

The Supreme Court of the State of Louisiana

OCTAVIO DIAZ-MOLINA

No. 2023-CC-01135

VS.

WALTER C. FLOWER, III

IN RE: John D. Wogan, in his capacity as the Succession Representative of the Estate of Walter C. Flower, III - Applicant Defendant; Applying For Supervisory Writ, Parish of Orleans Civil, Orleans Civil District Court Number(s) 2021-04139, Court of Appeal, Fourth Circuit, Number(s) 2023-C-0411;

December 19, 2023

Writ application granted. See per curiam.

JB
ML
JLW
JDH
SJC
WJC

Genovese, J., dissents and would deny.
Griffin, J., dissents and would deny.

Supreme Court of Louisiana
December 19, 2023

Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2023-CC-01135

OCTAVIO DIAZ-MOLINA

VS.

WALTER C. FLOWER, III

On Supervisory Writ to the Orleans Civil District Court, Parish of Orleans Civil

PER CURIAM

At issue is whether defendant is entitled to summary judgment on the ground plaintiff’s tort suit is precluded by the exclusivity provisions of the workers’ compensation act. For the reasons that follow, we conclude summary judgment is appropriate.

UNDERLYING FACTS AND PROCEDURAL HISTORY

Walter C. Flower, III owned a residence and property in Covington, Louisiana. He also owned an investment corporation known as Walter C. Flower & Co. (“Flower & Co.”).

Mr. Flower hired plaintiff, Octavio Diaz-Molina, to perform groundskeeper-type services on his Covington property, including cutting the grass, cleaning the pool, and keeping the property’s entrance clean. Mr. Flower determined plaintiff’s schedule and paid him \$400.00 in cash per week. After working for approximately five months, plaintiff was injured when a pile of debris he was burning burst into flames and burned him.

Following his injury, plaintiff filed a workers’ compensation claim against Flower & Co. seeking medical expenses and indemnity benefits. Flower & Co. answered and denied it was plaintiff’s employer. Plaintiff then amended his claim to add as defendant, “WALTER C. FLOWER, III, individually.”

Subsequently, plaintiff settled portions of his workers' compensation claim with Mr. Flower, accepting \$8,500.00 in exchange for partial settlement of past indemnity benefits owed. Following the settlement, plaintiff voluntarily dismissed his workers' compensation claim against Mr. Flower without prejudice but reserved "all rights for future workers' compensation benefits against Walter C. Flower, III, individually." Also, plaintiff voluntarily dismissed Flower & Co. with prejudice, asserting "they were not the proper employer."

In the meanwhile, plaintiff filed the instant tort suit against Mr. Flower individually (hereinafter referred to as "defendant").¹ Plaintiff alleged his tort claims are not barred by the workers' compensation act "because his work as a groundskeeper at FLOWER's residential property falls outside the 'trade, business, or occupation' requirement."

Defendant filed a motion for summary judgment, arguing plaintiff's exclusive remedy lies in workers' compensation. Defendant relied on plaintiff's pleadings from the workers' compensation proceeding in which plaintiff admitted Flower & Co. was "not the proper employer," as well as evidence of payment of settlement proceeds between Mr. Flower individually and plaintiff in the workers' compensation claim, and plaintiff's deposition in which he testified he understood the settlement was from Mr. Flower individually.

Plaintiff opposed defendant's motion, arguing a genuine issue of fact exists regarding who employed him. He relied on his deposition in which he testified he did not know whether he was employed by Mr. Flower individually, by Flower & Co., or both, because no one "officially" told him, and he lacked a personnel file or other formal employment documents to confirm his status. Further, plaintiff

¹ Mr. Flower died in 2022 and his estate, through his executor, John Wogan, was substituted in his place. For the sake of clarity, we will refer to both Mr. Flower and the executor collectively as "defendant" in this opinion.

contended Mr. Flower never told him whether the cash Mr. Flower paid him was from Flower & Co.'s business account or from his personal funds. Moreover, plaintiff noted that as Mr. Flower has now died, he was unable to provide any testimony resolving the issue.

After a hearing, the district court denied defendant's motion for summary judgment, finding a genuine issue of fact existed as to whether plaintiff worked for defendant "in his personal capacity, in his business capacity or in both his personal and business capacity."

Defendant applied for supervisory review. The court of appeal denied writs.

Upon defendant's application to this court, we ordered written briefing pursuant to the provisions of La. Code Civ. P. art. 966(H). Having received briefs from both parties, we now review the district court's ruling on the motion for summary judgment on the merits.

DISCUSSION

A ruling on a motion for summary judgment is reviewed under a de novo standard, with the appellate court using the same criteria that govern the district court's determination of whether summary judgment is appropriate, i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Catzen v. Toney*, 2022-01261 (La. 1/18/23), 352 So.3d 972, 974; *Jones v. Whips Elec., LLC*, 2022-01035 (La. 11/22/22), 350 So.3d 846, 848; *Guidry v. Brookshire Grocery Co.*, 2019-1999 (La. 2/26/20), 289 So.3d 1026, 1027. Pursuant to La. Code Civ. P. art. 966(D)(1), the burden on the party moving for summary judgment "does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense." *Reynolds v. Bordelon*, 2014-2371 (La. 6/30/15), 172 So.

