to create an incentive for general contractors to police their sub-contractors' compliance with the workers' compensation law." Williams v. A&L Packing &Storage, 314 N.J. Super. 460, 467 (App. Div. 1998). N.J.S.A. 34:15-79 "requires the general contractor to make sure the subcontractor insures his liability to pay compensation benefits as provided by the statute or else the general contractor himself will become liable to pay such benefits." Pollack v. Pino's Formal Wear

& Tailoring, 253 N.J. Super. 397, 404 (App. Div. 1992). What the directive of N.J.S.A. 34:15-79 was not intended to do was provide an incentive for businesses to strike private agreements for lending workers' compensation coverage in exchange for private reimbursement in violation of the express language of statutory law. Should parties be able to receive the benefits of Workers' Compensation Act, including immunity from tort suits, while knowingly contracting with one another to operate in violation of the express language of the Act, the goals of the statute would be undermined.

The compilation of misrepresentations by Defendants Royal and Vino leads to three scenarios which each contain multiple genuine issues of material fact for which Plaintiff-Appellant is entitled to engage in discovery and should be able to present to a fact finder. The three scenarios are as follows: (1) Royal really is "merely a customer of Vino [Trucking]" as they had presented themselves to the Court, there is no contractor and subcontractor relationship between the parties, and thus Vino should not have been able to receive workers' compensation insurance under N.J.S.A. 34:15-79; (2) Royal and Vino have a private agreement wherein Royal will carry workers' compensation insurance and Vino will knowingly fail to carry insurance due to being covered by the private agreement and will be able to call on that coverage by having Royal represent themselves as a "General Contractor" to their insurance carrier, taking

advantage of and abusing the N.J.S.A. 34:15-79 legal mechanism; or (3) Royal is a general contractor, Vino is a subcontractor of Royal, and Royal did in fact place the delivery which gave rise to this cause of action and that is why they were able to and did provide workers' compensation to Plaintiff-Appellant under N.J.S.A. 34:15-79; however, if this is the case, there is an open question as to why Defendants would make such materially and significantly different representations to the contrary before the Court when arguing their summary judgment motions. (Pa 37; Pa253; Pa271; 2T5:15-16). Under any of these scenarios there remains genuine issues of material fact that should have precluded summary judgment, and the holding of the Superior Court should be reversed.

III. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE VINO DEFENDANTS BECAUSE GENUINE ISSUES OF DISPUTED MATERIAL FACT REMAINED AS TO PLAINTIFF-APPELLANT'S EMPLOYER (Pa3; 4T22:20-25)

Rule 4:46-2(b) states that to oppose a summary judgment motion, a party need only demonstrate the existence of a genuine issue as to a fact in dispute. A motion for summary judgment should not be denied, therefore, where "there is the slightest doubt as to the existence of material issues of fact." Shanley & Fisher, P.C. v. Sisselman, 215 N.J. Super. 200, 211 (App. Div. 1987).

Here, the parties disagree over whether or not Plaintiff-Appellant was an employee of Vino on the date of the accident. On their motion for summary judgment, the Vino Defendants asserted that because Plaintiff-Appellant was paid after the fact by Vino for working on the subject date, and because there was an alleged reimbursement agreement with Royal for payment of workers' compensation benefits for which insurance Vino did not carry in New Jersey, Plaintiff-Appellant was Vino's employee and barred from bringing the underlying action under the WCA. (Pa256). As demonstrated, whether Vino was properly provided with workers' compensation coverage under the WCA is in question and should not serve as dispositive proof that Plaintiff-Appellant is an employee of Vino. Plaintiff-Appellant has argued correctly that there are there is competing evidence regarding his status as an employee of Vino on the date of the incident that raises a genuine issue of material fact including: no one from Vino authorized Plaintiff-Appellant to work on the subject date, Plaintiff-Appellant was not guaranteed compensation on the subject date and was only paid after the fact, and while Royal paid for Plaintiff-Appellant's workers' compensation benefits, they seem to have done so in violation of the WCA, discrediting any inference of employment that could arise from the fact that Plaintiff-Appellant received workers' compensation benefits. Thus, it is essential that these questions of material facts be left to a jury to consider.

Despite these disputed questions of material facts, the below Court held that because Plaintiff-Appellant collected workers' compensation benefits from Royal, "[h]e was accepted as . . . an employee" of Vino. (4T22:20-21). The Court further held that by virtue of Plaintiff-Appellant eventually receiving compensation for the subject day of work, and "making anywhere from $400 to $500 a week" prior to the accident, it was solidified that Plaintiff-Appellant was an employee of Vino. (4T22:22-25). For parties to receive the benefits provided by the Workers' Compensation Act they must meet the definitions of employer and employee set forth in the Act. There is a genuine dispute as to whether Vino meets the definition of "subcontractor" in order to receive workers' compensation coverage from Royal under N.J.S.A. 34:15-79 and has yet to demonstrate meeting the criteria of an employer.

The Court has created a two-prong test in order to determine if an individual meets the definition of employee for purposes of the Act: (1) the right to control test and (2) the relative nature of the work test. Auletta v. Bergen Center for Child Development, 338 N.J. Super. 464, 471 (App. Div. 2001). While the control prong is not dispositive to the analysis, if the relative nature of the work test is met, the individual is considered an employee under the Act. Id. at 472. At the absolute very least, the analysis when applied to the facts illuminates that there is a genuine dispute as to whether Vino should be labeled

an employer under these circumstances, and in which case, the determination should be left as a jury question to consider.

Defendant Vino does not satisfy the control prong as David Aharon testified that he did not authorize Plaintiff-Appellant to be on the truck on the date of the accident. (1T57:5-10). David Aharon further stated that not only did he not ask Plaintiff-Appellant to work on the date of the accident, but he also did not permit anyone else, including the driver of the truck, Defendant Dicks, to hire Plaintiff-Appellant to work on that day. (1T49:1-5). Defendant Dicks testified that he neither authorized Plaintiff-Appellant to be on the truck on the date of the accident, nor did he authorize or ask him to be on the truck. (5T13:5-18). David Aharon also testified that if Defendant Dicks, the driver on the date of the accident, or any driver for Vino, wanted a helper that had not been hired due to an increased amount of deliveries that day, the driver could technically reach out to a helper, but if they were "seeking compensation for that helper, that would be a problem at the end of the week because I didn't tell him to get one." (1T47:10-18). Defendant Dicks stated that he did not share any of his earnings for the date of the accident with Plaintiff-Appellant, and never intended to do so. (5T13:23-14:3). Finally, Defendant Dicks affirmed that he did not have any knowledge as to who it was who asked Plaintiff-Appellant to be on the truck that day. (5T14:4-7). If David Aharon did not hire Plaintiff-Appellant and did

not authorize anyone else to hire Plaintiff-Appellant, then it is not possible that Vino retained the supervision necessary to meet the control prong of the test. Furthermore, if David Aharon was unaware of Plaintiff working on the truck with Defendant Dicks that day, he did not retain the requisite authority to direct the manner in which the business or work should be done, nor the results.

Concerning the relative nature of the work test, a court must determine whether the work performed was both an integral part of the regular business of the defendant and that plaintiff had substantial economic dependence upon the employer. Auletta, 338 N.J. Super. at 471 (App. Div. 2001). If Plaintiff-Appellant was not authorized or scheduled to work, then his contributions on the truck could not have been integral to Vino.

David Aharon testified that there is no record maintained of the dates when Plaintiff-Appellant actually worked, or any record of payments made to him, since Plaintiff-Appellant "was only paid in cash." (1T72:4-18). Shmuel Aharon confirmed that Plaintiff-Appellant was paid only in cash, was off the books, and was not granted any benefits at all, including health insurance. (3T 31:12 – 32:3). He further explained that the reason for this was due to the fact that he did not know how long Plaintiff-Appellant was going to be around, as Vino usually had helpers "coming and going like crazy. By the time you put

them on the books, you have to take them off the books. They come for in-between jobs." (3T32:4-8).

Therefore, given the manner in which Plaintiff-Appellant happened to be on the truck on the subject date, there could not have been substantial economic dependence upon the employer, as it was not guaranteed Vino would be the source of compensation for Plaintiff-Appellant.

The purpose of the WCA is to protect both the employer and employee when injuries and accidents occur within the course of employment. The Act, as well as subsequent case law, makes evident that if the definitions of employer and employee are not met, the Act does not apply. The facts surrounding Plaintiff-Appellant's alleged employment do not comport with the employment definitions under the Act or protections afforded under same. Vino sporadically and temporarily hired Plaintiff-Appellant prior to the day of the accident, did not hire Plaintiff-Appellant on the day of the accident, paid cash under-the-table, did not provide Plaintiff-Appellant benefits such as health insurance, did not hold a New Jersey workers' compensation insurance policy, and should thus not be considered an employer solely to reap the protections of the workers' compensation bar. They failed to even create an employment file for him. The circumstances surrounding how Plaintiff-Appellant came to be on the subject

truck on the day of the accident remain disputed, as does the manner by which Plaintiff-Appellant was eventually paid.

Whether or not Plaintiff-Appellant was an employee of Vino on the date of the accident is a question of fact that should ultimately be left for a jury to decide, rendering the Order granting the Vino Defendants summary judgment improper.

A. If Anything, Plaintiff-Appellant Was Working As A Casual Employee For Vino On The Subject Date, And There Is Sufficient Evidence To Be Left For A Reasonable Jury To Conclude That Plaintiff-Appellant Should Not Be Barred From Pursuing Civil Remedies Under The Act (4T14:18 – 15:8).

Plaintiff-Appellant does not meet the definition of an employee for purposes of the Act and thus should not be barred from bringing a common law negligence claim against the Vino Defendants. Our courts have made clear that neither independent contractors nor casual employees are considered employees for purposes of the Act. Casual employment is defined as when "employment [for] the occasion for which arises by chance or purely accidental, or if not in connection with any business of the employer, as employment that is not regular, periodic, or recurring." Millison, 101 N.J. at 174. For purposes of workers' compensation benefits, these words "connote that employment is regular when it is steady and permanent for more than a single piece of work; recurring when the work is to be performed at some time in the future by the same party, without

further engagement, and periodic, when the work is to be performed at stated intervals, without further engagement." DeMarco v. Bouchard, 274 N.J. Super. 197, 200 (App. Div. 1994).

The nature of Plaintiff-Appellant's work on the date of the accident aligns more closely with that of a casual employee, rather than a full-time regular employee. In Berkeyheiser, the plaintiff had a permanent full-time job as a pipefitter for St. Regis Paper Co., while also completing repair jobs for respondent Woolf in his spare time. Berkeyheiser v. Woolf, 71 N.J. Super. 171, 173 (App. Div. 1961). For years, plaintiff performed tasks for Woolf in a sporadic fashion, with no definite or official arrangement. Ibid. Woolf would call plaintiff, relay the type of work she wanted done, and plaintiff would complete the work when he was available to do so. Ibid. Furthermore, there was no expectation of regular employment by Woolf. Id. at 177. While completing one of the repairs, plaintiff was injured and sought workers' compensation benefits from Woolf. Id. at 174. The Berkeyheiser Court held "that the character of the work was such as to preclude petitioner from the right to compensation under the Workmen's Compensation Act," as no employer-employee relationship could be established. Id. at 175.

While the Vino Defendants have previously argued that Plaintiff-Appellant worked on certain authorized days for a time prior to the subject date,

there remains the question of if Plaintiff-Appellant was working as a "regular employee" for Vino at the time of the accident. David Aharon testified that individuals working as assistants or helpers, such as Plaintiff-Appellant, on delivery trucks would be contacted by him directly, or through a driver that was authorized by him, and would usually work Tuesday through Friday. (1T46:18-24). David Aharon confirmed the subject date was a Monday, which Plaintiff-Appellant did not typically come in to help, and that he did not hire Plaintiff-Appellant to work, nor did he authorize any driver to do so. (1T46:6-11).

In analyzing the facts surrounding the date of the accident, it is evident that genuine issues of material fact remain as to how Plaintiff-Appellant came to work on the truck that day and by what means he would be compensated, but at most, a jury should be left to consider if he was working for Vino under the guise of a casual employee. Plaintiff-Appellant was hired to work for Vino on an "as needed" basis, most often working Tuesday through Friday in his limited time with the company. Moreover, no one from Vino or Defendant Dicks authorized Plaintiff-Appellant to work that day. There was no guarantee or agreement that Plaintiff-Appellant was going to be compensated by Vino. Thus, if anything, a jury should be left to consider if Plaintiff-Appellant was working as a casual employee of Vino on the subject date.

CONCLUSION

For the reasons set forth above, Plaintiff-Appellant respectfully requests that the Trial Court's Orders granting summary judgment in favor of Defendant Royal and Defendant Vino be reversed.

Respectfully submitted,

BLUME FORTE FRIED ZERRES & MOLINARI, P.C.
Attorneys for Plaintiff-Appellant

BY: /s/ John E. Molinari
JOHN E. MOLINARI, ESQ.
Attorney I.D.: 023571986

DATED: August 29, 2024

42528.00105
MARSHALL DENNEHEY, P.C.
Patricia M. McDonagh, Esq. Attorney I.D. No.: 021961993
425 Eagle Rock Avenue, Suite 302
Roseland, NJ 07068
Main ☎: (973) 618-4100 Direct Dial ☎: (973) 618-4116
pmmcdonagh@mdwcg.com
Attorneys for Defendant-Respondent, Isaiah M. Dicks

AL-JAQUAN LEWIS,

Plaintiff-Appellant,

vs.

ISAIAH M. DICKS, RYDER TRUCK RENTAL, INC. and/or ABC CORP. (a fictitious entity), MIRANDA MICHEL and/or "JANE DOE" (a fictitious name), SOUTHERN GLAZERS, INC., SOUTHERN GLAZERS 1, LLC, SOUTHERN GLAZER'S LEASING, LLC, SOUTHERN GLAZER'S WINE AND SPIRITS OF NEW JERSEY, LLC, VINO TRUCKING, VINO'S TRUCKING CORP. ROYAL WINE CORPORATION, LEGEND SPIRITS, LLC, DAVID AHARON, "RICHARD ROE" (a fictitious name), and DEF-GHI CORP. (a series of fictitious entities)

Defendant(s)-Respondent(s).

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: A-002781-23

Civil Action

ON APPEAL FROM THE SUPERIOR COURT, LAW DIVISION, ESSEX COUNTY
DOCKET NO.: ESX-L-1718-22

SAT BELOW:
HONORABLE ANNETTE SCOCA, J.S.C.

BRIEF FOR DEFENDANT-RESPONDENT ISAIAH M. DICKS

MARSHALL, DENNEHEY
Attorneys for Defendant-Respondent Isaiah M. Dicks
425 Eagle Rock Avenue, Suite 302
Roseland, NJ 07068
(973) 618-4100
pmmcdonagh@mdwcg.com

On the Brief:

Patricia M. McDonagh, Esq.
Attorney I.D. No. 021961993

TABLE OF CONTENTS

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED iii

INDEX OF ABBREVIATIONS TO TRIAL COURT TRANSCRIPTS iii

TABLE OF AUTHORITIES vi

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY 2

COUNTER-STATEMENT OF FACTS 4

STANDARD OF REVIEW 8

I. THE LOWER COURT CORRECTLY GRANTED THE VINO DEFENDANTS SUMMARY JUDGMENT BECAUSE THE VINO DEFENDANTS ARE ENTITLED TO THE PROTECTION OF THE EXCLUSIVE REMEDY PROVISION OF THE ACT. (Pa3; 4T21:5-8). 9

II. THE VINO DEFENDANTS ARE ENTITLED TO THE PROTECTION OF THE EXCLUSIVE REMEDY PROVISION OF THE ACT WHERE TRAVELERS, THE WORKERS' COMPENSATION CARRIER OF ROYAL WINE, VINO'S GENERAL CONTRACTOR, PAID PLAINTIFF WORKERS' COMPENSATION BENEFITS, ON BEHALF OF VINO, PURSUANT TO N.J.S.A. 34:15-79. (P3; 4T22:2-6; 4T23:9-13).….....11

A. A General Contractor and Subcontractor Relationship Existed Between Royal Wine and Vino. (4T22:2-6).....14

B. As Vino Did Not Carry Workers' Compensation Insurance Coverage in New Jersey, Workers' Compensation Benefits Were Appropriately Paid to Plaintiff by Travelers, Royal Wine's Workers' Compensation Carrier, On Behalf of Vino, Pursuant to N.J.S.A. 34:15-79. (4T22:2-6) 22

1.Vino Did Not Carry Workers' Compensation Insurance Coverage in the State of New Jersey 22

2.Travelers Provided Plaintiff Workers' Compensation Benefits, Pursuant to N.J.S.A. 34:15-79.....23

3.Vino Does Not Lose the Protection of the Exclusive Remedy Provision of the Act By Not Maintaining Workers' Compensation Insurance Coverage in the State of New Jersey.....27

III. THE LOWER COURT PROPERLY GRANTED THE VINO DEFENDANTS SUMMARY JUDGMENT, PURSUANT TO THE EXCLUSIVE REMEDY PROVISION OF THE ACT, BECAUSE AT THE TIME OF THE ACCIDENT, PLAINTIFF WAS AN EMPLOYEE OF VINO AND CO-EMPLOYEE OF DICKS WAS PAID BY VINO FOR THE WORK HE PERFORMED AND WAS INJURED IN THE COURSE OF HIS EMPLOYMENT. (P3; 4T19:15-18). 30

A. Plaintiff Has Admitted That At The Time of the Accident, He Was Working As An Employee of Vino and Cannot Now Take A Contrary Position In An Effort To Raise A Genuine Issue of Material Fact As to His Employment Status To Defeat the Vino Defendants' Motion for Summary Judgment. (4T17:4-13) 33

B. Under the "Right to Control" Test, Plaintiff Was an Employee of Vino At the Time of the Accident. 34

C. Under the "Relative Nature of the Work" Test, Plaintiff Was an Employee of Vino At the Time of the Accident. 37

D. Plaintiff Was Not A "Casual Employee" of Vino. (4T14:18 –25).....42

CONCLUSION.....46

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED

The Defendant-Respondent refers to the Plaintiff-Appellant's table of judgments, orders and rulings being appealed (Pbiv).

INDEX OF ABBREVIATIONS TO TRIAL COURT TRANSCRIPTS

DAVID AHARON DEPOSITION TRANSCRIPT DATED MAY 10, 2023……1T

TRANSCRIPT OF MOTION HEARING DATED JUNE 23, 2023……..2T

SHMUEL AHARON DEPOSITION TRANSCRIPT, DATED JULY 10, 2023……...3T

TRANSCRIPT OF MOTION HEARING DATED OCTOBER 13, 2023……4T

ISAIAH DICKS DEPOSITION TRANSCRIPT, DATED DECEMBER 12, 2023……...5T

TRANSCRIPT OF MOTION HEARING DATED APRIL 26, 2024……6T

TABLE OF AUTHORITIES

CASES

Auletta v. Bergen Center for Child Development, 338 N.J. Super. 464 (App. Div. 2001) 30, 31, 36, 37

Barone v. Harra, 77 N.J. 276 (1978).....9

Basil v. Wolf, 193 N.J. 38, 54 n. 7 (2007).....9

Berkeyheiser v. Woolf, 71 N.J. Super. 171 (N.J. Super. App. Div. 1961).....43, 44

Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1955).....8

Brower v. ICT Group, 164 N.J. 367, 3735 (2000).....30

Brygidyr v. Rieman, 31 N.J. Super. 450 (App. Div. 1954) 14, 17, 18, 36

Caicco v. Toto Bros., 62 N.J. 305 (1973) 41, 42

Conrad v. Robbi, 341 N.J. Super. 424 (App. Div.), certif. denied, 170 N.J. 210 A.2d 438 (2001).....10

Crank v. Palermo Supply Co., 326 N.J. Super. 84 (App. Div. 1999).....31

Fournier Trucking, Inc. v. New Jersey Manufacturers Ins. Co., 2020 N.J. Super. Unpub. LEXIS 651 (N.J. Super. Ct. App. Div. Apr. 9, 2020).....14, 15, 16, 18, 20

Gaydos v. Packanack Woods Dev. Co., 64 N.J. Super. 395 (Law Div. 1960).....12, 16, 18

Hannigan v. Goldfarb, 53 N.J. Super. 190 (1958).....35

Jordan v. Lindeman & Co., 23 N.J. Misc. 194 (N.J. Com. Pl. 1945).....16, 17, 18

Kaur v. Garden State Fuels, Inc., 2019 WL 1579705 (N.J. Super. Ct. App. Div. Apr. 12, 2019).....29

Kelly v. Geriatric and Med. Serv., 287 N.J. Super. 567 (App. Div. 1996).....36

Kertesz v. Korsh, 296 N.J. Super. 146 (App. Div. 1996)).....31, 36

Laidlow v. Harriton Machinery Co., Inc., 170 N.J. 602 (2002) 28

Lepis v. Lepis, 83 N.J. 139, 159 (1980).....24

Lewis v. Walter Scott & Co., 50 N.J. Super. 283 (1958) 10

Lowe v. Zarghami, 158 N.J. 606 (1999).....34

Mahoney v. Nitroform Co., Inc., 20 N.J. 499, 506 (1956) 35, 36

Marcus v. E. Agr. Ass'n, Inc., 58 N.J. Super. 584, 603 (Conford, J.A.D., dissenting) (App. Div. 1959) Marcus v. E. Agric. Ass'n, Inc., 32 N.J. 460 (1960) 37

Martin v. Pollard, 271 N.J. Super. 551 (App. Div. 1994) certif. denied, 137 N.J. 307 (1994) 43, 44

Merchs. Express Money Order Co. v. Sun Nat'l Bank, 374 N.J. Super. 556 (App. Div.), certif. granted, 183 N.J. 592 (2005).....12, 24

Mosior v. Ins. Co. of North America, 193 N.J. Super. 190 (App. Div. 1984).....34

O'Loughlin v. Nat'l Cmty. Bank, 338 N.J. Super. 592 (App. Div.), certif. denied, 169 N.J. 606 (2001).....13

Petrone v. Kennedy, 75 N.J. Super. 295 (App. Div. 1962) 43

Pollack v. Pino's Formal Wear & Tailoring, 253 N.J. Super. 397 (App. Div.), certif. denied, 130 N.J. 6 (1992) 14, 31

Puckrein v. ATI Transport, Inc., 186 N.J. 563 (2006).....20

Rossnagle v. Capra, 127 N.J. Super. 510 (App. Div. 1973), aff'd o.b., 64 N.J. 549 (1974)37

Runk v. Rickenbacher Transp. Co., 31 N.J. Super. 350 (App. Div. 1954).....31

Shelcusky v. Garjulio, 343 N.J. Super. 504 (App. Div. 2001), rev'd, 172 N.J. 185 (2002).34

Silva v. Soderstrom, 2008 WL 794976, at *3 (N.J. Super. Ct. App. Div. Mar. 27, 2008)..31

Sloan v. Luyando, 305 N.J. Super. 140 (App. Div. 1997).....31, 40, 42

Smith v. E.T.L. Enters., 155 N.J. Super. 343 (App. Div. 1978).....30, 31, 37

Tofani v. Lo Biondo Bros. Motor Exp., 83 N.J. Super. 480, 486 (App. Div.) 34, 35, 37

Torres v. Trenton Times Newspaper, 64 N.J. 458 (1974) 30

Trautwein v. Harbourt, N.J. Super. 247, 259 (App. Div.), certif. denied, 22 N.J. 220 (1956) 8

Van Dunk v. Reckson Assocs. Realty Corp., 210 N.J. 452 (2012) 28

Vitale v. Schering-Plough Corporation, 447 N.J. Super. 98 (App. Div. 2016) 29

STATUTES

N. J. S.A. 34:15-1 10

N.J.S.A. 34:15-36 .....30, 42

N.J.S.A. 34:15-79 .....1, 2, 7, 10, 11, 12, 13, 15, 16, 28, 30, 45

N.J.S.A. 34:15–8.....2, 8, 9

NEW JERSEY COURT RULES

R. 4:30-2 8

R. 4:37-2(b).....8

Rule 4:46-2(c) 8

PRELIMINARY STATEMENT

This case arises out of a motor vehicle accident, which occurred on April 6, 2020. At the time of the accident, Plaintiff-Appellant, Al Jaquan Lewis (hereinafter, "Plaintiff"), was a passenger in a commercial van being operated by Defendant-Respondent, Isaiah Dicks (hereinafter, "Dicks"). Both Plaintiff and Dicks were employees of Defendant-Respondent, Vino Trucking Corp. (hereinafter, "Vino") and were in the course of their employment with Vino making deliveries of wine products on behalf of Defendant-Respondent, Royal Wine Corp. (hereinafter, "Royal Wine").

