STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

KEB
WIL, III - By KEB
PMC

NO. 2024 CA 1241

EBER MENDOZA

VERSUS

H&O INVESTMENTS, LLC

Judgment Rendered: AUG 05 2025

* * * * *

On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. C739304, Section 25

Honorable Wilson Fields, Judge Presiding

* * * * *

Jonathan M. Lee
George B. Recile
Troy R. Keller
Metairie, LA

Attorneys for Plaintiff-Appellant,
Eber Mendoza

Joshua D. Roy
Roy H. Maughan, Jr.
Namisha D. Patel
Connor S. Thomas
Baton Rouge, LA

Attorneys for Defendant-Appellee,
H&O Investments, LLC

* * * * *

BEFORE: McCLENDON, C.J., LANIER AND BALFOUR, JJ.

BALFOUR, J.

Plaintiff/appellant, Eber Mendoza, appeals the trial court's judgment granting his employer's exception of no cause of action and dismissing his case with prejudice. For the following reasons, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

Mendoza, while working for H&O Investments, LLC (H&O), was allegedly injured when his left foot was caught underneath a riding lawnmower being operated by a co-worker. Mendoza filed a disputed claim for compensation (Form 1008) with the office of workers' compensation in July 2023.[1]

In October 2023, Mendoza filed a petition for damage in civil court. Mendoza alleged the accident was caused by H&O's negligence, specifically in failing to give warnings of the dangerous condition; failing to properly inspect its equipment; failing to properly supervise its employees; and failing to act as a reasonably prudent person when it removing the guards from its lawn mowers.

In response, H&O filed a peremptory exception pleading objection of no cause of action, no right of action, and lack of subject matter jurisdiction. H&O also filed a dilatory exception pleading the objections of vagueness. A hearing was held on January 29, 2024, wherein the trial court allowed Mendoza to amend his petition.

In his amended petition, Mendoza alleged in the alternative that H&O is "liable for an intentional tort by knowingly removing the guards on its lawn mowers because [H&O] knew that physical injury was substantially certain to follow." H&O filed the same exceptions in response to Mendoza's amended petition. During the July 8, 2024 second hearing, the trial court granted H&O's exception of no cause of action and adopted the reasons set forth by H&O, namely that Mendoza's sole remedy is workers' compensation. The trial court further found that the remaining

[1] At the time of filing this appeal, the workers' compensation matter was pending.

exceptions were moot and dismissed Mendoza's claims with prejudice.[2] Mendoza now appeals.

LAW AND DISCUSSION

On appeal, Mendoza, argues that the cause of action for an intentional tort claim against his employer is not barred by workers' compensation and contends that his petition was properly pled. H&O maintains that Mendoza's claims are barred by the Louisiana Workers' Compensation Act, La. R.S. 23:1020.1 *et seq.*, which provides the exclusive remedy for an employee who is injured during the course and scope of his employment.[3]

The Louisiana Workers' Compensation Act provides for compensation if an employee receives personal injury by accident arising out of and in the course of his employment. La. R.S. 23:1031. As a general rule, the rights and remedies granted to an employee are exclusive of all rights and remedies against his employer, any officer or principal of the employer, or any co-employee. La. R.S. 23:1032(A)(1) However, an exception to this rule provides that nothing therein shall affect the liability of an employer, principal, officer, or co-employee resulting from an "intentional act." La. R.S. 23:1032(B)

The Louisiana Supreme Court has held that in order to meet the intentional act exception of the Workers' Compensation Act, an employee must establish that the employer either (1) consciously desired the physical result of his act, whatever the likelihood of that result happening from his conduct; or (2) knew that that result is substantially certain to follow from his conduct, whatever his desire may be as to that result. *Bazley v. Tortorich*, 397 So. 2d 475, 481 (La. 1981). The *Bazley* court

---

[2] The written judgment was signed July 23, 2024.

[3] During the workers' compensation hearing, H&O alleged that Mendoza was engaged in horseplay, and was not in the course and scope of employment when he was injured. If found to be true, pursuant to La. R.S. 23:1031(D), an employee is "not covered … if the injured employee was engaged in horseplay at the time of the injury."

concluded that in drawing a line between intentional and unintentional acts, the legislative aim was to make use of the well-established division between intentional torts and negligence. *Id.* at 480; *See also Courtney v. BASF Wyandotte Corp.*, 385 So. 2d 391, 394 (La. App. 1 Cir.), *writ denied*, 386 So. 2d 359 (La. 1980).

Here, H&O argues Mendoza did not articulate facts to support his intentional tort claim that H&O knowingly removed the guards on its lawn mowers and that physical injury would result. H&O's argument is premature in that it requires the trial court to consider the merits of the case. "The merit of plaintiff's claim is to be determined after findings of fact upon motion for summary judgment or trial on the merits." *Carey v United Mechanical Contractors*, 553 So. 2d 472 (La. 1989).

The objection that a petition fails to state a cause of action is properly raised by peremptory exception. La. C.C.P. art. 927(A)(5). "A trial court's judgment sustaining the peremptory exception raising the objection of no cause of action is subject to *de novo* review by an appellate court, employing the same principles applicable to the trial court's determination of the exception." *Cador v. Deep South Equipment Company*, 2014-1371 (La. App. 1 Cir. 03/06/15) 166 So. 3d 344, 347. The purpose of the exception of no cause of action is to determine the sufficiency in law of the petition, in terms of whether the law extends a remedy to anyone under the petition's factual allegations, which are accepted as true. *Id.*

Louisiana Code Civil Procedure art. 856, in pertinent part, states: "Malice, intent, knowledge, and other condition of mind of a person may be alleged generally." In *Mayer v. Valentine Sugars, Inc.*, 444 So. 2d 618, 620 (La. 1984), the supreme court explained that a "plaintiff's allegation that he was injured by an intentional act set forth a well pleaded fact because intent may be alleged generally." Based on the foregoing analysis, we conclude that Mendoza properly pled a cause of action for an intentional tort against his employer. Therefore, we find that the

trial court erred in granting the exception of no cause of action and dismissing the claim with prejudice.

CONCLUSION

For the reasons above, we reverse the trial court's July 8, 2024 judgment granting the employer's exception raising the objection of no cause of action, and we remand the case for further proceedings consistent with this opinion. Costs of this appeal are assessed to appellee, H&O Investments, LLC.

REVERSED AND REMANDED.