3d 607, 610–11. When a motion for summary judgment is made and supported, an adverse party may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. La. Code Civ. P. art. 967(B); *Bufkin v. Felipe’s Louisiana, LLC*, 2014-0288 (La. 10/15/14), 171 So.3d 851, 858. Once a motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion. *Dauzat v. Curnest Guillot Logging Inc.*, 2008-0528 (La. 12/2/08), 995 So.2d 1184, 1187 (citing *Babin v. Winn–Dixie Louisiana, Inc.*, 2000-0078 (La. 6/30/00), 764 So.2d 37, 40).

In support of his motion for summary judgment, defendant introduced the earlier settlement from the workers’ compensation proceeding showing plaintiff accepted \$8,500.00 from Mr. Flowers in exchange for partial dismissal of his workers’ compensation claims and expressly stipulated he “wishes to dismiss Walter C. Flower & Co., with prejudice, as they were not the proper employer.”

In *C.T. Traina, Inc. v. Sunshine Plaza, Inc.*, 2003-1003 (La. 12/3/03), 861 So. 2d 156, 159, we explained the concept of a judicial confession:

The definition of judicial confession is contained in Article 1853 of the Civil Code, which provides:

A judicial confession is a declaration made by a party in a judicial proceeding. That confession constitutes full proof against the party who made it. A judicial confession is indivisible and it may be revoked only on the ground of error of fact.

The well settled jurisprudence establishes that an admission by a party in a pleading constitutes a judicial confession and is full proof against the party making it. *Taboni ex rel. Taboni v. Estate of Longo*, 01–2107 (La. 2/22/02), 810 So.2d 1142; *Starns v. Emmons*, 538 So.2d 275 (La. 1989); *Smith v. Board of Trustees*, 398 So.2d 1045 (La. 1981); *Cheatham v. City of New Orleans*, 378 So.2d 369 (La. 1979). A judicial confession has the effect of waiving evidence as to the subject of the admission.

Crawford v. Deshotels, 359 So.2d 118 (La. 1978); *Jackson v. Gulf Ins. Co.*, 250 La. 819, 199 So.2d 886 (1967); *Farley v. Frost–Johnson Lumber Co.*, 133 La. 497, 63 So. 122 (1913). A declaration made by a party’s attorney or mandatary has the same effect as one made by the party himself. La. Civ.Code art. 1853, cmt. (b). [emphasis added].

In the instant case, the settlement in the workers’ compensation claim supports defendant’s assertion that plaintiff believed he was employed by Mr. Flowers personally and not by Flower & Co. That judgment of dismissal provides:

Octavio Diaz appears herein through undersigned counsel and suggests to the Court that he wishes to dismiss without prejudice his petition against Walter C. Flower.

Further, Octavio Diaz wishes to dismiss Walter C. Flower & Co., with prejudice, as they were not the proper employer.

Octavio Diaz reserves all rights for future workers’ compensation benefits against Walter C. Flower, III, individually. [emphasis added].

This evidence is sufficient to satisfy defendant’s burden of establishing an absence of factual support for one or more elements essential to plaintiff’s claim by showing plaintiff admitted he was not employed by Flower & Co. and therefore must have been employed by Mr. Flower in his individual capacity. Because this evidence establishes Mr. Flowers, in his individual capacity, is plaintiff’s employer, any tort claims are precluded by the workers’ compensation exclusivity provisions.

At this point, the burden shifted the plaintiff to set forth specific facts showing that there is a genuine issue for trial. Plaintiff relied primarily on his own deposition. However, nothing in plaintiff’s deposition indicates he ever believed he was working for Flower & Co. To the contrary, plaintiff testified he did not work at Mr. Flower’s investment business in New Orleans. Further, plaintiff testified that he never asked Mr. Flower if he was working for Mr. Flower individually or for Flower & Co.; rather, plaintiff simply stated: “All I knew is that I worked for him . . . he just gave me the orders of the work I needed to do . . . I just did the jobs he told me to do . . .

[w]hen I met him; he told me that I was going to work for him.” This evidence is insufficient to raise any genuine issues of material fact.

In sum, we find defendant has satisfied his burden on summary judgment by establishing the absence of factual support for an essential element of plaintiff’s claim. Plaintiff has not produced any evidence of a material factual dispute. Summary judgment in favor of defendant is therefore mandated, dismissing plaintiff’s tort claims.²

DECREE

For the reasons assigned, the writ is granted and made peremptory. The judgment of the district court is reversed and summary judgment is granted, dismissing the claims of plaintiff, Octavio Diaz-Molina, against defendant, Walter C. Flower, III, with prejudice.

² Our decision is limited to plaintiff’s tort claims against Mr. Flowers individually and does not affect any rights plaintiff may have to claim additional workers’ compensation benefits from Mr. Flower in his capacity as plaintiff’s employer.