Plaintiff was injured in the accident and filed a Claim Petition for workers' compensation benefits with the New Jersey Division of Workers' Compensation. In both his Claim Petition and a sworn Affidavit submitted in support of his Claim Petition, Plaintiff identified Vino as his employer at the time of the accident, with whom he worked four to five days per week, earning $400-$500 per week.

Vino did not have workers' compensation insurance coverage and Royal Wine's insurance carrier, Travelers Insurance Company (hereinafter, "Travelers"), paid workers' compensation benefits to Plaintiff, on behalf of Vino, in excess of $450,000, pursuant to N.J.S.A. 34:15-79, which provides:

> [a]ny contractor placing work with a subcontractor shall, in the event of the subcontractor's failing to carry workmen's compensation insurance as required by this article, become liable for any compensation which may be due an employee or the dependents of a deceased employee of a subcontractor. The

> contractor shall then have a right of action against the subcontractor for reimbursement.

Vino, as the uninsured subcontractor, in turn, reimbursed Royal Wine for the out-of-pocket expenses Royal Wine incurred in the form of Royal Wine's $150,000 deductible.

Vino and Dicks (hereinafter collectively referred to as the "Vino Defendants") moved for summary judgment, pursuant to the exclusivity provision of the Workers' Compensation Act, N.J.S.A. 34:15-8. The lower Court correctly granted the Vino Defendants summary judgment, finding that Plaintiff was an employee of Vino and co-employee of Dicks and received workers' compensation benefits, on behalf of Vino, through Royal Wine's insurance carrier, pursuant to N.J.S.A. 34:15-79.

As such, the lower Court's ruling, granting the Vino Defendants' summary judgment, should be affirmed and Plaintiff's appeal of this ruling denied.

PROCEDURAL HISTORY

On March 16, 2022, Plaintiff filed a Complaint in the Superior Court of New Jersey, Essex County for personal injuries arising from an April 6, 2020 motor vehicle accident. (Pa8). On March 24, 2022, Plaintiff filed an Amended Complaint. (Pa20).

On April 28, 2020, Plaintiff filed a Claim Petition in the New Jersey Division of Workers' Compensation, identifying Vino as the employer and identifying Plaintiff's job title as "Delivery Driver Assistant". (Pa265). Workers' compensation benefits were paid to Plaintiff by Travelers, Royal Wine's workers' compensation carrier, pursuant to N.J.S.A.

34:15-79, recognizing Royal Wine as the general contractor of the uninsured Vino. (Pa276). On May 11, 2023, an Order Approving Settlement of the Plaintiff's workers' compensation claim was entered. (Pa502).

On April 3, 2023, Royal Wine moved for summary judgment. (Pa30). On May 2, 2023, Plaintiff filed opposition to the motion. (Pa63). On June 23, 2023, oral argument was held before the Honorable Annette Scoca, J.S.C. (2T:1). On June 23, 2023, Defendant Royal Wine was granted summary judgment and dismissed with prejudice. (Pa1).

On July 27, 2023, a Notice of Motion for Summary Judgment was filed on behalf of the Vino Defendants. (Pa248). On August 28, 2023, Plaintiff filed opposition to the motion. (Pa392). On October 13, 2023, oral argument was held before the Judge Scoca. (4T:1). On October 13, 2023, Judge Scoca granted the Vino Defendants' Summary Judgment Motion. (Pa3). This Order included a condition precedent, which stated that:

> The Court will stay this order to allow for the Plaintiff to conduct the deposition of Mr. [Dicks], which must be taken within 14 days of the date of this Order. After the deposition, the Plaintiff shall have thirty days from the deposition to file a motion for reconsideration of this Motion if the deposition reveals contrary facts as to the employer of Plaintiff and it will be deemed filed timely.

Id.

On December 12, 2023, the deposition of Defendant Isaiah Dicks was taken. (6T:1). On January 8, 2024, Plaintiff filed a Notice of Motion for Reconsideration of the October

13, 2023 Order. (Pa422). On April 26, 2024, Plaintiff's Motion for Reconsideration was denied. (Pa5).

On May 15, 2024, Plaintiff filed a Notice of Appeal. (Pa438).

COUNTER-STATEMENT OF FACTS

On April 6, 2020, Plaintiff was a passenger in a commercial van traveling in Montclair, New Jersey, when that vehicle was involved in a motor vehicle accident. (Pa39). At the time of the accident, the commercial van was being operated by Dicks. (Id.). Dicks was operating the commercial van in the course of his employment with Vino. (5T11:8-24). The commercial van involved in the accident was owned by Ryder Truck Rentals and leased to Southern Glazers. Southern Glazers, in turn, loaned the commercial van to Vino due to the shortage of trucks available for rental during the busy season of Passover. (3T33:2-34:9).

Vino is a trucking company that delivers the products of Royal Wine and Southern Glazers. (3T14:21-15:15) (1T16:6-8). Shmuel Aharon (hereinafter, "Shmuel") is the owner and president of Vino and his son, David Aharon (hereinafter, "David"), is an officer in the company. (3T10:19-11:7). Both Shmuel and David are involved in the operation, control and supervision of the business. (3T20:10-13) Vino had an exclusive agreement with Royal Wine for Vino to deliver Royal Wine's products to Royal Wine's customers. (3T12:4-11) (1T 16:6-11). Shmuel testified that this was an oral agreement (not written) that went back thirty-three years, which he referred to as a "handshake agreement". (3T21:23-22:5). As

confirmed by the Bills of Lading of the products on the commercial van at the time of the accident, Vino was in the process of delivering Royal Wine products to Royal Wine's customer when the accident occurred. (Pa212). Shmuel confirmed that Royal Wine products were on the truck at the time of the accident. (3T:36:7-9).

At the time of the accident, Plaintiff was an employee of Vino, working as a helper assisting with the delivery. (1T58:2-8) (1T44:23-25) (5T10:20-11:4). Plaintiff himself has admitted his status as a Vino employee both at the time of the accident and before in his certified answers to Uniform Form A Interrogatory No. 10 (Pa188), New Jersey Workers' Compensation Claim Petition (Pa268) and sworn Affidavit, dated July 2, 2020, submitted to the New Jersey Division of Workers' Compensation in support of his claim for workers' compensation benefits (Pa293). In his certified answers to Uniform Form A Interrogatory No. 10 (Pa188), Plaintiff certifies that at the time of the accident, he was employed by Vino as a "[d]eliverer and mover of goods" and he earned $400-$500 per week in 2020 before the accident. (Pa188). The Claim Petition Plaintiff filed with the New Jersey Division of Workers' Compensation identifies Vino as Plaintiff's employer and the type of work as "Delivery Driver Assistant" with gross wages earned of $500 weekly. (Pa268). Lastly, in a signed Affidavit Plaintiff submitted to the New Jersey Division of Workers' Compensation in support of his claim for workers' compensation benefits, Plaintiff states:

> On Monday, April 6, 2020, I was working as an assistant on a delivery truck making deliveries with a driver, Isaiah Dicks. This was a box truck. At the time, we were involved in a motor vehicle crash on Grove Street in Montclair, New Jersey…At that time, I was assisting with the delivery of wine shipments as well as loading and

> unloading these deliveries. I had been hired as an assistant on this "box truck" and would work these wine deliveries daily, and my typical work week was Tuesday to Friday. However, I would occasionally work certain Mondays if there were additional deliveries that needed to be completed. I earned $100 per day for this work and would typically make $400 per week, but sometimes would make $500 per week if I worked Mondays as well. My point of contact/supervisor was David Aharon…The box truck that I was assisting on had the name "Vino Trucking" on the side of the truck. However, Bills of Lading for deliveries I would help make read "Royal Wine". Some also said "Legends Spirits."

(Pa293).

Prior to the accident, David hired Plaintiff to work for Vino as a helper. (1T43:22-24; 1T44:23-25). As David testified, generally helpers work Tuesday to Friday and occasionally on Monday, depending on the need. (1T46:12-17). While David testified that he himself did not hire Plaintiff to work on the day of the accident nor authorize anyone else to hire Plaintiff to work on that day, David gave unequivocal sworn deposition testimony that he nonetheless considered Plaintiff to be an employee of Vino on the day of the accident (1T58:2-8) and he paid Plaintiff for the work he performed that day, stating, "…if someone did do the work, I wouldn't refuse payment." (1T51:6).

The accident happened on the Monday before Passover, Vino's busiest holiday. During the three weeks before Passover, Vino employees worked six days per week. (1T48:1-5). This explains why Plaintiff was working on the day of the accident, a Monday, when his regular schedule was to work four days a week from Tuesday through Friday.

After the accident, as an employee of Vino, Plaintiff filed a claim for workers' compensation benefits with the New Jersey Division of Workers' Compensation. (Pa268).

Vino was identified as the employer on the Claim Petition. (Id.). Vino, however, did not maintain workers' compensation coverage in New Jersey. As Shmuel testified, he was under the belief that Vino did carry workers' compensation insurance in the State of New Jersey until he found out, after the accident, that this was not the case. Shmuel places responsibility for Vino's lack of workers' compensation insurance coverage in the State of New Jersey on his insurance broker. (3T44:15-45:19).

Royal Wine's workers' compensation carrier, Travelers, provided Plaintiff with workers' compensation benefits, pursuant to N.J.S.A. 34:15-79, recognizing that Vino was an uninsured subcontractor of the Travelers' insured, Royal Wine. (Pa271). Travelers paid out over $140, 368.00 in workers' compensation benefits to Plaintiff. (Pa274). Travelers put both Plaintiff and Vino on notice of its subrogation rights for any monies it paid out. (Pa378) (Pa274). On December 14, 2022, an Order Approving Settlement of Plaintiff's workers' compensation claim was entered. (Pa496).

Vino had an agreement with Royal Wine, whereby Vino would reimburse Royal Wine for any out-of-pocket monies Royal Wine incurred in defending a claim brought against it relating to or arising out of the trucks Vino supplied to deliver Royal Wine's products. (3T46:3-9). With respect to the April 6, 2020 accident, this included Royal Wine's $150,000 deductible with Travelers for the workers' compensation coverage Travelers provided to Plaintiff. (Id.). Vino reimbursed Royal Wine $150,000 for its out-of-pocket deductible, pursuant to this agreement. (3T46:10-18)

On October 13, 2023, the lower Court granted Vino and Dicks (as the employee of Vino) summary judgment, dismissing Plaintiff's claims against them, pursuant to the exclusivity provision of the Workers' Compensation Act, N.J.S.A. 34:15–8 (hereinafter, "the Act"). (Pa3). In so holding, the lower Court properly found that on the day of the accident, Plaintiff was (1) an employee of Vino and co-employee of Dicks (4T22:20-23:1); (2) Plaintiff was paid for the services he performed (4T19:15-18) and (3) Plaintiff received workers' compensation benefits from Vino. (4T22:20-23:1). On April 26, 2024, the lower Court correctly denied Plaintiff's Motion for Reconsideration of the Court's October 13, 20023 Order. (Pa5).

STANDARD OF REVIEW

In reviewing an appeal of a motion for summary judgment, the appellate Court uses the same standards as the trial court. That is, the appellate Court first decides whether there was a genuine issue of material fact. If not, the Court then decides whether the trial judge's ruling on the law was correct. Trautwein v. Harbourt, N.J. Super. 247, 259 (App. Div.), certif. denied, 22 N.J. 220 (1956).

Rule 4:46-2(c) provides that summary judgment should be entered if the moving papers "show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law". In Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1955), the Supreme Court modified the standard of review to be utilized on a motion for summary judgment. It is presently equivalent to the

standard of review for a motion for a directed verdict, pursuant to R. 4:37-2(b), as well as a judgment notwithstanding the verdict, pursuant to R. 4:30-2. Under this new standard, the essence of the inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury, or whether it is so one-sided that one party must prevail as a matter of law." Brill, 142 N.J. at 536.

LEGAL ARGUMENT

I. THE LOWER COURT CORRECTLY GRANTED THE VINO DEFENDANTS SUMMARY JUDGMENT BECAUSE THE VINO DEFENDANTS ARE ENTITLED TO THE PROTECTION OF THE EXCLUSIVE REMEDY PROVISION OF THE ACT. (Pa3; 4T21:5-8).

Historically, the exclusive remedy for a claim by an employee against his employer for work-related injuries is in workers' compensation court. Specifically, the Act contains a so-called "exclusivity provision," N.J.S.A. 34:15-8, which provides that an employee's exclusive remedy against his employer for his work-related injuries is a claim under the Act. Employees give up their right to pursue common-law remedies against their employer in exchange for their receiving fast and certain payment of compensation benefits from their employer for their work-related injuries. Id.

The statute's exclusivity bar also prohibits an injured employee's legal action to recover for injuries caused by a fellow employee. Basil v. Wolf, 193 N.J. 38, 54 n. 7 (2007); Barone v. Harra, 77 N.J. 276, 278 (1978) (reiterating that the Act "precludes tort actions against fellow employees for compensable actions occurring while both persons are in the

same employ…"). The Act blankets co-employees with immunity from suit by injured co-workers. Conrad v. Robbi, 341 N.J. Super. 424, 438 (App. Div.), certif. denied, 170 N.J. 210 (2001).

An employee's injury qualifies for workers' compensation benefits when the accident that caused the injury "arise[s] out of and in the course of his employment." N. J. S.A. 34:15-1. To determine whether an accident has occurred "in the course of employment," it must be considered whether the accident occurred within the period of employment and at a place where the employee may reasonably be. Lewis v. Walter Scott & Co., 50 N.J. Super. 283, 286 (1958).

In the present case, the evidence presented to the lower Court on the Vino Defendants' Motion for Summary Judgment raised no genuine issue of material fact that (1) at the time of the April 6, 2020 accident, Plaintiff was in the course of his employment as a helper for Vino; (2) Defendant Dicks was Plaintiff's co-employee; (3) Vino was Royal Wine's subcontractor; and (4) since Vino, as Plaintiff's employer, did not carry workers' compensation insurance coverage in the State of New Jersey, workers' compensation benefits were provided to Plaintiff by Royal Wine's workers' compensation carrier, Travelers, pursuant to N.J.S.A. 34:15-79. Based on these undisputed facts, the lower Court correctly granted the Vino Defendants summary judgment as a matter of law (Pa3) and correctly denied Plaintiff's Motion for Reconsideration (Pa5). The lower Court's rulings should be affirmed on appeal.

II. THE VINO DEFENDANTS ARE ENTITLED TO THE PROTECTION OF THE EXCLUSIVE REMEDY PROVISION OF THE ACT WHERE TRAVELERS, THE WORKERS' COMPENSATION CARRIER OF ROYAL WINE, VINO'S GENERAL CONTRACTOR, PAID PLAINTIFF WORKERS' COMPENSATION BENEFITS, ON BEHALF OF VINO, PURSUANT TO N.J.S.A. 34:15-79. (P3; 4T22:2-6; 4T23:9-13).

It is undisputed that Travelers, Royal Wine's workers' compensation carrier, paid Plaintiff workers' compensation benefits, pursuant to N.J.S.A. 34:15-79, recognizing that its insured, Royal Wine, was the general contractor of Vino, Plaintiff's employer, who did not carry workers' compensation insurance in the State of New Jersey. As the Travelers Claim History states:

> Employee of Vino Trucking Corp. who had no NJ WC cover for loss we are accepting under Sec. 79 who was a passenger in in [sic] work truck which was involved in MVA and injured his neck and back, orthopedic and neurological in nature.

(Pa271).

Further, as stated in Travelers' correspondence to counsel for Royal Wine, dated April 3, 2023:

> Petitioner is a 28- year-old male employed by Vino Trucking Corp. On date of incident, petitioner was a passenger in vehicle when it was involved in a MVA on date of loss. Co worker was the river [sic] of the vehicle. Claim petition filed against our insured who is not the direct employer of the petitioner. The petition was filed against our insured as the General Contractor as our insured hired and used Vino Trucking Corp. on a regular basis. Vino Trucking Corp. held no N.J. WC Policy; only N.Y.

(Pa277).

N.J.S.A. 34:15-79 provides in part as follows:

> Any contractor placing work with a subcontractor shall, in the event of the subcontractor's failing to carry workmen's compensation insurance as required by this article, become liable for any compensation which may be due an employee or the dependents of a deceased employee of a subcontractor. The contractor shall then have a right of action against the subcontractor for reimbursement.

"The purpose of this provision is to provide compensation for employees of subcontractors who are financially irresponsible and who have failed to obtain workmen's compensation insurance, by transferring the liability to the contractor." Gaydos v. Packanack Woods Dev. Co., 64 N.J. Super. 395, 398 (Law Div. 1960).

In support of his appeal, Plaintiff argues that the lower Court improperly granted the Vino Defendants' Motion for Summary Judgment because there are genuine questions of material fact as to whether a contractor and subcontractor relationship existed between Royal Wine and Vino (Pb20) and whether workers' compensation benefits were appropriately provided to Plaintiff, pursuant to N.J.S.A. 34:15-79. (Pb29). Plaintiff's arguments made in support of his position that outstanding material issues of fact precluded summary judgment being granted in favor of the Vino Defendants are premised on nothing more than pure speculation, which is insufficient to defeat a motion for summary judgment. Competent opposition requires "competent evidential material" beyond mere "speculation" and "fanciful arguments." Merchs. Express Money Order Co. v. Sun Nat'l Bank, 374 N.J. Super. 556, 563 (App. Div.), certif. granted, 183 N.J. 592 (2005); O'Loughlin v. Nat'l Cmty. Bank,

338 N.J. Super. 592, 606–07 (App. Div.), certif. denied, 169 N.J. 606 (2001) (opponent must do more than establish abstract doubt regarding material facts).

In the present case, Plaintiff's speculative argument made in an effort to defeat the Vino Defendants' Motion for Summary Judgment - that Royal Wine and Vino misrepresented themselves to Travelers as general contractor and subcontractor and struck an agreement between themselves wherein Vino was to be able to borrow Royal's workers' compensation insurance for a fee, avoiding the premium payment that would be demanded from a proper insurer (Pb33) – has no basis in fact, is unsupported by the record and does not serve to defeat the Vino Defendants' Motion for Summary Judgment. For the reasons set forth below, the material evidence presented to the lower Court on the Vino Defendants' Motion for Summary Judgment supports the conclusions that a general contractor and subcontractor relationship existed between Royal Wine and Vino and that because Vino did not carry workers' compensation insurance coverage in New Jersey, workers' compensation benefits were appropriately paid to Plaintiff by Travelers, Royal Wine's workers' compensation carrier, on behalf of Vino, pursuant to N.J.S.A. 34:15-79. Moreover, contrary to Plaintiff's contention, the Vino Defendants do not lose the protection of the exclusivity provision of the Act by their failure to carry workers' compensation insurance coverage in New Jersey.

In opposition to the Vino Defendants' underlying Motion for Summary Judgment, Plaintiff presented no material evidence (other than unsupported speculation) or case law to

dispute these conclusions. The lower Court correctly granted the Vino Defendants summary judgment as a matter of law and its decision should be affirmed.

A. A General Contractor and Subcontractor Relationship Existed Between Royal Wine and Vino. (4T22:2-6)

The undisputed material evidence in this case supports the position that at the time of the accident, Royal Wine and Vino had a general contractor and subcontractor relationship.

> Although the word "subcontractor" is not defined in the WCA, our courts have described a subcontractor under that statute as one "who enters into a contract with a person for the performance of work which such person has already contracted with another to perform." Brygidyr v. Rieman, 31 N.J. Super. 450, 453-54 (App. Div. 1954). "In other words, subcontracting is merely 'farming out' to others all or part of work contracted to be performed by the original contractor." Ibid. That definition is consistent with the plain meaning of the term "subcontractor." See Black's Law Dictionary 1722 (11th ed. 2019) (defining subcontractor as "[s]omeone who is awarded a portion of an existing contract by a contractor, esp. a general contractor").

Fournier Trucking, Inc. v. New Jersey Manufacturers Ins. Co., 2020 N.J. Super. Unpub. LEXIS 651 at *12 (N.J. Super. Ct. App. Div. Apr. 9, 2020).

The focus of the inquiry into whether a general contractor/subcontractor relationship exists is whether the party subcontracting the work to another is delegating or subcontracting work that is part of the contractor's regular business. Pollack v. Pino's Formal Wear & Tailoring, 253 N.J. Super. 397, 405-406 (App. Div.), certif. denied, 130 N.J. 6 (1992). In Fournier Trucking, supra, the Court found that a contractor/subcontractor relationship existed and the contractor was responsible for providing workers' compensation benefits to

the employee of the uninsured subcontractor who was injured in the course of his employment. Fournier Trucking, 2020 N.J. Super. Unpub. LEXIS 651 at *12. (Pa506).

In Fournier Trucking, the contractor, Fournier Trucking, contracts with shipping companies to consolidate and transport goods, and it then hires motor carriers to make the deliveries. As such, as the Court held, Fournier Trucking owes a contractual responsibility to the shipper to ensure that the goods reach their destination, and the carriers are the means used by Fournier Trucking to accomplish that duty. Thus, the carriers perform "some part of the work" required under Fournier Trucking's general contracts and meet the definition of "subcontractor", as defined in Brygidyr, supra. Id. at *13. The Court further held that it is not a requirement that the general contractor's employees must perform the same exact functions as the subcontractor's employees. Id. at *14.

Similarly, in Gaydos v. Packanack Woods Dev. Co., 64 N.J. Super. 395, 397 (Law Div. 1960), the Court found the existence of a contractor/subcontractor relationship for purposes of providing workers' compensation benefits, pursuant to N.J.S.A. 34:15-79. In this case, P. & B. Excavating Co., a subcontractor of Packanack Woods Development Co., general contractor, contracted with Packanack Woods to perform excavating work. Part of its work consisted of delivering dirt to certain locations. In order to accomplish this purpose, P. & B. leased a truck and driver, the petitioner, from Maynor Equipment Corp. On November 14, 1957, George Gaydos, an employee of Maynor and driver of the truck leased by P. & B., had an accident arising out of and in the course of his employment. Id. at 398.

The Court held that Maynor Equipment Corp. was the subcontractor of P. & B. and since Maynor Equipment Corp. did not carry New Jersey workers' compensation insurance coverage, P. & B. was responsible for providing the plaintiff with workers' compensation benefits, pursuant to N.J.S.A. 34:15-79. Id. at 400-01.

In yet another case, Jordan v. Lindeman & Co., 23 N.J. Misc. 194 (N.J. Com. Pl. 1945), the Court found a contractor/subcontractor relationship existed where the party subcontracting the work to another is delegating or subcontracting work that is part of the contractor's regular business. In Jordan, a coal dealer, Lindeman & Co., Inc., hired an independent contractor, Pentimone, and his trucks to deliver coal. Pentimone carried no workers' compensation insurance. Pentimone hired Jordan, who was subsequently injured while helping Pentimone deliver coal for Lindeman & Co. Id. at 195. The Court held that workers' compensation coverage in favor of Pentimone's employee was allowed against Lindeman & Co., pursuant to N.J.S.A. 34:15-79, where Pentimone did not carry workers' compensation insurance coverage. Id. at 195-96.

It is important to note that where it is found that the alleged "subcontractor" was doing work for the general contractor who retained it, it is immaterial whether the "subcontractor" is also classified as an independent contractor. Fournier Trucking, 2020 N.J. Super. Unpub. LEXIS 651 at *12 (Pa506) (Court holding "[f]undamentally, both case law and common sense show the terms 'independent contractor' and 'subcontractor' are not mutually exclusive); see also, Gaydos, 64 N.J. Super. at 400-01 (applying the definition of

"subcontractor", adopted by the Appellate Division in Brygidyr, supra, the court concluded that the "independent contractor" in that case satisfied the definition of "subcontractor" and triggered the contractor's obligations under section 79 of the Act); Jordan, 23 N.J. Misc. at 195-96 (the Court holding that where a coal dealer had hired an independent contractor and his trucks to deliver coal, the contractor coal dealer's obligations were triggered under section 79 of the Act where the independent contractor did not carry worker's compensation insurance).

In the present case, the relationship between Royal Wine and Vino fits neatly into the Brygidyr Court's "farming out" definition of a general contractor/subcontractor relationship. Royal Wine is engaged in the business of producing and distributing Kosher wines and spirits. (3T17:8-17). Royal Wine had an agreement with Vino, a trucking company, for Vino to deliver Royal Wine's products to its customers. (1T16:6-11) (3T12:4-7) (3T21:23-22:5). It is undisputed that at the time of the April 6, 2020 accident, Vino was delivering Royal Wine's products. This is evidenced by the Bills of Lading that show "Royal Wine Company" goods were to be delivered to various liquor retailers on "04/06/2020", the day of the accident. (Pa212) and supported by the deposition testimony given by Dicks (5T16:8-14), the deposition testimony of Shmuel (3T:36:7-9) and the Affidavit of Plaintiff that wine and spirits were the products on the commercial van at the time of the accident (Pa293).

Vino clearly falls within the definition of "subcontractor" given by the Court in Brygidyr, supra – one "who enters into a contract with a person for the performance of work

which such person has already contracted with another to perform." Brygidyr, 31 N.J. Super. at 453-54. Here, Royal Wine contracted with third parties to produce and distribute Kosher wine and spirits. Royal Wine, in turn, subcontracted Vino to deliver those products to Royal Wine's customers. As reasoned by the Court in Fournier Trucking, supra, and like the general contractor in that case, Royal Wine owed a contractual responsibility to its customers to ensure that the goods reach their destination, and Vino was the means used by Royal Wine to accomplish that duty. Thus, like the carriers in Fournier Trucking, Vino performed "some part of the work" required under Royal Wine's contracts and meets the definition of "subcontractor."

In addition to Fournier Trucking, this case is on point with the Court's decisions in Gadyos and Jordan, supra. In each of these cases, the Courts found that a contractor/subcontractor relationship was found where the contractor is deemed to have "sublet" to another contractor part of the work it had undertaken. In line with these cases, Vino was hired by Royal Wine to deliver Royal Wine's products to Royal Wine's customers in fulfillment of Royal Wine's contract with its customers. As such a general contractor/subcontractor relationship exists between Royal Wine and Vino.

In support of his appeal, Plaintiff attempts to create issues of fact surrounding the nature of the relationship between Royal Wine and Vino, where none exist. Repeatedly, throughout his appellate brief, Plaintiff argues that an alleged representation made by Vino to the Court that Royal Wine had no involvement in the April 6, 2020 delivery demonstrates

that Vino was not working on anything Royal had "already contracted for" and thus, Vino does not meet the definition of a subcontractor who can be lent workers' compensation coverage under N.J.S.A. 34:15-79. (Pb30-31). Plaintiff continues that this should have precluded Vino from receiving workers' compensation coverage and tort immunity under N.J.S.A. 34:15-79. (Pb29). A review of the citation to the record in support of this position in Plaintiff's appellate brief shows that by "representations made by Vino to the Court that Royal Wine had no involvement in the April 6, 2020 delivery," Plaintiff was referring to Vino's Statement of Undisputed Facts submitted in support of Vino's Motion for Summary Judgment, specifically ¶10, which reads:

> Royal was not involved in the delivery on the date of the accident and filed a motion for summary judgment which was granted by Judge Annette Scoca on June 23, 2023.

(Pa253).

Contrary to Plaintiff's assertion, Vino's aforesaid statement that Royal Wine was not involved in the delivery on the date of the accident does not contradict the Vino Defendants' position that Vino was a subcontractor of Royal Wine on the date of the accident and Travelers, Royal Wine's workers' compensation carrier, appropriately provided Plaintiff with workers' compensation benefits, pursuant to N.J.S.A. 34:15-79. Vino's statement that Royal Wine was not involved in the delivery on the date of the accident was made in the context of the basis for Royal Wine's Motion for Summary Judgment, granted by the lower Court, that Royal Wine did not own, operate, or control a vehicle involved in the accident, and there was no agency relationship with the driver of the involved vehicle.

The sworn undisputed deposition testimony of Shmuel and David shows that Royal Wine was engaged in the production and distribution of wine and spirits and subcontracted with Vino to deliver its products. Royal Wine did not control the means and methods by which Vino conducted the deliveries and while Plaintiff attempts to create one, there is no issue of fact in this regard. The test for establishing agency or vicarious liability (which was the subject of Royal Wine's Motion for Summary Judgment), see Puckrein v. ATI Transport, Inc., 186 N.J. 563, 574 (2006), is different than the test for establishing a general contractor/subcontractor relationship for application of N.J.S.A. 34:15-79, see Fournier Trucking, supra. Simply put, Vino made no representation to the lower Court regarding the relationship between Royal Wine and Vino which contradicts the Vino Defendants' position that Vino was a subcontractor of Royal Wine on the day of the accident.

Plaintiff also attempts to create an issue of fact surrounding the relationship between Royal Wine and Vino by pointing to a written agreement between Royal Wine and Vino, wherein Royal Wine grants Vino the right to park its trucks on Royal Wine's premises during overnight hours. (Pb21) (Pa209). Plaintiff argues he is unable to determine from the agreement whether Royal had a general contractor and subcontractor relationship with Vino at the time of Plaintiff's accident. This written agreement, however, has nothing to do with Royal Wine's and Vino's agreement for Vino to deliver Royal Wine's products and therefore, creates no issue of fact surrounding Vino's status as Royal Wine's subcontractor. Shmuel clearly and indisputably testified that Royal Wine's and Vino's agreement for Vino

to deliver Royal Wine's product was an oral, not written agreement, going back thirty-three years. (3T21:23-22:5). When asked about the written agreement with Royal Wine permitting Vino to park its trucks on Royal Wine's premises during overnight hours (Pa209), Shmuel's response was "What is the written contract have to do with delivery?" (3T53:2-3).

For the reasons set forth above, at the time of the April 6, 2020 accident, Royal Wine and Vino had a general contractor and subcontractor business relationship, pursuant to an oral agreement that Vino, a trucking company, would deliver Royal Wine's products to Royal Wine's customers in the States of New York and New Jersey. There are no issues of fact as to the business relationship between Royal Wine and Vino. Because Vino did not have workers' compensation insurance coverage in the State of New Jersey, Travelers, the workers' compensation carrier of Royal Wine, the general contractor, provided Plaintiff with workers' compensation benefits, on behalf of Vino, pursuant to N.J.S.A. 34:15-79. In granting the Vino Defendants' Motion for Summary Judgment, the lower Court correctly recognized that Plaintiff was paid workers' compensation benefits by the general contractor's (Royal Wine's) insurance carrier and Vino was accordingly afforded the protection of the exclusivity provision of the Act. (4T23:9-13). The lower Court's grant of summary judgment to the Vino Defendants should be affirmed.

B. As Vino Did Not Carry Workers' Compensation Insurance Coverage in New Jersey, Workers' Compensation Benefits Were Appropriately Paid to Plaintiff by Travelers, Royal Wine's Workers' Compensation Carrier, On Behalf of Vino, Pursuant to N.J.S.A. 34:15-79. (4T22:2-6)

1. Vino Did Not Carry Workers' Compensation Insurance Coverage in the State of New Jersey

As Shmuel testified, he was under the assumption that at the time of the Plaintiff's accident, Vino had a workers' compensation policy of insurance in the State of New Jersey. However, he learned after this accident that this was not the case. He blames this on his insurance broker for not procuring a policy of workers' compensation for Vino in the State of New Jersey. In this regard, Shmuel testified:

> So I have my insurance broker for, like, 28 years. He knew 1 strictly that I moved to New Jersey in the year 2021. I kept my policy a hundred percent, my general liability insurance, my workers' comp my other liability insurance, my cargo insurance. And few times I asked my broker, am I covered in the State of New Jersey? He told me yes. And we find out in a bad way, very hard way, the day of that accident that we are actually not covered by my workers' comp insurance in New York State, in the State of New Jersey. He was assuming that I'm covered.
>
> So you can check my record and I can hand it to you because I took care of it myself, two, three weeks after the accident we got our workers' comp in New Jersey because I was not informed in the right way that I'm not covered. I was assuming I was covered. I asked the person who was in charge of my insurance, am I covered? He told me yes, but he was wrong. So I took right away another policy.

(3T44:24-45:19).

2. Travelers Provided Plaintiff Workers' Compensation Benefits, Pursuant to N.J.S.A. 34:15-79.

After the April 6, 2020 accident, on April 28, 2020, Plaintiff filed a Claim Petition with the New Jersey Division of Workers' Compensation. (Pa265) (Pa268). On this Claim Petition, Plaintiff identified Vino as his employer. (Pa268). This is consistent with the signed and sworn Affidavit, dated July 2, 2020, Plaintiff submitted in support of his claim for worker' compensation benefits with regard to his employment on the date of the accident. (Pa293) and his certified answer to Form A Interrogatory No. 10. (Pa188). However, it was discovered that Vino did not have workers' compensation insurance coverage in New Jersey and pursuant to N.J.S.A. 34:15-79, Travelers, Royal Wine's workers' compensation carrier, provided workers' compensation benefits to Plaintiff. (Pa271). In doing so, Travelers recognized its insured, Royal Wine, was the general contractor of Vino. (Pa277).

In support of his present appeal, Plaintiff argues that the lower Court improperly granted the Vino Defendants' Motion for Summary Judgment because there is a genuine issue of material fact as to whether Royal Wine properly provided workers' compensation coverage to Plaintiff on behalf of Vino**.** (Pb29). Plaintiff raises a speculative and unsupported contention that Royal Wine and Vino misrepresented themselves as general contractor and subcontractor to Travelers and struck an agreement between themselves wherein Vino would be able to borrow Royal Wine's workers' compensation insurance for a fee, avoiding the premium payment that would be demanded from a proper insurer. (Pb33). According to Plaintiff, if this proves to be true, Royal Wine and Vino knowingly

contracted with one another to operate in violation of the express language of the Act. (Pb35).

Plaintiff's argument that there is an issue of fact as to whether Royal Wine and Vino misrepresented themselves to Travelers as general contractor and subcontractor while striking up an agreement between themselves wherein Vino would get the benefit of Royal Wine's workers' compensation insurance for a fee and avoid the premium payment for such insurance coverage is based on utter speculation and in no way, serves to defeat the Vino Defendants' Motion. The law is clear that opposition to a summary judgment motion requires "competent evidential material" beyond mere "speculation" and "fanciful arguments." Merchs. Express Money Order Co. v. Sun Nat'l Bank, 374 N.J. Super. 556, 563 (App. Div.), cert. granted, 183 N.J. 592 (2005). Accord Lepis v. Lepis, 83 N.J. 139, 159 (1980) (conclusory allegations of parties should be disregarded when deciding whether material fact is in dispute). Plaintiff has provided absolutely nothing to support the contention that any such private agreement existed between Royal Wine and Vino for the purpose of Vino avoiding the obligation to pay workers' compensation insurance premiums.

To the contrary, the evidence in this case supports the opposite conclusion. The sworn deposition testimony of Shmuel was that at the time of the Plaintiff's accident, he believed his broker had procured workers' compensation insurance coverage for Vino in the State of New Jersey and after the accident, he was surprised to learn that this was not the case. (3T44:24-45:19). Upon learning that Vino was not covered, Shmuel immediately secured

the requisite insurance coverage for Vino. (3T45:19). This testimony hardly supports Plaintiff's speculative argument that Vino entered into a private agreement with Royal Wine for the purpose of avoiding payment of workers' compensation policy premiums.

Plaintiff further points to an alleged contradiction between "the supposed private agreement between Royal and Vino" and "Travelers letter sent to Vino demonstrating they will be pursuing subrogation for the workers' compensation payments they made on behalf of Royal" (Pa379), which Plaintiff contends creates a genuine issue of material fact as to whether workers' compensation benefits were appropriately paid by Travelers. (Pb25) According to Plaintiff, a question of fact is raised as to why Vino would pay Royal Wine since Travelers is the one who paid the claim. (Pb32).

Contrary to Plaintiff's assertion, there is no contradiction between the agreement between Royal Wine and Vino and Travelers subrogation letter (Pa379). Plaintiff misconstrues the agreement Vino had with Royal Wine. Plaintiff describes the agreement as one where Vino would pay Royal Wine up to $150,000 in workers compensation benefits if anything would happen to Vino's trucks and questions why Vino would be paying anything to Royal Wine when it was Travelers who paid the workers' compensation benefits. (Pb25).

Shmuel, however, described the agreement between Royal Wine and Vino as one where Vino agreed to pay Royal Wine for the out-of-pocket expenses Royal Wine incurred

(in connection with Plaintiff's workers' compensation claim), which was Royal Wine's $150,000 deductible. Shmuel testified in this regard as follows:

> Because my agreement with Royal Wine that I am -- we will pay up whatever they need to pay, $150,000 deductible, which anything would happen with my trucks and they are going to get sued, I need to pay for it. Then the insurance company kicked in.

(3T46:5-9). Shmuel, after all, would be the person with the most knowledge as to the substance of the agreement between Royal Wine and Vino. Thus, there is no contradiction between the agreement Vino made with Royal Wine to reimburse it for the amount of its deductible and Travelers subrogating for workers' compensation benefits it paid out.

Further, whether the agreement between Royal Wine and Vino has been produced (this improperly assumes the agreement was written and not oral) or whether proof has been provided that Vino paid Royal Wine back for the $150,000 deductible Royal Wine incurred, are immaterial issues of fact as to whether the Vino Defendants are entitled to summary judgment and should be rejected by this Court.

Plaintiff's attempt at muddying the waters to try and create issues of fact, where none exist, based on speculation and hyperbole, in an effort to defeat the Vino Defendants' Motion, should be rejected by this Court. The lower Court correctly ruled that based on the material facts of this case, the Vino Defendants were entitled to summary judgment and a dismissal of Plaintiff's claims against them as a matter of law, pursuant to the exclusivity provision of the Act.

3. Vino Does Not Lose the Protection of the Exclusive Remedy Provision of the Act By Not Maintaining Workers' Compensation Insurance Coverage in the State of New Jersey.

Plaintiff argues that Vino's failure to maintain workers' compensation insurance somehow permits the Plaintiff to circumvent the exclusivity provision of the Act and to bring a civil action in tort against the Vino Defendants. (Pb27). Plaintiff is essentially asking this Court to permit him to recover over $140,000 in workers' compensation benefits from Vino and also be allowed to bring a civil action in tort against the Vino Defendants. Plaintiff cites to no case law in support of this argument, and it is, like Plaintiff's other arguments, meritless.

Contrary to Plaintiff's position in this regard, the failure of Vino to maintain workers' compensation insurance in New Jersey does not permit Plaintiff to bypass the exclusivity provisions of the Act and bring a civil action against the Vino Defendants. While Vino did not have workers' compensation insurance in the State of New Jersey on the date of the accident, there is no evidence that this was intentional. To the contrary, Shmuel's sworn deposition testimony reveals otherwise. He testified it was his belief Vino had workers' compensation insurance and he blames the failure of Vino to maintain workers' compensation insurance on the date of the accident on Vino's insurance broker. (3T44:24-45:19). Upon learning that Vino was not covered, Shmuel immediately secured the requisite insurance coverage for Vino. (3T45:19).

Notwithstanding Vino's lack of workers' compensation insurance coverage, Plaintiff received workers' compensation insurance benefits in excess of $140,000. (Pa274). The workers' compensation benefits were paid by Travelers, on behalf of Vino, pursuant to N.J.S.A. 34:15-79. (Pa277). Whether the workers' compensation benefits were paid directly by Vino or its insurance carrier is immaterial. Plaintiff's contention that he did not receive workers' compensation benefits from Vino could not be further from the truth. The workers' compensation coverage was provided to Plaintiff, on behalf of Vino, pursuant to N.J.S.A. 34:15-79, and that conclusively bars any further civil remedies Plaintiff has against the Vino Defendants.

Moreover, while the Act provides civil and criminal penalties for failure to maintain insurance as required by N.J.S.A. 34:15-79, those penalties do not include abrogation of the exclusivity provision of the Act, and Plaintiff does not and cannot point to any authority which supports such a proposition. Further, the penalties for failure to maintain insurance under the Act are imposed by the Director of the Division of Workers' Compensation; however, there is no evidence that Vino was penalized for its lack of insurance.

The only way the Act's exclusivity provision may be overcome is through the "intentional wrong" exception. Laidlow v. Harriton Machinery Co., Inc., 170 N.J. 602 (2002). To satisfy the narrow exception, the New Jersey Supreme Court requires "an intentional wrong creating substantial certainty of bodily injury or death." Van Dunk v. Reckson Assocs. Realty Corp., 210 N.J. 449, 452 (2012). Moreover, the "intentional wrong"

exception must be interpreted very narrowly for the purpose of furthering the goals of the Act. Vitale v. Schering-Plough Corporation, 447 N.J. Super. 98 (App. Div. 2016). Here, Plaintiff has come forward with no evidence that any of the Vino Defendants acted intentionally and that their actions created a "substantial certainty of bodily of injury or death."

As the Court held in Kaur v. Garden State Fuels, Inc., 2019 WL 1579705 (N.J. Super. Ct. App. Div. Apr. 12, 2019) (DIDa1), the failure to maintain workers' compensation insurance does not alter the effect of the Workers' Compensation bar. Id. at *7. Hence, Vino's failure to maintain workers' compensation insurance coverage on the date of the accident, does not permit Plaintiff to circumvent the exclusivity provision of the Act and bring a civil action in tort against the Vino Defendants. The lower Court correctly ruled that because Vino provided Plaintiff with workers' compensation benefits, the exclusivity provision of the Act barred Plaintiff from bringing a civil claim in tort against the Vino Defendants and granted the Vino Defendants Motion for Summary Judgment.

III. THE LOWER COURT PROPERLY GRANTED THE VINO DEFENDANTS SUMMARY JUDGMENT, PURSUANT TO THE EXCLUSIVE REMEDY PROVISION OF THE ACT, BECAUSE AT THE TIME OF THE ACCIDENT, PLAINTIFF WAS AN EMPLOYEE OF VINO AND CO-EMPLOYEE OF DICKS WAS PAID BY VINO FOR THE WORK HE PERFORMED AND WAS INJURED IN THE COURSE OF HIS EMPLOYMENT. (P3; 4T19:15-18).

The Act broadly defines employees as persons "who perform service for an employer for financial consideration, exclusive of … casual employment". N.J.S.A. 34:15-36. The Act provides as follows:

> "(E)mployee…includes all natural persons…who perform service for an employer for financial consideration, exclusive of casual employments, which shall be defined, if in connection with the employer's business, as employment the occasion for which arises by chance or is purely accidental; or if not in connection with any business of the employer, as employment not regular, periodic or recurring;...

Id.

As the Court stated in Auletta v. Bergen Center for Child Development, 338 N.J. Super. 464 (App. Div. 2001):

> [T] he Act is remedial social legislation and should be given a liberal construction in order "to implement the legislative policy of affording coverage to as many workers as possible."

Id. at 470 (quoting Brower v. ICT Group, 164 N.J. 367, 373 (2000)); Torres v. Trenton Times Newspaper, 64 N.J. 458, 461 (1974)). This Court has specifically stressed that the "term 'employee' should be given neither a mechanical nor overly restrictive interpretation." Smith v. E.T.L. Enters., 155 N.J. Super. 343, 349 (App. Div. 1978) (citations omitted).

"Rather, the term must be construed liberally in order to bring as many cases as possible within the coverage of the act." Id See also Crank v. Palermo Supply Co., 326 N.J. Super. 84, 92 (App. Div. 1999); Sloan v. Luyando, 305 N.J. Super. 140, 147 (App. Div. 1997).

In deciding whether an employer/employee relationship exists:

> [t]he determination of each case depends on the particular facts. Some of the elements to be construed are the hiring, control, payment of wages and power of dismissal. According to all the adjudications, control is one of the most significant factors.

Runk v. Rickenbacher Transp. Co., 31 N.J. Super. 350, 354 (App. Div. 1954).

Courts have employed two tests to determine whether a person is an employee under the Act: (1) the "right to control" test and (2) the "relative nature of the work" test. Smith, 155 N.J. Super. at 350; Auletta, 338 N.J. Super. at 471; Pollack v. Pino's Formal Wear & Tailoring, 253 N.J. Super. 397, 407, certif. denied, 130 N.J. 6 (1992). A worker will be entitled to workers' compensation benefits under the Act if he or she can satisfy either the "right to control" test or the "relative nature of the work" test. Auletta, 338 N.J. Super. at 473; see also Silva v. Soderstrom, 2008 WL 794976, at *3 (N.J. Super. Ct. App. Div. Mar. 27, 2008) (DIDa2) **(**"Because the purpose of applying the tests is to maximize Workers' Compensation coverage, satisfying either test will result in coverage under the Act.") (citing Kertesz v. Korsh, 296 N.J. Super. 146, 154 (App. Div. 1996)).

In the present case, a liberal construction of the term "employee" supports the conclusion that at the time of the April 6, 2020 accident, Plaintiff was an employee of Vino and was working in the course of his employment for Vino as a helper making deliveries of

Royal Wine's products. Plaintiff was clearly performing services for Vino for financial consideration. Under both the "right to control" test and the "relative nature of the work" test, Plaintiff qualifies as an employee of Vino, entitled to benefits under the Act. The lower Court correctly determined that the undisputed material facts in the case presented to it on the Vino Defendants' underlying Motion for Summary Judgment demonstrated that Plaintiff was an employee of Vino at the time of the accident for purposes of the Act. (4T22:17-25).

In support of his appeal, Plaintiff argues that the lower Court improperly granted the Vino Defendants' Motion for Summary Judgment as there are unresolved issues of fact as to Plaintiff's employment status at the time of the accident. (Pb37). Among the issues of fact raised by Plaintiff are (1) no one from Vino authorized Plaintiff to work on the subject date; (2) Plaintiff was not guaranteed compensation on the subject date and was only paid after the fact; (3) Vino sporadically and temporarily hired Plaintiff to work prior to the day of the accident, paid cash under-the-table, and did not provide Plaintiff benefits such as health insurance and (4) while Royal Wine paid for Plaintiff's workers' compensation benefits, they seem to have done so in violation of the Act. (Pb37; Pb41). Plaintiff disputes that either the "right to control" or the "relative nature of the work" tests have been met (Pb38) and further argues that at most, Plaintiff was a "casual employee" of Vino. (Pb42).

Contrary to Plaintiff and for the reasons set forth below, there are no issues of fact surrounding Plaintiff's status as an employee of Vino at the time of the accident. First, Plaintiff himself has admitted that at the time of the accident, he was working as an employee

of Vino. Second, both tests used to determine whether a person is an employee under the Act have been met. Third, Plaintiff was not a "casual employee" of Vino at the time of the accident. Finally, for the reasons more fully set forth above under Point II, Plaintiff properly received workers' compensation benefits as an employee of Vino, an uninsured subcontractor. The lower Court correctly granted the Vino Defendants summary judgment, pursuant to the exclusivity provision of the Act, and the lower Court's decision should be affirmed.

A. Plaintiff Has Admitted That At The Time of the Accident, He Was Working As An Employee of Vino and Cannot Now Take A Contrary Position In An Effort To Raise A Genuine Issue of Material Fact As to His Employment Status To Defeat the Vino Defendants' Motion for Summary Judgment. (4T17:4-13)

Prior to the Vino Defendants filing their Motion for Summary Judgment, Plaintiff admitted his status as a Vino employee at the time of the accident in both his Claim Petition for workers' compensation benefits (Pa268); his sworn Affidavit submitted in support of his petition for workers' compensation benefits (Pa293) and in his certified answers to Uniform Form A Interrogatories (Pa188).

In an attempt to defeat the Vino Defendants' Motion for Summary Judgment, Plaintiff now takes a contrary position and argues that there are issues of fact as to whether he was an employee of Vino at the time of the accident. This is unacceptable and should not serve as a basis to defeat the Vino Defendant's Motion for Summary Judgment. The law is clear that where plaintiff's contradiction is unexplained and unqualified, he "cannot create an issue

of fact simply by raising arguments contradicting his own prior statements and representations." Mosior v. Ins. Co. of North America, 193 N.J. Super. 190, 195 (App. Div. 1984). See also Shelcusky v. Garjulio, 343 N.J. Super. 504, 510 (App. Div. 2001), rev'd, 172 N.J. 185 (2002).

Plaintiff has indisputably admitted that he was an employee of Vino at the time of the accident. Plaintiff's status as an employee of Vino is therefore undisputed. Plaintiff received workers' compensation benefits by virtue of his status as Vino's employee and accordingly, the Vino Defendants were correctly granted summary judgment.

B. Under the "Right to Control" Test, Plaintiff Was an Employee of Vino At the Time of the Accident.

Under the "right to control" test, the decisive inquiry is whether "the employer retains the right to determine not only what will be done, but how it shall be done." Pollack, 253 N.J. Super. at 408-409. The right to control is usually inferred from direct evidence of right of control and exercise of control over means and methods of completing the work; right of termination; method of payment; and who furnishes the equipment. Tofani v. Lo Biondo Bros. Motor Exp., 83 N.J. Super. 480, 486 (App. Div.), aff'd sub nom. Tofani v. Lobiondo Bros. Motor Exp., 43 N.J. 494 (1964). See also Lowe v. Zarghami, 158 N.J. 606, 616 (1999).

Where, as here, the equipment furnished is valuable equipment, such as a truck, the Court's decision in Tofani, supra, is instructive. In Tofani, the Court held that when the employer furnishes valuable equipment, the relationship is almost invariably that of employment under the "control test". This refers "only to equipment of considerable size

and value, not items like trowels and hammers; the most common example being the furnishing of a truck." Id. at 486. As the Court explained:

> The direct relation between furnishing of equipment and the inference of right of control, is again, a simple matter of common sense and business. The owner of a five thousand dollar truck who entrusts it to a driver is naturally going (to retain the right) to dictate details in order to protect his investment. Moreover, he will also want to ensure that it is kept as busy as possible. For these reasons, it is not surprising that there seems to be no case on record in which the employer owned the truck but the driver was held to be an independent contractor.

Id. at 486-87.

Under the "control test", the Tofani Court held that a decedent, who owned his own tractor, leased it to the defendant and drove it while hauling a trailer owned by defendant, was the defendant's employee for coverage purposes. Id.

Similarly, in Hannigan v. Goldfarb, 53 N.J. Super. 190, 196 (1958), the Court held that a taxicab driver who paid a set fee to operate a cab on his own for twelve hour shifts, but who did not own the cab, was nevertheless an employee for the purposes the Act. The Court concluded that since the driver was operating the cab through the defendant association, was identified with the association by its logo and received his fees through a central office which managed the overall operation, there was sufficient control to justify labeling the driver an employee. Id.

Notably, under the control test, the actual exercise of control is not as determinative as the right of control itself. Mahoney v. Nitroform Co., Inc., 20 N.J. 499, 506 (1956); Kelly

v. Geriatric and Med. Serv., 287 N.J. Super. 567, 575–76 (App. Div. 1996); Kertesz, 296 N.J. Super. at 153. The determination depends upon whether the employer had the right to direct the manner in which the business or work shall be done, as well as the results accomplished. Auletta, 338 N.J. Super. at 471-72.

In support of his appeal, Plaintiff argues that the "right to control" test has not been met because as admitted to by David, he did not hire Plaintiff to work on the day of the accident; he did not authorize anyone else to hire Plaintiff; and he had no knowledge that Plaintiff was working on the box truck that day until after the accident. As such, Plaintiff argues that Vino could not have exercised supervision over Plaintiff and directed the manner in which the work was done, necessary to meet the "right to control" test. (Pb39).

Plaintiff's argument in this regard, however, is misplaced because under the "right to control" test, the actual exercise of control is not as determinative as the right of control itself. Mahoney, 20 N.J. at 506 (1956); Kelly, 287 N.J. Super. at 575–76 (App. Div. 1996); Kertesz, 296 N.J. Super. at 153. Considering the factors from which a right of control is inferred – (1) right of control over means and methods of completing the work; (2) right of termination; (3) method of payment; and (4) who furnishes the equipment, an inference can be made that the "right to control" test has been met. Plaintiff presented no facts in opposition to the underlying Motion for Summary Judgment or in support of his within appeal to dispute Vino's right to control over any of these four areas.

With respect to the last factor, who furnishes the equipment, the Court's decision in Tofani, supra, is instructive. Like the employer in Tofani, Vino furnished a valuable piece of equipment of considerable size and value – the box truck. As the Tofani Court held, "when the employer furnishes valuable equipment, the relationship is almost invariably that of employment under the 'control test'". Tofani, 83 N.J. Super. at 436-37.

Plaintiff's status as an employee of Vino has been established under the "right to control" test, thereby entitling him to workers' compensation benefits under the Act. See Auletta, 338 N.J. Super. at 473.

C. Under the "Relative Nature of the Work" Test, Plaintiff Was an Employee of Vino At the Time of the Accident.

The "relative nature of the work" test is essentially an economic and functional one, and the determinative criteria is the extent of the economic dependence of the worker upon the business he serves and the relationship of the nature of his work to the operation of that business. Marcus v. E. Agr. Ass'n, Inc., 58 N.J. Super. 584, 603 (Conford, J.A.D., dissenting) (App. Div. 1959), rev'd sub nom. Marcus v. E. Agric. Ass'n, Inc., 32 N.J. 460 (1960). Under this test, it is necessary to analyze the nature of the employer's business and decide whether "the work done by the petitioner was an integral part of the regular business of the respondent" as well as whether the worker is economically dependent upon the employer. Smith, 155 N.J. at 352 (quoting Rossnagle v. Capra, 127 N.J. Super. 510, 517 (App. Div. 1973), aff'd o.b., 64 N.J. 549 (1974)).

In the present case, with respect to the first factor to be considered as to whether the "relative nature of the work" test has been met - the work done by the petitioner was an integral part of the regular business of the respondent - Plaintiff has failed, in support of both his opposition to the underlying Motion for Summary Judgment and in support of his appeal, to present any facts from which a fact finder could conclude that the work he was performing at the time of the accident was not an integral part of the regular business of Vino. Plaintiff merely argues that his contributions on the truck on the day of the accident could not have been an integral part of Vino's business because he was not authorized or scheduled to work that day. (Pb40). Vino is a trucking company which had an exclusive agreement with Royal Wine to deliver Royal Wine's products. Plaintiff himself admits that at the time of the accident, he was on Vino's box truck assisting in the delivery of wine shipments. (Pa292). Clearly, the work being performed by Plaintiff at the time of the accident was an integral part of Vino's business.

With respect to the second factor to be considered as to whether the "relative nature of the work" test has been met - whether the worker is economically dependent upon the employer - Plaintiff has also failed to demonstrate that this factor has not been met. Plaintiff himself has established that he was working as "an assistant on a delivery truck" for Vino at the time of the accident; had been working for them four days a week, and sometimes five days a week, for some time before the accident; and was paid $400-$500 per week by Vino. (Pa292).

David testified that he was the one who hired Plaintiff to work for Vino as a helper. (1T43:22-24; 1T44:23-25). Plaintiff, like the majority of Vino's employees, generally worked Tuesdays through Fridays. (1T33:12-22). Although David did not hire Plaintiff to work on the day of the accident or authorize anyone else to hire Plaintiff to work that day, David unequivocally testified that he considered Plaintiff to be an employee of Vino on the day of the accident. (1T57:2-8). David further testified that he paid Plaintiff for the work he performed on the day of the accident, stating, "if someone did do the work, I wouldn't refuse payment." (1T51:12-15).

In disputing that Plaintiff was economically dependent on Vino, Plaintiff argues Vino sporadically and temporarily hired Plaintiff prior to the day of the accident, did not hire Plaintiff on the day of the accident, paid cash under-the-table, and did not provide Plaintiff benefits such as health insurance. (Pb41). Plaintiff has provided no support, by way of case law or otherwise, for any of these contentions as to why Plaintiff cannot be found to have been economically dependent on Vino. Nonetheless as the following cases illustrate, Plaintiff's being hired by Vino on a day to day basis before the accident and Vino's payment to Plaintiff for work performed in the form of cash off the books and without benefits does not establish that Plaintiff was not economically dependent on Vino under the "relative nature of the work" test where the Plaintiff himself admits that he was regularly employed with Vino for a period of time before the accident, earning $400-$500 per week. (Pa292).

In Sloan v. Luyando, 305 N.J. Super. 140 (App. Div. 1997), the Court found that "relative nature of the work" test for an employer-employee relationship under the Act had been met. In this case, the plaintiff was injured in an automobile accident, while riding as a passenger in the front seat of a pick-up truck driven by John Feola, the sole proprietor of Notchwood Construction ("Notchwood"). The leased truck was registered in the name of John's father. Plaintiff was accompanying Feola to a warehouse to pick up a refrigerator needed for a renovation job being performed by Notchwood, when the truck was involved in an accident. Id. at 142-43.

Plaintiff claimed he was an independent contractor and not an employee of Notchwood, Plaintiff testified at his deposition that he had been an employee of Notchwood for seven years before the accident from 1983 to 1991, when he left his employment with Notchwood and then began to work for Notchwood as a subcontractor. No federal, state, social security, or unemployment tax deductions were taken out of his salary. Notchwood issued him Form 1090's for the payments made to him, rather than W2 forms. Id. at 149. Plaintiff acknowledged that most of the carpentry jobs he had received prior to the date of the accident were with Notchwood, but pointed to three other entities that he worked for in addition to Notchwood. Id.

In finding the "relative nature of the work" test had been met, the Sloan Court stated, "[u]nquestionably, there was a 'substantial economic dependence' by [Plaintiff] upon Notchwood for the work he performed through the date of the accident, as most of

[Plaintiff's] work before the accident was with Notchwood. Id. at 149-50. Further, the fact that Notchwood treated him as an independent contractor for tax and accounting purposes did not mean Plaintiff "was not an 'employee' on the numerous occasions he worked for Feola [Notchwood] upon whom he remained economically dependent." Id. at 149-50.

Similarly, in Caicco v. Toto Bros., 62 N.J. 305, 307–08 (1973), the Court found that the "relative nature of the work" test had been met. Here, Plaintiff-decedent was accidentally electrocuted when the dump truck he was operating came in contact with high tension wires. At the time of the accident, decedent was delivering a load of landfill in a dump truck he owned for respondent, which had subcontracted to supply landfill at the site where the accident occurred. Decedent's employment with respondent was on a day-to-day basis and depended on such circumstances such as weather conditions and available work. He was generally paid by the load but on occasion was paid by the hour. He could be fired at any time, but according to respondent, he could also quit at any time. Id. at 308.

Decedent held himself out to be an independent contractor, but approximately six months before the accident, respondent became decedent's prime source of work and so remained until his death. From the commencement of that relationship about 81% of decedent's work-days were devoted to respondent and 19% to four other customers. About 85% of decedent's billings for work done during that period were to respondent. Decedent was required as a condition of employment to supply respondent with a letter in a form

prescribed by respondent stating that he would be responsible for his own federal income taxes and that he was self-employed. Id. at 144-45.

In finding that the "relative nature of the work" test had been met, the Court held that the decedent had made himself economically dependent on respondent during the period in question. The fact that he sought work from others during slack periods with respondent or that he held himself out to be an independent contractor "does not derogate from that fact so long as substantial economic dependence on respondent and functional integration of operations persisted." Id. at 310.

In the present case, similar to the workers' compensation claimants in Sloan and Caicco, Plaintiff satisfies both factors of the test for a determination of whether he was an employee of Vino under the "relative nature of the work" test - the work done by the Plaintiff was an integral part of Vino's business and Plaintiff was economically dependent on Vino. As such, the lower Court correctly granted the Vino defendants' summary judgment, pursuant to the exclusivity provision of the Act and its decision should be affirmed.

D. Plaintiff Was Not A "Casual Employee" of Vino. (4T14:18 –25)

N.J.S.A. 34:15-36 defines "casual employment" as "if in connection with the employer's business, as employment the occasion for which arises by chance or is purely accidental; or if not in connection with any business of the employer, as employment not regular, periodic or recurring…" In other words, if the services rendered by the alleged

employee are rendered *in relation to a business*, they are casual *only if* they are rendered *by chance or by pure accident* (emphasis added). If they are not rendered in relation to a business, they are casual if the employment is not regular, periodic or recurring.

In the instant case, there is no question that the services rendered by Plaintiff were rendered in relation to the business of Vino. Therefore, Plaintiff would only be considered a "casual employee" of Vino if the services he rendered were by chance or pure accident.

The critical and distinguishing factors Courts have recognized in finding "casual employment", which are absent from this case, include the financial independence of the claimants, all of whom were gainfully employed in full time positions unrelated to the work they were performing for the respondent at the time they sustained injuries; claimants were not economically dependent on the respondent and the jobs undertaken for the respondents were done during their free time with no expectation of additional work. See Berkeyheiser v. Woolf, 71 N.J. Super. 171 (N.J. Super. App. Div. 1961); Martin v. Pollard, 271 N.J. Super. 551 (App. Div. 1994) certif. denied, 137 N.J. 307 (1994); Petrone v. Kennedy, 75 N.J. Super. 295 (App. Div. 1962).

In Berkeyheiser, supra, cited in the Plaintiff's brief, the claimant had regular full time employment for a substantial salary in work other than that which he only sporadically performed for the respondent. The odd jobs he performed for the respondent occurred at irregular and isolated occasions and only when the need arose and the petitioner himself chose the times he would work. The decision noted that he had no expectation of regular

employment with the respondent, he worked for respondent in his spare time and he was not economically dependent on the respondent. Berkeyheiser, 71 N.J. Super at 77.

In Martin, supra, the petitioner Martin was injured while painting the house in which he lived which was rented, from the Pollards. The house was one of two properties owned by the Pollards which they rented out. Martin, 271 N.J. Super. at 552-53. The Court found that the services rendered by Martin were not an integral part of the Pollards' business of being landlords but was more in the nature of an odd job which Martin would do at times of his choosing and in a manner he chose with no supervisory control by the Pollards. In addition, the court noted that Martin was not economically dependent on the Pollards. Id. at 557.

In the case at bar, unlike Berkeyheiser or Martin, supra, Plaintiff had been employed by Vino for a considerable period of time before the accident as a helper assisting with deliveries of wine shipments. Plaintiff himself admits in a sworn Affidavit that prior to the date of the accident, he had been working for Vino four days per week, earning $400-$500 per week for a considerable period of time. (Pa293). Plaintiff clearly considered Vino to be his employer at the time of the accident. It follows that Plaintiff was economically dependent on Vino and expected to be paid for the work he performed on the day of the accident. The record is devoid of any other employment Plaintiff held. The task he was performing at the time of the accident was integral to the business of Vino.

In arguing that Plaintiff was a "casual employee" at the time of the accident, Plaintiff focuses on the fact that neither anyone from Vino nor Dicks asked, authorized or hired Plaintiff to work the day of the accident and there was no guarantee or agreement that Plaintiff was going to be compensated by Vino for the work he performed. (Pb44). Regardless of whether the Vino Defendants asked, authorized or hired Plaintiff to work the day of the accident, however, there is no question that David confirmed Plaintiff was working as an employee of Vino that day (1T57:2-8) and paid Plaintiff for the work he performed that day (1T51:12-15).

The undisputed evidence shows that Plaintiff was performing services in connection with the business of Vino at the time of the accident, which did not arise by chance or accident. As such, he cannot be considered a "casual employee" of Vino and would be entitled to benefits from Vino under the Act.

E. Plaintiff's Receipt of Workers' Compensation Benefits From Vino Qualifies Him As an Employee of Vino. (4T12:19-2; 4T13:22-24; 4T22:20-22)

For the reasons fully set forth under Point II above, Travelers appropriately provided Plaintiff with workers' compensation benefits, on behalf of Vino, pursuant to N.J.S.A. 34:15-79. As the lower Court correctly recognized, Plaintiff's receipt of these workers' compensation benefits means he was an employee of Vino; otherwise, the benefits would not have been paid. As the lower Court stated:

> So you're familiar with workers' comp. So just - - and these are some points I wanted to clarify Isn't it true in order for you to

> collect workers' compensation benefits, at least temporary benefits, you have to be an employee for…a specific period of time?

(4T12:19-24).

> Okay. So if he collected temporary disability benefits and he collected 7 percent of…his wage, he's acknowledged as an employee.

(4T13:22-24).

> Here, we have the fact that he collected workers' compensation benefits. He was accepted as…an employee.

(4T22:20-22).

CONCLUSION

For all the reasons set forth above, the lower Court correctly granted the Vino Defendants' Motion for Summary Judgment; this ruling should be affirmed on appeal and Plaintiff's appeal of this ruling should be denied.

Respectfully submitted,
MARSHALL DENNEHEY

Patricia M. McDonagh, Esq.

Patricia M. McDonagh, Esq.
NJ Id.: 021961993
425 Eagle Rock Avenue, Suite 200
Roseland, NJ 07068
pmmcdonagh@mdwcg.com
Counsel for Defendant/Respondent: Isaiah Dicks

Dated: October 30, 2024

AL-JAQUAN LEWIS,

Plaintiff-Appellant

-vs-

ISAIAH M. DICKS, RYDER TRUCK RENTAL, INC. AND/OR ABC CORP. (A FICTITIOUS ENTITY), MIRANDA MICHEL AND/OR "JANE DOE" (A FICTITIOUS NAME), SOUTHERN GLAZERS, INC., SOUTHERN GLAZERS 1, LLC, SOUTHERN GLAZER'S WINE AND SPIRITS OF NEW JERSEY, LLC, VINO TRUCKING, VINO'S TRUCKING CORP., ROYAL WINE CORPORATION, LEGEND SPIRITS, LLC, DAVID AHARON, "RICHARD ROE" (A FICTITIOUS NAME), AND DEF-GHI CORP. (A SERIES OF FICTITIOUS ENTITIES),

Defendant(s) – Respondent(s)

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

Brief
DOCKET NO.: **A-002781-23**

CIVIL ACTION

ON APPEAL FROM:

SUPERIOR COURT, LAW DIVISION, ESSEX COUNTY
DOCKET NO. ESX-L-1718-22

HONORABLE ANNETTE SCOCA, J.S.C. SAT BELOW

BRIEF FOR RESPONDENTS,

VINO TRUCKING, VINO TRUCKING CORP. AND DAVID AHARON

LePore Luizzi, LLC
489 Aurora Place
Brick, New Jersey 08723
(732) 920-5500
jglepore@leporeluizzi.com

On the Brief:

James LePore, Esq.
Attorney ID No. 00445-1973

Joseph G. LePore, Esq.
Attorney ID No. 01675-1994

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY 3

COUNTERSTATEMENT OF FACTS 5

STANDARD OF REVIEW 8

LEGAL ARGUMENT 9

POINT I

THE TRIAL COURT WAS CORRECT IN GRANTING SUMMARY JUDGMENT TO THE VINO DEFENDANTS 9

POINT A: THE TRIAL COURT DID NOT NEED PROOF OF REPAYMENT BY VINO TO ROYAL IN ORDER TO DECIDE THE VINO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT 9

POINT B: THOUGH THE VINO DEFENDANTS DID NOT HAVE WORKERS' COMPENSATION INSURANCE FOR THEIR NEW JERSEY ACTIVITIES AT THE TIME OF PLAINTIFF'S ACCIDENT, THEY COMPLIED WITH THE WORKERS COMPENSATION ACT BY TENDERING PLAINTIFF'S WORKERS' COMPENSATION CLAIM TO ROYAL 11

POINT C: *FOURNIER TRUCKING* DOES NOT, AS PLAINTIFF ARGUES, SUPPORT HIS CLAIM THAT THE TRIAL COURT INCORRECTLY GRANTED SUMMARY JUDGMENT TO THE VINO DEFENDANTS 14

POINT D: PLAINTIFF'S CLAIM THAT VINO WAS NOT A SUBCONTRACTOR OF ROYAL IS WITHOUT MERIT 14

POINT E: THE PLAINTIFF'S CLAIMS THAT VINO WAS "IMPROPERLY" PROVIDED WITH COVERAGE UNDER THE WCA AND THAT VINO WAS LENT WORKERS COMPENSATION COVERAGE WITHOUT COMPLYING WITH N.J.S.A. 34:15-79 ARE WITHOUT MERIT 16

POINT II

THERE ARE NO GENUINE ISSUES OF DISPUTED MATERIAL FACT AS TO THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PLAINTIFF AND VINO ON THE DAY OF THE PLAINTIFF'S ACCIDENT 21

POINT III

NO GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO PLAINTIFF'S STATUS AS A REGULAR EMPLOYEE OF VINO 25

POINT IV

PLAINTIFF HAS RAISED ISSUES ON APPEAL THAT WERE NOT RAISED BELOW 29

CONCLUSION 31

TABLE OF AUTHORITIES

CASES

Auletta v. Bergen Center for Child Development
338 N.J. Super. 464 (App. Div. 2001) 22

Berkeyheiser v. Woolf
71 N.J. Super. 171 (App. Div. 1961) 27

Brill v. Guardian Life Ins. Co. of America
142 N.J. 520 (1995) 8

Brygidyr v. Rieman
31 N.J.Super. 450, 454 (App.Div.1954) 10, 15

Cassano v. Aschoff
226 N.J.Super. 110, 543 A.2d 973 (App.Div.) 18

Community Hospital Group v, Blume Goldfadden,
Berkowitz Donnelly Fried & Forte
381 N.J. Super. 119 (App. Div. 2005) 30

Forrester v. Erickson
107 N.J.L. 156 (E. & A. 1930); 28

Fournier Trucking v. N.J. Mfrs. Ins. Co.
2020 WL 1802840,
DOCKET NO. A-1353-18T2 (App. Div. Apr. 9, 2020) 14

Gerber v. Arrow Construction Co.
121 N.J.L. 587, 3 A.2d 583 (E. & A.1939) 15

Gerber v. Sherman
120 N.J.L. 237, 198 A. 762 (Sup.Ct.1938) 15

Gildrear v. Charles
11 N.J. Super. 523 (App. Div. 1951) 28

Globe Motor Co. v. Igdalen
225 N.J. 669, 480 (2016) 8

Kertesz v. Korsh
296 N.J. Super. 146, 252-53 (App. Div. 1996) 22, 23, 24

Mittan v. O'Rourke
115 N.J.L. 177 (1935) 14, 15

Nieder v. Royal Indemnity Ins. Co.
62 N.J. 229, 234 (1973) 30

Perez v. Professionally Green, LLC
215 N.J. 388, 40606 (2013) 8

Pollack v. Pino's Formal Wear & Tailoring
253 N.J.Super. 397 (App. Div. 1992) 15

Priby v. Lee
15 N.J.Misc. 292, 191 A. 105 (C.P.1936)..... 15

Samolyk v. Berthe
251 N.J. 73 (2022) 8

Shields v. Ramslee Motors
240 N.J. 479 (2020) 8

Steinberg v. Sahara Sam's Oasis, LLC
226 N.J. 344, 366 (2016) 8

STATUTES

N.J.S.A. 23:15-79 ..... 9, 19

N.J.S.A. 34:15-1–147 9

N.J.S.A. 34:15-8 9

N.J.S.A. 34:15-36 25

N.J.S.A. 34:15-77 9

N.J.S.A. 34:15-78 9

N.J.S.A. 34:15-79 ..... 1, 9, 12, 14, 15, 16, 17, 18, 19, 29, 30

N.J.S.A. 34:15-120.1(a) 13

N.J.S.A. 34:15-120.5 13

PRELIMINARY STATEMENT

This case arises out of a one-vehicle motor vehicle accident (the "accident") that occurred on April 6, 2020, in Montclair, New Jersey. The Plaintiff, Al-Jaquan Lewis, was a passenger in a truck driven by the Defendant Isaiah Dicks when the accident happened. Mr. Lewis and Mr. Dicks were employees of the Defendant Vino Trucking Corporation, also known as Vino Trucking, (collectively "Vino") at the time of the accident. Mr. Dicks was the driver of the truck, and the Plaintiff was his helper. The Defendant David Aharon was managing Vino's operations at the time. On the day in question, pursuant to a longstanding oral agreement between Vino and Royal Wine Corporation ("Royal" or "Defendant Royal"), a wine wholesaler, Vino was making deliveries to retailers for Royal.

Mr. Lewis was injured in the accident. Afterwards, he filed for, and received, Worker's Compensation benefits that ultimately totaled $140,268.00. As Vino did not have worker's compensation insurance at the time, these benefits were paid by Travelers Insurance Company ("Travelers"), the worker's compensation carrier for Royal, pursuant to N.J.S.A. 34:15-79, which provides that a "contractor placing work with a subcontractor shall, in the event of the subcontractor's failing to carry workers' compensation insurance as required by this article, become liable for any compensation which may be due an employee or the dependents of a deceased

employee of a subcontractor. The contractor shall then have a right of action against the subcontractor for reimbursement."

Plaintiff argues on appeal that the trial court's entry of summary judgment in favor of the Vino Defendants was incorrect for various reasons, including claims that the Royal/Vino relationship was not one of contractor/subcontractor; that genuine issues of disputed material fact remain as to Plaintiff's employer; that the Plaintiff was a casual employee not entitled to Workers' Compensation benefits; that certain representations made by both Royal and Vino raise a genuine issue of material fact as to whether Vino was properly granted workers' compensation coverage and immunity from civil actions

Judge Annette Scoca, sitting below, found that Mr. Lewis was an employee of Vino at the time of the accident and that he collected Workers' Compensation benefits; that as a result, the Defendants Vino Trucking, Vino Trucking Corp, David Aharon and Isaiah Dicks (the "Vino Defendants") were immune from the Plaintiff's civil action under long settled New Jersey law that bars employees who sustain work related injuries from maintaining civil actions against their employers or co-employees.

The Vino Defendants submit that Judge Scoca was correct in her ruling and that her entry of summary judgment should be affirmed.

PROCEDURAL HISTORY

A. Plaintiffs Civil Action

The Plaintiff's Complaint was filed on March 16, 2022, and an Amended Complaint was filed on March 24, 2022. (Pa7; Pa19).

The Vino Defendants filed a Motion For Summary Judgment on July 27, 2023. (Pa248). Plaintiff filled opposing papers on August 28, 2023. (Pa392).

Oral argument was held on October 13, 2023 before Honorable Annette Scoca, J.S.C. (2T1).

The Vino Defendants' Motion For Summary Judgment was granted by Judge Scoca on October 13, 2023. (Pa3).

(The above Order was stayed by Judge Scoca to allow for the Plaintiff to take the deposition of the Defendant, Isaiah Dicks. Ibid.)

Plaintiff took the deposition of Mr. Dicks on December 12, 2023 (6T:1)

Plaintiff filed a Motion For Reconsideration on January 8, 2014 (Pa422).

Plaintiff's Plaintiff Motion For Reconsideration was denied on April 26, 2024. (Pa5).

B. Plaintiff's Worker's Compensation Matter

Plaintiff filed an Employee Claim Petition with the New Jersey Department of Labor and Workforce Development, Division of Worker's Compensation on April 28, 2020, in which he identified his Employer as Vino Trucking Corp. (Pa268).

Travelers accepted coverage "under Sec. 79." (Pa271, Pa277).

An Order Approving Settlement (in the amount of $105,000.00) of Plaintiff's Workers' Compensation case was entered on December 14, 2022. (Pa496-498).

COUNTERSTATEMENT OF FACTS

The Vino Defendants supplement the Plaintiff's Statement of Facts as follows:

Sometime prior to the accident, the Plaintiff was introduced to Mr. Aharon, who hired him as a helper. (1T44:13-25).

The role of a helper is a basic one, involving using a hand truck, sliding cases to the driver and making sure the driver doesn't get a ticket. (1T45:1-21)

Mr. Aharon liked to promise his helpers four days per week, but this fluctuated based on the business Vino had. (1T46:10-17).

Helpers were paid $100.00 per day at the time. (1T50:17-19).

The Plaintiff was working as a helper on a truck being driven by the Defendant, Dick, on the day of the accident. (5T10:20-11:3).

The Defendant Dicks had worked with the Plaintiff prior to the day of the accident. (5T11:4-7).

When the Defendant Dicks arrived at the warehouse in Bayonne on the day of the accident to pick up the truck he would driving it was already loaded, and he was provided with a list of the items on the truck and the locations of the deliveries he was to make. (5T15:6-16:3).

Mr. Aharon did not know that the Plaintiff was working as a helper on the day of the accident but when he learned of the accident and that Mr. Lewis was working and had been injured, he paid Mr. Lewis' wages for the day. (1T50:20-51:19).

On the day of the accident, pursuant to a 33 year handshake agreement between Vino and Defendant, Royal Wine Corporation ("Royal" or "Defendant Royal"), a wine wholesaler, the Defendant, Isaiah Dicks and Plaintiff, working as his helper, were making deliveries for Royal. (3T21:23-22:5).

On April 28, 2020, Plaintiff filed an Employee Claim Petition with the New Jersey Division of Worker's Compensation for the injuries he sustained in the accident naming Vino Trucking Corp. as his employer. (Pa268).

At the time of Plaintiff's accident Vino had had workers compensation coverage for its activities in New York for 28 years. Shmuel Aharon believed that Vino also had workers compensation coverage for its activities in New Jersey. After the Plaintiff's accident, Mr. Aharon found out "the hard way" that it did not. He then "right away" obtained New Jersey coverage. (3T44:12-45:19).

Plaintiff's workers compensation claim against Vino was investigated by Travelers Insurance Company ("Travelers"), the worker's compensation carrier for Royal, and "deemed compensable pursuant to Section 79." (Pa271, Pa277).

As of April 3, 2023, Mr. Lewis had received over $140,268.00 of Worker's Compensation benefits from Travelers. (Pa274).

Travelers served a notice of its workers' compensation subrogation claim on Vino's attorney. (Pa274).

Vino has reimbursed Royal $150,000.00, representing the amount of Royal's deductible under its workers compensation policy with Travelers. (3T46:3-18).

STANDARD OF REVIEW

Summary judgment may be entered if the evidence of record, together with all legitimate inferences therefrom favoring the non-moving party, show that there is no genuine issue of material fact challenged and that the moving party is entitled to a judgment as a matter of law. *R.* 4:46-2(c); *Steinberg v. Sahara Sam's Oasis, LLC*, 226 N.J. 344, 366 (2016); *Brill v. Guardian Life Ins. Co. of America,* 142 N.J. 520 (1995). Summary judgment is designed to provide a prompt, inexpensive method of resolving cases where a review of the operative documents and testimony yield no genuine issue of material fact requiring disposition of the case at trial. *Globe Motor Co. v. Igdalen*, 225 N.J. 669, 480 (2016). The "court's task is to determine whether a rational factfinder could resolve the alleged dispute in favor of the non-moving party." *Perez v. Professionally Green, LLC*, 215 N.J. 388, 40606 (2013).

Purely legal questions, such as the one presented here, are particularly suited for summary judgment. *Shields v. Ramslee Motors*, 240 N.J. 479 (2020).

Appellate courts review the trial court's grant or denial of a motion for summary judgment *de novo*, applying the same standard used by the trial court. *Samolyk v. Berthe*, 251 N.J. 73 (2022). They consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. *Brill*, supra.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT WAS CORRECT IN GRANTING SUMMARY JUDGMENT TO THE VINO DEFENDANTS

A. THE TRIAL COURT DID NOT NEED PROOF OF REPAYMENT BY VINO TO ROYAL IN ORDER TO DECIDE THE VINO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The Workers' Compensation Act ("WCA"), N.J.S.A. 34:15-1–147, provides that a claim under the WCA is the exclusive remedy for injuries sustained by an employee in an "accident arising out of and in the course of employment." (N.J.S.A. 34:15-8). Under §8, both employers and co-employees are immunized from civil actions by an injured employee. The statute requires employers to carry workers' compensation insurance (N.J.S.A. 34:15-78) or qualify to be self-insured. (N.J.S.A. 34:15-77).

N.J.S.A. 34:15-79, ("Section 79") provides that "any contractor placing work with a subcontractor shall, in the event of the subcontractor's failing to carry workers' compensation insurance as required by this article, become liable for any compensation which may be due an employee or the dependents of a deceased employee of a subcontractor. The contractor shall then have a right of action against the subcontractor for reimbursement." The statute applies to situations in which a general contractor engages a subcontractor to perform some portion of a project for which the general contractor is responsible. "A subcontractor is one who enters into a

contract with a person for the performance of work which such person has already contracted with another to perform. In other words, subcontracting is merely 'farming out' to others all or part of work contracted to be performed by the original contractor." *Brygidyr v. Rieman,* 31 *N.J.Super.* 450, 454 (App.Div.1954).

The plain intent of Section 79 is to ensure that an employee injured while working for a subcontractor who did not carry workers' compensation insurance would receive workers' compensation benefits from the contractor who placed work with the subcontractor. The statute is not directed at any specific industry. It applies to any situation in which a contractor places work it had already contracted to perform with a subcontractor. The unlimited scope of its application makes sense as it is the protection of injured employees that is its goal, no matter what industry they work in.

In the case at bar, the statute worked as it was intended to. Royal, a wine wholesaler, had contracted with various wine retailers in New Jersey to deliver their products to them. Royal subcontracted the deliveries to Vino. When Vino realized it had no workers compensation insurance for its activities in New Jersey in general and specifically for the delivery that resulted in Mr. Lewis' accident and injuries, it tendered Mr. Lewis' workers compensation claim to Royal. Royal submitted the Lewis claim to its workers' compensation carrier, Travelers. Travelers accepted coverage under the statute and paid substantial workers compensation benefits to Mr. Lewis.

Royal's policy with Travelers had a $150,000.00 deductible, which, anticipating Royal's statutory right to subrogate, Vino paid to Royal.

The Plaintiff claims (Pb27), referring to the above payment made by Vino to Royal, that "the lower court erred in granting summary judgment to the Vino defendants because there was no proof of repayment of workers' compensation benefits." He cites no statutory or decisional law that mandates such "proof of repayment." Section 79 certainly does not. Nowhere in his entire brief does the Plaintiff explain *why* such lack of proof (assumably in the form of a cashed check or an affidavit from Royal) was reversable error. This is because proof of payment of a subrogation claim, while possibly relevant to a dispute between Royal or Travelers and the Vino Defendants, has no bearing on the issue of whether Mr. Lewis was an employee of Vino who, having been injured in a work-related accident, received workers' compensation benefits, thus barring the Plaintiff's civil action against Vino.

The Plaintiff's "no proof of repayment of workers' compensation benefits" argument has no basis in New Jersey law or in the facts of this case and should be rejected.

B. THOUGH THE VINO DEFENDANTS DID NOT HAVE WORKERS' COMPENSATION INSURANCE FOR THEIR NEW JERSEY ACTIVITIES AT THE TIME OF PLAINTIFF'S ACCIDENT, THEY COMPLIED WITH THE WORKERS COMPENSATION ACT BY TENDERING PLAINTIFF'S WORKERS' COMPENSATION CLAIM TO ROYAL

The Plaintiff also claims (Pb27) that the lower court erred in granting summary

judgment to the Vino defendants because "the Vino Defendants did not act in accordance with the Workers' Compensation Act as they did not carry New Jersey workers compensation insurance and thus should not be afforded its protections." The record below makes it very clear that the Vino Defendants acknowledged that they did not carry workers' compensation insurance for their New Jersey activities; that they submitted the Plaintiff's workers' compensation claim to Royal; that the Plaintiff's claim was expressly accepted by Royal's workers' compensation carrier, Travelers, pursuant to N.J.S.A. 34:15-79; and that Travelers then paid substantial workers' compensation benefits to the Plaintiff.

Plaintiff seems to be arguing (Pb28) that even though he received workers' compensation benefits, because "representations by both Vino and Royal that Royal was not 'involved' with the delivery on the date of the accident" and because "Royal and Vino have an agreement whereby Vino is reimbursing Royal for workers' compensation benefits, *Vino was lent workers' compensation coverage by Royal without complying with N.J.S.A. 34:15-79."* (Emphasis added). Making this argument more confusing, Plaintiff adds that it is *possible* that "Vino misrepresented critical factual issues before the court when claiming 'Royal was not involved in the delivery on the date of the accident."

The record is clear that, except for the fact that Royal contracted with Vino to make its deliveries, it, Royal, was not "involved" with the delivery on the date of the

accident. There is no record nor any citation to the record by Plaintiff which indicates that either Royal or Vino claimed that Royal was involved in, or connected with, the delivery in any other way.[1] A simple reading of the citations Plaintiff claims support this claim (4T23:2-25:13, Pa253; 3T49:5-9; 2T8:13-16) quickly reveals that they do not in fact even remotely support it.

The Plaintiff claims that because it did not carry workers' compensation insurance, Vino should not be afforded the immunity from civil actions provided by the WCA. This is not correct. An employer's failure to carry workers' compensation insurance, does not constitute an exception to the workers' compensation bar. N.J.S.A. 34:15-120.1(a) establishes a fund (the "Fund") "to provide for the payment of awards against uninsured defaulting employers who fail to provide compensation to employees or their beneficiaries in accordance with the provisions of the workers' compensation law." The Fund is granted a right of subrogation to the extent of any compensation and benefits it pays to an employee. (N.J.S.A. 34:15-120.5).

[1] Perhaps Plaintiff means to claim that Royal was somehow *actively* involved in the delivery in question or *controlled* it in some respect, which, depending on the nature and extent of such activity or control, might be the basis for a third party action against Royal. The record below is devoid of any evidence of active involvement or control by Royal of the delivery. Even if such evidence existed, it would not be a basis for a civil action by Plaintiff against the Vino Defendants, who are immunized from civil suits under the WCA.

The plain language of this section of the WCA leaves no doubt that workers' compensation is the exclusive remedy for an injured employee in cases where the employer does not have workers' compensation insurance.

C. *FOURNIER TRUCKING* DOES NOT, AS PLAINTIFF ARGUES, SUPPORT HIS CLAIM THAT THE TRIAL COURT INCORRECTLY GRANTED SUMMARY JUDGMENT TO THE VINO DEFENDANTS

Plaintiff's reliance on *Fournier Trucking v. N.J. Mfrs. Ins. Co.*, 2020 WL 1802840, DOCKET NO. A-1353-18T2 (App. Div. Apr. 9, 2020) is confusing as that case involved a dispute over premiums between the plaintiff, Fournier Trucking (who described itself as a company that facilitates the transport of goods for shipping companies) and its workers' compensation insurance carrier, New Jersey Manufacturers ("NJM"). One of Fournier's claims was that it hired independent contractors which would limit NJM's exposure under N.J.S.A. 34:15-79. The appellate court, in affirming the trial court's ruling in favor of NJM, made it clear that notwithstanding the nomenclature used by Fournier, NJM was entitled to charge premiums for amounts paid to uninsured subcontractors pursuant to N.J.S.A. 34:15-79.

D. PLAINTIFF'S CLAIM THAT VINO WAS NOT A SUBCONTRACTOR OF ROYAL IS WITHOUT MERIT

Plaintiff contends (Pb30), citing *Mittan v. O'Rourke*, 115 N.J.L. 177 (1935) that, "By Vino denying that Royal had any involvement in the April 6, 2020 delivery, they (sic) demonstrate Vino was not working on anything Royal had 'already contracted

for" and thus do not meet the definition of a subcontractor who can be lent workers' compensation coverage under N.J.S.A. 34:15-79." (Pb31-32) Plaintiff's reliance on *Mittan* is misplaced. *Mittan* is the first in a line of cases that recognize that tradesmen hired by an owner of property are independent contractors and not subcontractors for the purposes of N.J.S.A. 34:15-79. See *Pollack v. Pino's Formal Wear & Tailoring*, 253 N.J.Super. 397 (App. Div. 1992); *Cassano v. Aschoff,* 226 *N.J.Super.* 110, 543 *A.*2d 973 (App.Div.), *certif. denied,* 113 *N.J.* 371, 550 *A.*2d 476 (1988); *Brygidyr v. Rieman,* 31 *N.J.Super.* 450, 107 *A.*2d 59 (App.Div.1954); *Gerber v. Sherman,*120 *N.J.L.* 237, 198 *A.* 762 (Sup.Ct.1938), *aff'd o.b., sub nom. Gerber v. Arrow Construction Co.,* 121 *N.J.L.* 587, 3 *A.*2d 583 (E. & A.1939); *Mittan v. O'Rourke,* 115 *N.J.L.*177, 178 *A.* 797 (Sup.Ct.1935); *Priby v. Lee,* 15 *N.J.Misc.* 292, 191 *A.* 105 (C.P.1936).

Vino and Royal do not have an owner-tradesman relationship. Royal, a wine wholesaler, contracted with its customers to deliver wine products to them. Instead of delivering them themselves, Royal subcontracted the deliveries to Vino. The record is clear that Royal entered into a contract with Vino for the performance of work which Royal has already contracted with another to perform, which constitutes the classic contractor/subcontractor relationship. *Brygidyr,* supra.

This argument is devoid of any legal or factual support and should be rejected.

E. THE PLAINTIFF'S CLAIMS THAT VINO WAS "IMPROPERLY" PROVIDED WITH COVERAGE UNDER THE WCA AND THAT VINO WAS LENT WORKERS COMPENSATION COVERAGE WITHOUT COMPLYING WITH N.J.S.A. 34:15-79 ARE WITHOUT MERIT

1. The Private Agreement Argument

Plaintiff claims that the fact that Vino paid Royal its deductible "raises the question as to why Vino would pay Royal since Travelers is the one who paid the claim and as stated earlier, Defendants claim Royal had no involvement with the delivery that gave rise to the cause of action." (Pb32). Plaintiff calls this payment a "private agreement," but does not explain the significance of characterizing it thus. What is clear is that he ignores the language in Section 79 which gives a contractor (in this case Royal) a right of action against the subcontractor (in this case Vino) for reimbursement.

Plaintiff claims that support for these contentions can be found in 4T23:2-22 and Pa253-254. 4T23:2-22 is the transcript of the trial court's decision granting summary judgment to Vino. Besides being non-evidential, the passage in question has absolutely no relation to Plaintiff's claim that Vino was "improperly" provided with coverage under the WCA and that Vino was lent workers compensation coverage without complying with N.J.S.A. 34:15-79. Neither does Pa253-254, a certification of counsel submitted with Vino's motion for summary judgment that sets forth the relationship between Vino and Royal.

Plaintiff's claim that Vino was "improperly" provided with coverage under the WCA and that Vino was "lent" workers compensation coverage without complying with N.J.S.A. 34:15-79 is devoid of any legal or factual support and should be rejected.

2. The Subrogation Claim/The Claim That Royal "Lent" Vino Workers' Compensation Coverage

Though somewhat confusing, Plaintiff appears to argue that the fact that Travelers is pursuing its subrogation claim is "evidence" that "shows that Vino is making contradictory claims that allow them to receive the benefit of the WCA tort immunity protection, while also providing cover for Royal who apparently lent them workers' compensation coverage without having any connection to the incident beyond wanting to help Vino." (Pb31). Plaintiff does not explain what the "contradictory claims" are or what he means by "cover." He does not explain the significance of the word lent, nor does he cite anything in the record that supports his claim that Royal "lent" coverage to Vino. Neither does he explain why Vino would want to provide "cover" for Royal when Royal has a legal duty to provide workers' compensation coverage to the Plaintiff under Section 79.

These arguments should be rejected. Plaintiff continues to ignore the fact that Travelers has a right to subrogate under Section 79.

3. Allegations That Vino and Royal Misrepresented Themselves as General Contractor and Subcontractor and That Vino "Borrowed" Royal's Workers' Compensation Coverage For a Fee

The Plaintiff claims that there are three scenarios that "contain genuine issues of material fact for which Plaintiff-Appellant is entitled to engage in discovery and should be able to present to a fact finder." (Pb33).

The first of these scenarios is:

(1) Royal really is "merely a customer of Vino Trucking" as they had presented themselves to the Court, there is no contractor and subcontractor relationship between the parties, and thus Vino should not have been able to receive workers' compensation insurance under N.J.S.A. 34:15-79.

Plaintiff does not explain the significance of his use of the word customer, which is defined as "a person or organization that buys goods or services from a store or business." (Oxford Languages, https://languages.oup.com/google-dictionary-en/). He fails to cite anything in the record that remotely suggests that Royal was in fact a customer of Vino. Indeed, the record is clear that the Royal/Vino relationship was one of contractor and subcontractor.

As argued above, the record is clear that Royal entered into a contract with Vino for the performance of work which Royal has already contracted with another to perform, that theirs was a classic contractor/subcontractor relationship. *Brygidyr,* supra

This argument is devoid of any legal or factual support and should be rejected.

(2) Royal and Vino have a private agreement wherein Royal will carry workers' compensation insurance and Vino will knowingly fail to carry insurance due to being covered by the private agreement and will be able to call on that coverage by having Royal represent themselves as a "General Contractor" to their insurance carrier, taking advantage of and abusing the N.J.S.A. 34:15-79 legal mechanism.

Plaintiff does not cite anything in the record to support this allegation of a possible conspiracy between Vino and Royal to "take advantage of" and "abuse" what he calls the N.J.S.A. 34:15-79 legal "mechanism." Plaintiff cites nothing in the record to support this theory, obviously because no such support exists. On the other hand, the record fully supports the conclusion that Vino had workers' compensation coverage for its NY operations for 28 continuous years, that it only learned that it did not have coverage for its New Jersey operations after the Plaintiff's accident, that, in accordance with Section 79, it tendered the Plaintiff's workers' compensation claim to Royal, who tendered it to its carrier, Travelers, who paid full workers' compensation benefits to the Plaintiff.

This "possible" conspiracy argument is devoid of any legal or factual support and should be rejected.

(3) Royal is a general contractor, Vino is a subcontractor of Royal, and Royal did in fact place the delivery which gave rise to this cause of action and that is why they were able to and did provide workers compensation to Plaintiff-Appellant under N.J.S.A. 23:15-79; however, if this is the case, there is an open question as to why the Defendants would make such materially and significantly different representations to the contrary before the Court when arguing their summary judgment motions. (Pa37; Pa253; Pa271; 2T5:15-16). ***Under any of these scenarios there remains genuine issues of material fact that should have precluded***

summary judgment, and the holding of the Superior Court should be reversed. **(Emphasis added).**

A simple reading of the citations Plaintiff claims support this claim (Pa37; Pa253; Pa271; 2T5:15-16) quickly reveals that they do not in fact even remotely support it. This argument is devoid of any legal or factual support and should be rejected.

POINT II

THERE ARE NO GENUINE ISSUES OF DISPUTED MATERIAL FACT AS TO THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PLAINTIFF AND VINO ON THE DAY OF THE PLAINTIFF'S ACCIDENT

Plaintiff' claims, for the first time on appeal, (Pb36) that the trial court erred in granting the Vino Defendants' motion for summary judgment because "genuine issues of disputed material fact remained as to Plaintiff-Appellant's employer." Plaintiff bases this claim of reversable error on the fact that:

1) "no one from Vino authorized Plaintiff-Appellant to work on the subject date;"

2) "Plaintiff-Appellant was not guaranteed compensation on the subject date and was only paid after the fact," and

3) "while Royal paid for Plaintiff-Appellant's workers' compensation benefits, they seem to have done so in violation of the WCA, discrediting any inference of employment that could arise from the fact that Plaintiff-Appellant received compensation benefits."

Plaintiff claims that it is "essential that these questions of material facts be left to a jury to consider." They are, however, not questions. One and two are alleged facts, while three is a legal argument. They are excess and unnecessary verbiage and do not address the question of whether the court below erred in finding that an

employer-employee relationship existed between the Plaintiff and Vino on the day if the accident.

New Jersey has recognized that there is a distinct difference, for the purposes of applying the WCA, between those occupations which are properly characterized as separate enterprises and those which are in fact an integral part of the employer's regular business. Two separate tests have developed to determine whether a person is an employee, that is, an integral part of the employer's business, or an independent contractor, that is, a separate enterprise: (1) the "right to control test" and (2) the "relative nature of the work" test. *Auletta v. Bergen Center for Child Development*, 338 N.J. Super. 464 (App. Div. 2001). The control test is dispositive in situations in which "an employer who has the right to direct the manner in which the business or work shall be done, as well as the results accomplished." *Kertesz v. Korsh*, 296 N.J. Super. 146, 252-53 (App. Div. 1996). "Where the control test is not accepted as the dispositive factor, the focus then turns to the relative nature of the work test in deciding whether plaintiff is an employee or independent contractor." *Kertesz*, supra, 296 N.J. Super. at 154, 686 *A*.2d 368.

Plaintiff contends that Vino does not pass the control test:

1. because David Aharon testified that he did not authorize Plaintiff to be on the truck on the day of the accident; and

2. because Defendant Dicks testified that he neither authorized Plaintiff to be on the truck on the date of the accident, nor did he authorize or ask him to be on the truck;

3. because Mr. Aharon testified that a driver could technically reach out to a helper, but if they were seeking compensation for that helper that would be a problem at the end of the week because I didn't ell him to get one;

4. because Mr. Dicks did not share any of his earnings for the date of the accident with the Plaintiff and never intended to;

5. because Mr. Dicks had no knowledge as to who asked the Plaintiff to be on the truck that day.

These facts are true, but incomplete. What Plaintiff has left out, and does not contest, is the fact that Mr. Aharon, who did not know that the Plaintiff was working as a helper on the day of the accident, but that, when he learned of the accident and that Mr. Lewis was working and had been injured, paid Mr. Lewis' wages for the day. (1T50:20-51:19).

More important than this omitted fact is the lack of argument by Plaintiff as to how the above facts are relevant to the question of whether on the day of the accident Vino had the right to direct "the manner in which the business or work was to be done, as well as the results that were to accomplished." (*Kertesz*, supra.). This lack of argument is tantamount to a concession by Plaintiff that indeed, Vino, by directing Mr.

Dicks to pick up a truck at the Royal warehouse and to deliver to a pre-prepared list of stores, directed "the manner in which the business or work was to be done, as well as the results that were to accomplished." (*Kertesz*, supra.). Plaintiff offers no evidence that would suggest that Mr. Dicks was free to deviate from making the pre-listed deliveries or that he or the Plaintiff in fact had any independent control over what they did to make those deliveries.

In light of the foregoing, the "relative nature of the work test" is irrelevant. Plaintiff, however, contends that because "Plaintiff-Appellant was not scheduled to work, his contributions on the truck could not have been integral to Vino." Plaintiff does not say why this scheduling failure somehow erased the actual work that he did on the day of the accident. More significant, Plaintiff again conveniently ignores the fact that Mr. Aharon, when he learned that the Plaintiff was working as a helper on the day of the accident, paid Mr. Lewis' wages for the day. (1T50:20-51:19).

The record is clear that *no* genuine issues as to the material facts that establish that Vino was the Plaintiff's employer and he was their employee at the time of the accident exist.

POINT III

NO GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO PLAINTIFF'S STATUS AS A REGULAR EMPLOYEE OF VINO

The heading of POINT IIIA (Pb42) of Plaintiff's brief is as follows:

> **IF ANYTHING, PLAINTIFF-APPELLANT WAS WORKING AS A CASUAL EMPLOYEE FOR VINO ON THE SUBJECT DATE, AND THERE IS SUFFICIENT EVIDENCE LEFT FOR A JURY TO CONCLUDE THAT PLAINTIFF-APPELLANT SHOULD NOT BE BARRED FROM PURSUING CIVIL REMEDIES UNDER THE ACT (4T14:18-15:8)**

4T14:18-15:8 is a portion of the trial court's decision granting Vino's motion for summary judgment. It is of course not evidentiary. More significant, although the term casual employment is mentioned, Judge Scoca did not find that the plaintiff was a casual employee. She found the exact opposite.

The WCA, in its Definitions Section, expressly provides that persons engaged in "casual employments" are not employees entitled to workers' compensation. N.J.S.A. 34:15-36 contains the definition of casual employments:

> **34:15-36 Definitions.**
>
> 34:15-36. "Willful negligence" within the intent of this chapter shall consist of (1) deliberate act or deliberate failure to act, or (2) such conduct as evidences reckless indifference to safety, or (3) intoxication, operating as the proximate cause of injury, or (4) unlawful use of a controlled dangerous substance as defined in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226

(C.24:21-1 et seq.).

"Employer" is declared to be synonymous with master, and includes natural persons, partnerships, and corporations; *"employee" is synonymous with servant, and includes all natural persons, including officers of corporations, who perform service for an employer for financial consideration,* exclusive of (1) employees eligible under the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat.1424 (33 U.S.C. s.901 et seq.), for benefits payable with respect to accidental death or injury, or occupational disease or infection; and *(2) casual employments, which shall be defined, if in connection with the employer's business, as employment the occasion for which arises by chance or is purely accidental; or if not in connection with any business of the employer, as employment not regular, periodic or recurring; provided, however, that forest fire wardens and forest firefighters employed by the State of New Jersey shall, in no event, be deemed casual employees.* (Emphases added).

In addition to the bewildering reference to the above decision transcript, Plaintiff claims that fact issues remain as to "how Plaintiff came to work on the truck on the day of the accident and by what means he would be compensated." He argues that a jury should be left to consider whether he was working for Vino "under the guise" of a casual employee, that is, as defined by Section 36 (2) not "regular, periodic and recurring." He identifies the following reasons why the issue of whether he was a casual or a regular employee is a genuine issue of material fact:

1. because he was hired on as "as needed basis, most often working Tuesday through Friday in his limited time with the company;"

2. because "no one from Vino or Defendant Dicks authorized him to work that day;" and

3. because there was no guarantee or agreement the Plaintiff-Appellant was going to be compensated by Vino.

4. because there is a question as to how Plaintiff-Appellant came to work on the truck that day and by what means he would be compensated.

The Vino Defendants again add the pivotal fact that when David Aharon learned of the accident, and that Mr. Lewis was working and had been injured, he paid Mr. Lewis' wages for the day. (1T50:20-51:19).

In any event, none of the above facts are relevant to the issue of whether the Plaintiff was a casual, as opposed to a regular employee. Casual employment, for which an injured worker is not entitled to workers' compensation benefits, is described as connoting a relationship relatively brief and passing, coming without regularity. *Berkeyheiser v. Woolf*, 71 N.J. Super. 171 (App. Div. 1961). Plaintiff does not claim that his relationship with Vino was "relatively brief and passing or coming without regularity." How can he when the record is clear that he was hired as a helper and worked regularly four days per week prior to his accident? How can he when what he did as a helper was a part of Vino's ordinary business of making deliveries for Royal?

Employment under the WCA is regular when it is steady and permanent for more than a single piece of work; recurring, when the work is to be performed at some future time by the same party, without further engagement; and periodic, when the work is to be performed at stated intervals, without further engagement. *Forrester v. Erickson*, 107 N.J.L. 156 (E. & A. 1930); *Gildrear v. Charles*, 11 N.J. Super. 523 (App. Div. 1951).

Plaintiff cannot and does not even try to deny that he was a regular employee. Instead, he relies on irrelevant facts and blithely claims, without supporting citation to the record, that "Plaintiff-Appellant was working as a casual employee for Vino on the subject date, and there is sufficient evidence left for a jury to conclude that Plaintiff-Appellant Should not be barred from pursuing civil remedies under the act."

The record is clear that at the time of the accident the Plaintiff was a regular employee of Vino, and that Plaintiff's claim that there is a genuine issue of material fact as to whether he was a casual employee should therefore be rejected.

POINT IV

PLAINTIFF HAS RAISED ISSUES ON APPEAL THAT WERE NOT RAISED BELOW

Interspersed throughout Plaintiff's brief are issues that he did not raise below. These are:

1. That Vino's representation that the job on which Plaintiff-Appellant was injured was not connected to any contractual work given to Vino by Royal should have precluded Vino from receiving workers' compensation coverage and tort immunity under N.J.S.A. 34:15-79 of the WCA. (Pb29);

2. That "By Vino denying that Royal had any involvement in the April 6, 2020 delivery, they (sic) demonstrate Vino was not working on anything Royal had 'already contracted for" and thus do not meet the definition of a subcontractor who can be lent workers' compensation coverage under N.J.S.A. 34:15-79." (Pb30);

3. That there is no contractor/subcontractor relationship between Royal and Vino. (Pb30,31);

4. That there is a "possibility" that "Vino and Royal misrepresented themselves as general contractor and subcontractor to Travelers and had struck an agreement between themselves wherein Vino was able to borrow Royal's workers' compensation insurance for a fee, avoiding the premium payment that would be demanded from a proper insurer," resulting in the improper grant of workers' compensation coverage by Royal (Plaintiff's Br 33);

5. That "Vino's representations that they are a subcontractor and immune from tort suit under N.J.S.A. 34:15-79 and yet simultaneously deny that Royal had any involvement and thus could not have maintained a general and subcontractor relationship during the subject delivery raises a genuine issue of material fact and law as to whether Vino was properly granted workers' compensation coverage and immunity for tort suits under the WCA." (Pb33, 34).

6. That genuine issues of disputed material fact remain as to Plaintiff's employer. (Pb36);

7. That Plaintiff "was working as a casual employee for Vino on the subject date and there is sufficient evidence to be left for a reasonable jury to conclude that Plaintiff-Appellant should not be barred from pursuing civil remedies under the act." (Pb42).

Plaintiff has neither acknowledged that the above issues were not raised below, nor offered any jurisdictional or substantial public interest reasons as to why they should be considered on appeal. See *Nieder v. Royal Indemnity Ins. Co.*, 62 N.J. 229, 234 (1973); *Community Hospital Group v, Blume Goldfadden Berkowitz Donnelly Fried & Forte,* 381 N.J. Super. 119 (App. Div. 2005). Though, as demonstrated, *supra,* none of them have merit, they should nevertheless not be considered.

CONCLUSION

For all of the foregoing factual and legal reasons, the Defendants, Vino Trucking Corp., Vino Trucking and David Aharon request the trial court's grant of summary judgment to them be affirmed.

LePORE ♦ LUIZZI, LLC
Attorneys for Defendants, Vino Trucking, Vino's Trucking Corp., David Aharon and Isaiah Dicks

By: _____
JOSEPH G. LePORE, ESQ.

Dated: October 30, 2024

Superior Court of New Jersey

Appellate Division

Docket No. A-002781-23

AL-JAQUAN LEWIS, *Plaintiff-Appellant,* vs. ISAIAH M. DICKS, RYDER TRUCK RENTAL, INC. and/or ABC CORP. (a fictitious entity), MIRANDA MICHEL and/or "JANE DOE" (a fictitious name), SOUTHERN GLAZERS, INC., SOUTHERN GLAZERS 1, LLC, SOUTHERN GLAZER'S LEASING, LLC, SOUTHERN GLAZER'S WINE AND SPIRITS OF NEW JERSEY, LLC, VINO TRUCKING, VINO'S TRUCKING CORP., ROYAL WINE CORPORATION, LEGEND SPIRITS, LLC, DAVID AHARON, "RICHARD ROE" (a fictitious name), and DEF-GHI CORP. (a series of fictitious entities), *Defendants-Respondents.*	CIVIL ACTION ON APPEAL FROM AN ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, ESSEX COUNTY Docket No.: ESX-L-1718-22 Sat Below: HON. ANNETTE SCOCA, J.S.C.

BRIEF FOR DEFENDANT-RESPONDENT ROYAL WINE CORPORATION

LAW OFFICES OF JAMES H. ROHLFING
Attorneys for Defendant-Respondent Royal Wine Corporation
445 South Street, Suite 200
Morristown, New Jersey 07960
(973) 631-7358
nappel@travelers.com

On the Brief:
NANCY B. APPEL, ESQ.
Attorney ID# 005211989

Date Submitted: October 30, 2024

CP COUNSEL PRESS (800) 4-APPEAL • (332984)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

PROCEDURAL HISTORY 1

RESPONSE TO PLAINTIFF/APPELLANT'S STATEMENT OF FACTS 2

COUNTER-STATEMENT OF FACTS 3

LEGAL ARGUMENT 6

I. UPON DE NOVO REVIEW, THE APPELLATE COURT SHOULD FIND THAT THE TRIAL JUDGE DID NOT ERR IN FINDING NO DUTY AND THEREFORE NO NEGLIGENCE ON THE PART OF ROYAL WINE CORPORATION. 6

A. THE TRIAL JUDGE PROPERLY REVIEWED THE EVIDENCE IN THE RECORD AND FOUND NO DUTY OWED BY ROYAL WINE CORPORATION GIVEN THE LACK OF OWNERSHIP OF THE VEHICLE PLAINTIFF/APPELLANT WAS A PASSENGER IN, AND LACK OF AGENCY RELATIONSHIP BETWEEN THE DRIVER AND ROYAL WINE CORPORATION 6

B. PLAINTIFF/APPELLANT COULD HAVE TAKEN ADDITIONAL DEPOSITIONS TO DETERMINE THE POTENTIAL STATUS AS A GENERAL CONTRACTOR WHILE ROYAL WINE CORPORATION'S MOTION FOR SUMMARY JUDGMENT WAS PENDING OR COULD HAVE FILED A MOTION FOR RECONSIDERATION AND REQUESTED ADDITIONAL TIME FOR DISCOVERY 8

C. EVEN IF PLAINTIFF-APPELLANT HAD TAKEN THE ADDITIONAL DEPOSITION OR DEPOSITIONS, THERE IS NO

EVIDENCE THAT THE RESULT WOULD CHANGE 11

II. IF VINO TRUCKING CORPORATION IS FOUND NOT TO BE ENTITLED TO THE WORKERS' COMPENSATION BAR, OUT OF FAIRNESS ROYAL WINE CORPORATION SHOULD REAP THE BENEFITS OF THE WORKERS' COMPENSATION BAR AS IT PROVIDED WORKERS' COMPENSATION BENEFITS 14

CONCLUSION 16

TABLE OF AUTHORITIES

Page(s)

Cases:

C.H. by Cummings v. Rahway Bd. of Educ.,
459 N.J. Super. 236 (App. Div. 2018) 6

Iarranpino v. Reszkowski,
No. A-1336-02T3, 2003 WL 23281566 (N.J. Super. Ct. App. Div. Oct. 7, 2003) 7

Kelly v. Geriatric & Med. Servs., Inc.,
287 N.J. Super. 567 (App. Div. 1996) 14, 15

Murin v. Frapaul Const. Co.,
240 N.J. Super. 600 (App. Div. 1990) 15

Scott v. Salerno,
297 N.J. Super. 437 (App. Div. 1997) 7, 9

Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co.,
224 N.J. 189 (2016) 6

Wallach v. Williams,
52 N.J. 504 (1968) 7

Whitfield v. Bonanno Real Est. Grp.,
419 N.J. Super. 547 (App. Div. 2011) 15

Statutes & Other Authorities:

N.J.S.A. § 34:15–8 15

R. 1:13-1 10

R. 4:49-2 10

PROCEDURAL HISTORY

The within matter arises from a motor vehicle accident that occurred on April 6, 2020, on Grove Street in Montclair, New Jersey involving a vehicle owned by Ryder Truck Rental, hereafter "Ryder", and operated by Isaiah M. Dicks, and a vehicle operated by Miranda Michel. Plaintiff/Appellant was a passenger in the Ryder vehicle. (Pa40-Pa41).

At the time of the subject accident, Mr. Dicks was operating the Ryder truck on behalf of Defendant/Appellant Vino Trucking Corporation, hereafter "Vino", a trucking company that was delivering Royal Wine Corporation, hereafter "Royal", products and Southern Glazier products to Vino's customers. Royal was not present at the time of the accident. (Pa40-Pa41; Pa43-Pa51; Pa293-Pa294).

This personal injury action was instituted by the filing of a Complaint on March 16, 2022. (Pa7-Pa18). An Amended Complaint was filed on March 24, 2022. (Pa19-Pa29). On June 23, 2023, Summary Judgment was entered in favor of Royal. (Pa1-Pa2). Plaintiff/Appellant never filed a Motion for Reconsideration of the Order entering Summary Judgment in favor of Royal.

A Motion for Summary Judgment was filed on behalf of Vino on July 27, 2023, based upon the workers' compensation bar, which was granted on October 13, 2023. (Pa3-Pa4; Pa248-Pa297). Plaintiff/Appellant thereafter filed a Motion for Reconsideration as to the entry of Summary Judgment in favor of Vino which was denied on April 26, 2024. (Pa420-Pa430; Pa5-Pa6). Plaintiff/Appellant now appeals the entry of Summary Judgment in favor of Royal and Vino.

RESPONSE TO PLAINTIFF/APPELLANT'S STATEMENT OF FACTS

Royal admits to the first paragraph of Plaintiff/Appellant's Statement of Facts, that is that at the time of the accident Plaintiff/Appellant was a passenger in a commercial van involved operated by Defendant Dicks (Pa40-41); that the van was being operated for Defendant Vino, a trucking company that was delivering alcoholic products (Pa293-Pa294); that Vino was owned and operated by Shmuel and David Aharon (1T14:7-13; 1T15:18-20); and that the vehicle was garaged in a facility owned and operated by Royal (Pa293). Royal is not responding to all other facts asserted by Plaintiff/Appellant

which relate to his appeal of the entry of Summary Judgment in favor of Vino.

COUNTER-STATEMENT OF FACTS

On April 6, 2020, Plaintiff/Appellant Al Jaquan Lewis was involved in a motor vehicle accident in Montclair, NJ. (Pa20-21). He was a passenger in a rental truck at the time that was operated by Defendant Isaiah Dicks. (Pa40). Royal was not the owner of the truck that was operated by Mr. Dicks on the date of loss. (Pa40-Pa41; Pa48 responses 1 through 5). Defendant Mr. Dicks, the driver of the Ryder truck, was not an employee of Royal on the date of the loss. (Pa48 response 4). Plaintiff/Appellant was also not an employee of Royal on the date of the loss. (Pa225 Vino's response number 3 to Plaintiff's Request for Admissions).

Plaintiff/Appellant worked on an "as needed" basis for Vino as a "helper" and was paid off-the books in cash. (Pa293-Pa294; Pa225 Vino's response number 3 to Plaintiff's Request for Admissions). Plaintiff/Appellant provided a signed Affidavit certifying that he was employed as an assistant on the subject box truck and his supervisor was David Aharon. (Pa293-Pa294). David Aharon, the owner of Vino, testified that he hired Plaintiff/Appellant Al-Jaquan Lewis, and that he

considered him to be an employee of Vino Trucking on April 6, 2020. (Pa281-Pa282; Pa285-Pa286).

The Ryder vehicle was rented, and Vino was the insured listed on the Certificate of Liability Insurance pertaining to the Ryder truck operated by Mr. Dicks on the date of the loss. (Pa200-Pa201; Pa203) On the date of the subject accident, Royal was merely a customer of Vino. (2T at T5:12-16; 2T at T12:5-7; Pa293-Pa294). On the date of the accident, Mr. Dicks and Plaintiff/Appellant were transporting goods belonging to Royal and Southern Glazier to Vino Customers at the request of and by Vino. (Pa226 response 12; Pa293-Pa294). Mr. David Aharon testified that he paid Plaintiff/Appellant Al-Jaquan Lewis for the deliveries he made for Vino on April 6, 2020. (Pa289-Pa290). Mr. David Aharon testified that Royal did not control or supervise Mr. Lewis or Mr. Dicks on April 6, 2020, the date of the accident, (Pa283), and that Royal did not train Mr. Dicks or Mr. Lewis on how to do their respective jobs. (Pa283). According to Royal's December 9, 2022 Response to Plaintiff's Supplemental Notice to Produce, Royal had no knowledge of the items that were on the truck in question on the date of the accident. (Pa229-Pa230 response 4). The record reflects that there was no contract

entered into between Vino and Royal prior to the accident of April 6, 2020.

Plaintiff/Appellant never conducted the deposition of a representative of Royal either prior to, or after the filing of the Motion for Summary Judgment filed by Royal. Plaintiff/Appellant never filed a Motion for Reconsideration of the entry of Summary Judgment in favor of Royal.

Plaintiff/Appellant filed an employee claim petition stating that his employer was Vino and that he reported his injuries to David Aharon, the owner of Vino. (Pa268-Pa269). Ultimately, as Vino did not maintain workers' compensation insurance, Plaintiff/Appellant was paid workers' compensation benefits by Travelers, Royal's workers' compensation carrier. (See Pa190; Pa274).

LEGAL ARGUMENT

I. UPON DE NOVO REVIEW, THE APPELLATE COURT SHOULD FIND THAT THE TRIAL JUDGE DID NOT ERR IN FINDING NO DUTY AND THEREFORE NO NEGLIGENCE ON THE PART OF ROYAL WINE CORPORATION

A. THE TRIAL JUDGE PROPERLY REVIEWED THE EVIDENCE IN THE RECORD AND FOUND NO DUTY OWED BY ROYAL WINE CORPORATION GIVEN THE LACK OF OWNERSHIP OF THE VEHICLE PLAINTIFF/APPELLANT WAS A PASSENGER IN, AND LACK OF AGENCY RELATIONSHIP BETWEEN THE DRIVER AND ROYAL WINE CORPORATION

The Appellate Division conducts a de novo review of an Order granting Summary Judgment and applies the same standard as the trial court. C.H. by Cummings v. Rahway Bd. of Educ., 459 N.J. Super. 236, 242 (App. Div. 2018). The Appellate Division determines "whether the moving party has demonstrated that there are no genuine disputes as to material facts and, if so, whether the facts, viewed in the light most favorable to the non-moving party, entitle the moving party to a judgment as a matter of law." Id. at 242. An appellate court "review[s] the trial court's grant of summary judgment de novo under the same standard as the trial court." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016)."

"Our standard of review on appeal from the disposition of a summary judgment motion is the same as the trial court's, namely, a determination of whether the party opposing the motion, according that party the facts and inferences most favorable to her, has demonstrated on the motion record a sufficient prima facie showing to require the action to go to trial." Iarranpino v. Reszkowski, No. A-1336-02T3, 2003 WL 23281566, at *1 (N.J. Super. Ct. App. Div. Oct. 7, 2003). The law is clear that "Appellate review is confined to the record made in the trial court." Scott v. Salerno, 297 N.J. Super. 437, 447 (App. Div. 1997); Wallach v. Williams, 52 N.J. 504, 505 (1968). In that regard, the Appellate Court should not consider Plaintiff/Appellant's contention that Royal claimed to Travelers that they were a general contractor on the day of the accident to get worker's compensation benefits.

As noted by the Trial Court, the record at time Royal was granted Summary Judgment established that Royal did not own the vehicle involved in the accident and that there was no agency or employment relationship vis-vis Royal and Mr. Dicks. (See Pa40-41; Pa48; 2T at T14:22-25 and T15:1-2). The trial Court properly found, based upon the evidence presented and in the record at the time the Motion for Summary Judgment was heard, that there was no issue of material fact in dispute

and that Royal could not be found liable for the subject accident. (See 2T at T14:22-25; T15-T17). The Court specifically addressed and rejected the contention that Royal allowed Vino to park its truck at Royal's facility or that Vino was delivering Royal's goods would have any bearing on Royal's liability in this matter, or that it would alter the fact that Royal did not own the Ryder truck or employ or have an agency relationship with Mr. Dicks. (See 2T at T16:23-25; T17:1-12).

B. PLAINTIFF/APPELLANT COULD HAVE TAKEN ADDITIONAL DEPOSITIONS TO DETERMINE THE POTENTIAL STATUS AS A GENERAL CONTRACTOR WHILE ROYAL WINE CORPORATION'S MOTION FOR SUMMARY JUDGMENT WAS PENDING OR COULD HAVE FILED A MOTION FOR RECONSIDERATION AND REQUESTED ADDITIONAL TIME FOR DISCOVERY

Plaintiff-Appellant argues that Royal has a "potential status" as a general contractor for Vino in this matter which he claims would have a bearing on Royal's liability for the accident. He clearly did not establish that during discovery, and he had an avenue of recourse while Royal's Motion for Summary Judgment was pending to determine Royal's status. The fact is that Royal was not even noticed for deposition at the time of the court hearing. (See 2T at 11:20-24). With respect to the alleged

status as a general contractor, Plaintiff/Appellant claims that there is a genuine dispute of material fact as to whether or not Defendant Royal was involved in or exercised control over the delivery which led to Plaintiff's injuries. He did not, however, articulate even one fact in dispute, and the facts in the record are to the contrary. The evidence presented was that Royal had no knowledge of the goods being transported. (Pa229-Pa230 response 4).

The Appellate Division has found that a case is ripe for summary judgment when there is a reasonable opportunity from the time a Complaint is filed until the time opposition to a summary judgment motion is due, to proceed with discovery to determine the identity of an employer. Scott v. Salerno, 297 N.J. Super. 437, 448 (App. Div. 1997).

Royal filed a motion for Summary Judgment on April 3, 2023. (Pa30-Pa62). The motion for Summary Judgment was originally returnable on May 12, 2023. On June 23, 2023, the Court granted Summary Judgment in favor of Defendant Royal dismissing any and all claims and crossclaims against Royal with prejudice. (Pa1-Pa2). At the time of the June 23, 2023 Order, the case was ripe for Summary Judgment because Plaintiff had a reasonable opportunity from the date the Complaint was filed on March 16, 2022 until the opposition to our

Summary Judgment motion was due, which was over a year later, to proceed with discovery to determine if he needed any additional employment information. Plaintiff-Appellant could have taken the additional deposition or depositions to learn more about Royal's "potential status" as a general contractor from April 3, 2023(the filing of Royal's Motion for Summary Judgment) until the time Plaintiff's Opposition to same was due. In addition, Plaintiff/Appellant could have filed a Motion for Reconsideration pursuant to New Jersey Court Rule 4:49-2 and requested the additional time.

"Except as otherwise provided by R. 1:13-1 (clerical errors), a motion for rehearing or reconsideration seeking to alter or amend a judgment or final order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or final order sought to be reconsidered and a copy of the court's corresponding written opinion, if any." In this case, Plaintiff/Appellant defended the motion for summary

judgment, but failed to file a Motion for Reconsideration or to request time to take a deposition.

C. EVEN IF PLAINTIFF-APPELLANT HAD TAKEN THE ADDITIONAL DEPOSITION OR DEPOSITIONS, THERE IS NO EVIDENCE THAT THE RESULT WOULD CHANGE

Even if Plaintiff-Appellant had taken the additional depositions, there is no evidence that the result would change. Plaintiff himself stated he was employed by Vino Trucking Corp. and that his supervisor at the time of this incident was David Aharon, the owner of Vino. During discovery, prior to the filing of Royal's Motion for Summary Judgment, Plaintiff/Appellant provided a signed Affidavit certifying that he was employed as an assistant on the subject box truck and his supervisor was David Aharon. (Pa293-Pa294). This further confirms that Plaintiff/Appellant's employer was Vino, not Royal. Plaintiff/Appellant filed an employee claim petition stating that his employer was Vino and that he reported his injuries to David Aharon, the owner of Vino. (Pa268-Pa269). In addition, Royal was not present the date of the accident. (See Royal Wine Corp.'s Form C and C(1) Answers to Interrogatories response 2 to Form C Interrogatories at Pa44). Defendant

Royal stated it did not own, operate, or control the vehicle involved in the accident, and that there was no agency relationship with Mr. Dick, the driver of the vehicle involved in the accident. (See Royal Wine Corp.'s Form C(1) Answers to Interrogatories nos. 1 through 5 at Pa48).

At oral argument conducted on June 23, 2023, it was asserted on behalf of Royal that with further discovery nothing is going to change because Royal is still not the owner of the vehicle, and Royal does not employ Mr. Dicks (the driver that caused the incident while Plaintiff was a passenger in that vehicle). (See 2T at T11-12). The trial court agreed and found "no genuine issue of material fact exists as there is no indication that there is an agency relationship or employment between Royal and the involved parties." (See 2T at T14:22-25 and T15:1-2).

Rather, the evidence shows that Mr. Dicks was operating the vehicle while working as a "helper" for Vino. (Pa293-Pa294; Pa225 Vino's response number 3 to Plaintiff's Request for Admissions). Vino was in fact the insured on the Certificate of Liability Insurance for the subject vehicle Plaintiff/Appellant was a passenger in the date of this incident. (Pa203). There was no contract in effect between Vino and Royal prior to the date of loss (Pa233-Pa235). The goods were being transported at the request of Vino, and Royal had no knowledge of the

items that were on the truck (Pa226 response 12; Pa229-Pa230 response 4).

At oral argument on June 23, 2023, the trial court was aware that all depositions had not been taken and still found that Plaintiff fell short of showing how Defendant Royal could potentially share any fault. (See 2T at T15:24-25; T16-T17). The Court found that opposing counsel failed to show how additional evidence, if any, would allow a rational fact-finder to see a duty owed by Royal to Plaintiff. (See 2T at T15:24-25; T16:1-9).

Whether there were goods belonging to Royal Wine in the vehicle Defendant Isaiah Dicks was operating at the time of this incident is irrelevant. In that regard, Royal is not in any different position than Southern Glazier, another Defendant in this matter who was given a voluntary dismissal.

Simply, Royal did not own, operate, or control a vehicle involved in the accident and there was no agency relationship between Royal and Mr. Dicks. (See Royal Wine Corp.'s Form C(1) Answers to Interrogatories nos. 1 through 5 at Pa48). It is therefore respectfully requested that the trial court's decision granting Royal Summary Judgment be affirmed.

II. IF VINO TRUCKING CORPORATION IS FOUND NOT TO BE ENTITLED TO THE WORKERS' COMPENSATION BAR, OUT OF FAIRNESS ROYAL WINE CORPORATION SHOULD REAP THE BENEFITS OF THE WORKERS' COMPENSATION BAR AS IT PROVIDED WORKERS' COMPENSATION BENEFITS

As set forth above, Royal asserts that the evidence clearly demonstrates that neither Mr. Dicks nor Plaintiff were an employee of Royal and that no agency relationship existed between Mr. Dicks and Royal. However, it stands to reason that if the Appellate Division accepts the argument of Plaintiff/Appellant with respect to Plaintiff/Appellant's appeal as to Vino that Vino should not be entitled to the Workers' Compensation bar, out of fairness Royal should. It is undisputed that Vino did not maintain workers' compensation insurance or pay workers' compensation benefits. Accordingly, Royal should be entitled to the workers' compensation bar, out of fairness, as it did provide Plaintiff/Appellant with workers' compensation benefits.

The New Jersey Workers' Compensation Act "allows an employee, for the purpose of workers' compensation to have two employers, both of whom may be liable in [workers'] compensation." Kelly v. Geriatric & Med. Servs., Inc., 287 N.J. Super. 567, 573 (App.

Div. 1996). "In such circumstances, the right to recover workers' compensation benefits serves to bar the employee from maintaining a tort action against either employer. Id. By agreeing to the statutory scheme, "the parties ... [surrender] their rights to any other method, form or amount of compensation", immunizing the employer and co-employees of the injured worker "except for intentional wrongs." *N.J.S.A.* §34:15–8; Whitfield v. Bonanno Real Est. Grp., 419 N.J. Super. 547, 553 (App. Div. 2011). "Under workers' compensation, there can be no liability absent a contract of hire between the employee and the borrowing employer. A contract of hire is essential." Murin v. Frapaul Const. Co., 240 N.J. Super. 600, 608 (App. Div. 1990).

In the present case, it is undisputed that Vino did not carry workers' compensation insurance, and that Plaintiff/Appellant was paid workers' compensation benefits by Travelers, Royal's workers' compensation carrier, and benefitted from same. (See Pa190; Pa274). Plaintiff should not receive a double recovery windfall. Based on the foregoing, if it is determined that Vino is not entitled to the Workers' Compensation bar, even though not Plaintiff/Appellant's employer, out of fairness Royal should be entitled to the protections of the Workers'

Compensation Act and Plaintiff/Appellant's liability claim against Royal should be barred by the Workers' Compensation Bar.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the trial court property granted summary judgment in favor of Respondent/Defendant Royal Wine Corporation and that the ruling of the trial court should be upheld.

LAW OFFICES OF JAMES H. ROHLFING
Attorneys for Respondent/Defendant
Royal Wine Corporation

By: /s/ Nancy B. Appel
Nancy B. Appel, Esq.

Dated: October 30, 2024

ATTORNEYS AT LAW

JOHN M. BLUME
(1932-2020)
CAROL L. FORTE ♦
MICHAEL B. ZERRES ♦
JOHN E. MOLINARI ♦
MITCHELL J. MAKOWICZ, JR. ♦
JEFFREY J. ZENNA ♦
KENNETH W. ELWOOD ♦
HARRIS S. FELDMAN ♦
RICHARD J. VILLANOVA ♦
NORBERTO A. GARCIA ♦
ABRAHAM N. MILGRAUM
ROBIN A. DONATO
CONNOR C. TURPAN
BRIAN M. RIEHL
RICHARD T. MADURSKI
TERRENCE J. HULL

OF COUNSEL
RONALD P. GOLDFADEN
CYNTHIA M. CRAIG
BRIAN E. MAHONEY
DAVID M. FRIED ♦
FREDERICK D. MICELI ♦

♦ Certified by the Supreme Court of New Jersey as a Civil Trial Attorney

BLUME FORTE FRIED ZERRES & MOLINARI
A PROFESSIONAL CORPORATION

ONE MAIN STREET
CHATHAM, NJ 07928-0924

WWW.NJATTY.COM

(973) 635-5400
FAX: (973) 635-9339

OTHER OFFICES:
JERSEY CITY, NJ
NORTH BERGEN, NJ
SEA GIRT, NJ

November 25, 2024

Via *eCourts Appellate*
Joseph H. Orlando, Clerk of the Appellate Division
New Jersey Superior Court, Appellate Division
25 Market St., PO Box 006
Trenton, New Jersey 08625

RE: Al-Jaquan Lewis v. Isaiah M. Dicks, et al.
Appellate Docket No.: A-002781-23
Trial Court Docket No.: ESX-L-1718-22
On appeal from the Superior Court of New Jersey, Law Division
Sat Below: Hon. Annette Scoca, J.S.C.

Dear Mr. Orlando:

This office represents Plaintiff-Appellant in the above-captioned matter. Defendant-Respondents filed response briefs to Plaintiff's Appeal in this matter. Please accept this letter brief on behalf of Plaintiff in reply to Defendants' response briefs.

TABLE OF CONTENTS

LEGAL ARGUMENT 3

POINT I. THERE REMAINS GENUINE ISSUES OF DISPUTED MATERIAL FACT AS TO THE RELATIONSHIP BETWEEN ROYAL WINE AND VINO 3

Point A: Defendants Give Contradictory Accounts As To Whether There Was A Contract In Place Between Royal and Vino On the Day Of The Accident For Vino To Perform Work Royal Had Already Contracted To Perform (Isaiah Dicks "I" Db14; Vino "V" Db6; Royal "R" Db4-5). 4

POINT II. 8

POINT III. 10

POINT IV. THERE REMAINS GENUINE ISSUES OF MATERIAL FACT REGARDING WHETHER PLAINTIFF-APPELLANT WAS PROPERLY CONSIDERED AN EMPLOYEE OF VINO 12

POINT V. THE GENUINE DISPUTES OF MATERIAL FACT IN THIS MATTER SHOULD HAVE PRECLUDED THE DEFENDANTS FROM BEING GRANTED SUMMARY JUDGMENT 13

CONCLUSION 15

ARGUMENT

POINT I: THERE REMAINS GENUINE ISSUES OF DISPUTED MATERIAL FACT AS TO THE RELATIONSHIP BETWEEN ROYAL WINE AND VINO

Plaintiff relies on his Statement of Facts and Procedural History as filed in his original brief (Pb4-14). This brief will address the genuine disputes of material fact, arising largely out of Defendants' own representations, on matters dispositive to Plaintiff-Appellant's cause of action. These disputes demonstrate that the grant of summary judgment to Defendants was premature and erroneous.

There remains genuine disputes of material fact with regard to: (1) whether Royal and Vino entered into a contract, express or implied, and thus maintained a general contractor/subcontractor relationship; (2) whether Royal had involvement in the delivery that gave rise to Plaintiff-Appellant's injuries; (3) whether Vino complied with N.J.S.A. 34:15-79 and properly received the protection of the workers' compensation bar, and; (4) whether Plaintiff-Appellant was an employee of Vino.

Motions for summary judgment may only be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the Affidavits, if any, show that there is no issue as to any material fact challenged and that the moving party is entitled to judgment or order as a matter of law." R. 4:46-2;

Brill v. Guardian Life Ins. Co., 142 N.J. 520, 528-29 (1995). The Defendants provide multiple, directly conflicting, representations of the material facts that should have precluded the lower Court from granting summary judgment.

A. Defendants Give Contradictory Accounts as to Whether There Was a Contract in Place Between Royal and Vino on the Day of the Accident for Vino to Carry Out Work Royal Had Already Contracted to Perform. (Isaiah Dicks "I" Db14; Vino "V" Db6; Royal "R" Db4-5)

Defendants Isaiah Dicks and Vino ("Vino Defendants"), claim "[t]he undisputed material evidence in this case supports the position that at the time of the accident, Royal Wine and Vino had a general contractor and subcontractor relationship." (Isaiah Dicks "I" Db14; Vino "V" Db6). The Vino Defendants' alleged "undisputed material evidence" that "supports the position" is their claim that Royal and Vino entered into a contract for Vino to deliver goods in furtherance of a general contract Royal maintained with third parties. (IDb14; VDb15; VDb18). This contractual arrangement between Royal and Vino is explained to "constitute[] the classic contractor/subcontractor relationship." (VDb15). Both Vino Defendants cite a multitude of case law, but highlight Brygidyr v. Reiman to support the well-established legal principle that a subcontractor is one "who enters into a contract with a person for the performance of work which such person has already contracted with another to perform." Brygidyr, 31 N.J. Super. 450, 453-54 (App. Div. 1954); (IDb14; IDb17-18; VDb15). The Vino Defendants explain that out of all the cases

cited, it is most obvious that "Vino clearly falls within the definition of 'subcontractor' given by the Court in Brygidyr" as "[t]he record is clear that Royal entered a contract with Vino for the performance of work which Royal has already contracted with another to perform...." (I Db17-18) (V Db15). Given how "clear" this is, the Vino Defendants then request "Plaintiff's attempt at muddying the waters to try and create issues of fact, where none exist, based on speculation and hyperbole...be rejected by this Court." (IDb26).

On the other hand, Royal, the party about whom the Vino Defendants assure much, provides "there was no contract entered into between Vino and Royal prior to April 6, 2020" and that "[t]he goods were being transported at the request of Vino, and Royal had no knowledge of the items that were on the truck." (Royal "R" Db4-5; RDb12-13). Plaintiff-Appellant contends there is no "speculation" or "hyperbole" in pointing out Royal's claims are in direct dispute with the Vino Defendants' "undisputed material evidence." (IDb14).

As explained in the Vino Defendants' response briefs and cited case law, New Jersey legal precedent has been consistent that a subcontractor is one "who enters into a contract with a person for the performance of work which such person has already contracted with another to perform" and that this definition is consistent with the plain meaning of the term "subcontractor." Brygidyr, 31 N.J. Super. at 453-54;

Pollack v. Pino's Formal Wear & Tailoring, 253 N.J. Super. 397, 405-06 (App. Div.1992); Fournier Trucking, Inc. v. New Jersey Manufacturers Ins. Co., 2020 N.J. Super. Unpub. LEXIS 651 at *12 (N.J. Super. Ct. App. Div. Apr. 9, 2020); Black's Law Dictionary 1722 (11th ed. 2019); (IDb14-18; VDb14-15). Further, Royal's claim to have no knowledge of the goods that were on the truck, and that the goods were directed at the request of Vino, further demonstrates conflicts with the Vino Defendants' claims that Royal was the general contractor of the delivery. As the Vino Defendants explain, a general contractor would need to be aware of the transport of its own goods in order to uphold the "contractual responsibility to its customers to ensure that the goods reach their destination…." (IDb18; RDb12-13).

The entire basis of the Vino Defendants' position for affirming summary judgment is that the "undisputed material evidence" supports Vino's claim to have been a subcontractor of Royal at the time of the accident, and thus Vino properly received the benefit of the workers' compensation bar against Plaintiff-Appellant's claim (IDb9-11; IDb14; VDb9-16). The lower Court explicitly granted summary judgment to the Vino Defendants on the theory that the Workers' Compensation Act "would act as bar" against Plaintiff-Appellant's claim because "Royal was the general contractor for Vino." (4T21:20; 4T22:5-6) Additionally, the basis for Royal seeking an affirmation of summary judgment is the lack of involvement in the

delivery and the absence of any duty owed to Plaintiff-Appellant, which turns on the relationship Royal maintained with the parties in this matter. (RDb6-11). In deciding Royal's summary judgment motion, the lower Court explicitly determined "there's no facts which would lead us to conclude there is a relationship there [between Royal and Vino]" and that no "rational fact-finder…[could] see a duty owed by Royal Wine" (2T7:19-21; 2T16:8-9). Plaintiff-Appellant opposed Royal's motion citing material evidence that shows Royal being involved with the delivery and case law which supports that a general contractor can be liable for the actions of a subcontractor under the framework of Puckrein v. ATI Transport, Inc., 186 N.J. 563, 574 (2006). (Pb18-19; Pa74-75; 2T10:17-21). Still, the lower Court was clear that "[Plaintiff-Appellant] fail[s] to show how the additional evidence, if any, would allow a rational fact-finder to…see a duty owed by Royal Wine." (2T16:7-9). Despite the conflicting claims as to the relationship maintained between the parties, the Defendants were granted summary judgment.

The New Jersey Supreme Court has been clear that when the party opposing summary judgment points to disputed issues of fact that are of a "substantial nature," the proper disposition is to deny the motion. Rowe v. Bell & Gossett Co., 239 N.J. 531, 539 (2019). There can be no factual dispute in this matter more "substantial" than the dispute between Royal and Vino as to the relationship maintained between

the parties at the time of the accident. Royal was granted summary judgment on the basis that there was no relationship between Royal and the parties, and thus no duty that could be owed to Plaintiff-Appellant. (2T16:3-25; 2T17:1-11). Vino was granted summary judgment because the lower Court found "[Royal] was the general contractor for Vino." (4T16:23-24). These holdings contain directly conflicting interpretations of the material facts. Not only was the lower Court's grant of summary judgment to the Defendants premature, the basis under which each party was granted summary judgment involves contradictions of fact. Plaintiff-Appellant respectfully requests the grants of summary judgment be reversed.

POINT II: (Addressing Defendant-Royal Response Brief Points I & II)

Royal's claim that "even if Plaintiff-Appellant had [engaged in additional discovery] there is no evidence that the result would change" as an argument for affirming summary judgment, in the face of directly contradicting representations of material facts between themselves and the Vino Defendants, is misguided. (RDb11). Plaintiff-Appellant would engage in discovery to resolve the genuine disputes of material fact to the extent possible, and to argue his case before a factfinder if discovery did not resolve the issues. Royal seems to request that despite the clear dispute in the material facts between themselves and the Vino Defendants, Plaintiff-Appellant be restricted from resolving the issue. It may be the case that Royal does

not have any involvement of any kind, nor did it maintain a relationship with Vino as a general contractor or otherwise. However, as there remains a genuine dispute of material fact between Royal, the Vino Defendants, and Plaintiff-Appellant, Royal must engage in discovery and present its position before the Court as all other parties subject to legal process are required to do.

Royal also contends that "[i]f Vino Trucking is found not to be entitled to the workers' compensation bar, out of fairness Royal Wine Corporation should reap the benefits...." (RDb14). Royal's relationship as a general contractor or other involved party, and the extent of Royal's involvement in the delivery, will determine Royal's liability to Plaintiff-Appellant. It is unclear whether Royal should be entitled to the workers' compensation bar given the unresolved factual issues in this matter. Additionally, Royal's argument for receiving the workers' compensation bar in and of itself seems to support the contention that there are genuine issues of material fact regarding Royal's involvement in this matter. Where there are genuine issues of material fact a party is not entitled to summary judgment on the promise that when the issues are resolved it will work in that party's favor.

The genuine disputes of material fact regarding Royal's involvement in the delivery and relationship to the parties demonstrate the grant of summary judgment was error, and the holding should be reversed. Brill, 142 N.J. at 540.

POINT III: (Addressing Isaiah Dicks's Response Brief I & II and Vino Response Brief Points I & IV)

The Vino Defendants were granted summary judgment under the theory that Royal and Vino entered into a contract for the delivery and thus maintained a general contractor and subcontractor relationship, which allowed Vino to properly receive workers' compensation coverage from Royal under N.J.S.A. 34:15-79. (IDb12-21; VDb16-20). Given the representations of Royal, whether this relationship was actually maintained is in dispute. (RDb4-5). While the Vino Defendants do much to characterize Plaintiff-Appellant's arguments as "attempt[s] to muddy the waters to try and create issues of fact, where none exist" and counsel Plaintiff-Appellant that "[c]ompetent opposition requires 'competent evidential material' beyond mere 'speculation' and 'fanciful arguments,'" bluster and puffery does not cure the genuine disputes of material fact that remain. (IDb12; IDb26). As demonstrated in Point I, the explicit representations of Royal and the Vino Defendants regarding the relationship between Royal and Vino at the time of the accident are in direct conflict. (IDb14; VDb15; VDb18; RDb4-5). The core factual assertion that serves as the basis for the Vino Defendants' position (that Vino was the subcontractor of Royal, which is being disputed by Royal) qualifies as a substantial factual dispute that should have precluded a grant of summary judgment. R. 4:46-2(c); Brill, 142 N.J. at 540. Therefore, Plaintiff-Appellant requests the grant of summary judgment be reversed.

Defendant Vino also argues that "Plaintiff has raised issues on appeal that were not raised below." (VDb29). While the arguments listed by Vino were raised below in both the opposition to summary judgment against Royal and the Vino Defendants, the phrasing of the arguments was admittedly different. (2T8:13-16; 4T9:1-25; 4T10:1-18). Part of Plaintiff-Appellant's difficulty in this case was Royal being dismissed before a single representative of Royal was able to be deposed, before most of the other Defendant depositions had taken place, and that little in the way of meaningful discovery had been conducted. (2T10:22-25). Royal's early dismissal gave rise to many of the issues Plaintiff-Appellant anticipated and communicated in its opposition to the motion for summary judgment, namely that Plaintiff-Appellant would be forced to continue without answers to open factual questions dispositive to his cause of action. (2T8:13-16; 2T12:24-25; 2T13:1-9). Plaintiff-Appellant argued to the best of his ability given the decisions of the lower Court, and still raised the issues seen in this appeal. Plaintiff-Appellant is seeking the reversal of the grant of summary judgment to Defendants in order to conduct further discovery and bring his cause of action before a factfinder. Any discrepancy in Plaintiff-Appellant's articulation should not be punished for the unclear and contradictory disclosures from the Defendants during discovery and premature grant of summary judgment by the lower Court.

POINT IV: THERE REMAIN GENUINE ISSUES OF MATERIAL FACT REGARDING WHETHER PLAINTIFF-APPELLANT WAS PROPERLY CONSIDERED AN EMPLOYEE OF VINO (Addressing Isaiah Dicks's Response Brief Point III and Vino's Response Brief Points II & III)

Like most of the other issues in this case, there are competing representations of material fact regarding whether Plaintiff-Appellant was an employee of Vino. (Pb37-41). The lower Court's ruling that Plaintiff-Appellant was an employee of Vino was in large part based upon Royal' provision of workers' compensation benefits to Plaintiff-Appellant. (4T12:1-4) (6T12:1-25). In fact, the lower Court openly explains that "the whole issue is going to come down to whether or not [Plaintiff-Appellant] collected workers' compensation benefits." (4T12:2-4). As demonstrated above, there is a genuine dispute of material fact as to whether the workers' compensation coverage provided to Plaintiff-Appellant was done in compliance with the Workers' Compensation Act. Despite the Vino Defendants' assertion that the "the record is clear" and supports their position, a genuine dispute of material fact remains. (VDb28).

POINT V: THE GENUINE DISPUTES OF MATERIAL FACT IN THIS MATTER SHOULD HAVE PRECLUDED THE DEFENDANTS FROM BEING GRANTED SUMMARY JUDGMENT.

The representations of the material facts in this matter by Defendants contain a multitude of inconsistencies. In quick summary, Royal provided workers' compensation coverage to Vino, but denies having entered into any contract with

Vino prior to the accident and denies having any involvement in the delivery. (RDb4-5; RDb12-13). Royal also asks that if Vino is not actually a subcontractor and thus failed to comply with the Workers' Compensation Act, a matter Royal should be able to assess given their alleged status as the general contractor, that Royal receive the benefit of the workers' compensation bar. (RDb14).

The Vino Defendants claim Vino is a subcontractor of Royal and offer the support of their own opinion that "[t]he record is clear that Royal entered into a contract with Vino for the performance of work which Royal has already contracted with another to perform, which constitutes the classic contractor/subcontractor relationship" to demonstrate Vino properly complied with the Worker's Compensation Act. (VDb15). This is an assertion outright rejected by Royal. (RDb4-5). Further, when arguing before the lower Court, the Vino Defendants made references to an "agreement" allegedly struck between Vino and Royal that was possibly used to have Royal provide Vino workers' compensation coverage. (Pa253-254; 3T46:5-9). The agreement, introduced by the Vino Defendants, was explained as one where "[Vino] will pay whatever [Royal] need to pay, $150,000 deductible, which anything would happen with [Vino's] trucks and [Royal] are going to get sued...." (3T46:6-8). The Vino Defendants fail to provide any example of how this agreement could apply, theoretical or otherwise, beyond Royal providing a

knowingly uninsured Vino with workers' compensation coverage. (IDb26; 3T46:5-9). Even if the alleged agreement could be used in other ways, it has no place in this matter if Royal provided Vino with workers' compensation benefits under N.J.S.A. 34:15-79. The Vino Defendants' reference to this alleged agreement is doubly confusing when considering that Royal denies having entered into any contract with Vino prior to the accident. (RDb4-5; RDb12-13).

In the end, the representation of the material facts by the Defendants is rife with contradictions and fails to follow a logical structure. Far from containing no genuine disputes of material fact, the story presented by Defendants is incoherent. As held by the New Jersey Supreme Court, the summary judgement rule "is not meant to shut a deserving litigant from his or her trial…it is inappropriate to grant summary judgment when discovery is incomplete and critical facts are peculiarly within the moving party's knowledge." Friedman v. Martinez, 242 N.J. 449 (2020) (internal citation omitted). In the instant matter, the lower Court granted summary judgment to Royal and the Vino Defendants, despite discovery being incomplete, and critical facts "peculiarly within the moving party's knowledge" being withheld from Plaintiff-Appellant. The grant was premature and erroneous, and Plaintiff-Appellant, a deserving litigant, risks being shut from his trial due to the lower Court's ruling.

CONCLUSION

For the reasons set forth above, Plaintiff-Appellant respectfully requests that the Trial Court's Orders granting summary judgment in favor of Defendant Royal and Defendant Vino be reversed.

Respectfully submitted,

BLUME FORTE FRIED ZERRES & MOLINARI, P.C.
Attorneys for Plaintiff-Appellant

BY: _____
JOHN E. MOLINARI, ESQ.
Attorney I.D.: 023571986

DATED: November 25, 2024