IN THE SUPREME COURT OF GUAM

GLENN W. GIBBS and
AMERICAN HOME ASSURANCE CO.,
Plaintiffs-Appellants

vs.

LEE HOLMES, JOAN HOLMES, and
AMERICAN HOME ASSURANCE CO.,
Defendants-Appellees

OPINION

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Supreme Court Case No.: CVA00-022
Superior Court Case No.: CV1270-97

Appeal from the Superior Court of Guam
Argued and Submitted on May 9, 2001
Hagåtña, Guam

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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice, PETER C. SIGUENZA, JR., Associate Justice, and F. PHILIP CARBULLIDO, Associate Justice.

CARBULLIDO, J.:

[1] Glenn W. Gibbs ("Gibbs") sustained injuries from a slip-and-fall accident which occurred at his work premises. As a result of these injuries, Gibbs received worker's compensation benefits from his employer, Western Systems, Inc. Subsequent to receiving worker's compensation benefits, Gibbs filed a negligence action in the Superior Court of Guam against Joan and Lee Holmes ("Holmeses") and American Home Assurance Company for damages sustained in the accident. At the time of the accident, the Holmeses were the owners of the premises as well as officers and directors of Western Systems, Inc. The trial court granted summary judgment in favor of the Holmeses on the ground that the exclusive remedy provision of the Guam Worker's Compensation statute barred the instant action. Gibbs filed a motion for reconsideration which the trial court denied. This appeal followed. We agree with the trial court and therefore affirm.

I.

[2] The Defendants-Appellees, the Holmeses, purchased a two-story commercial building ("premises") located in Hagåtña in October of 1985. On December 18, 1986, the Holmeses leased the premises to Western Systems, Inc. ("Western"), a corporation in which the Holmeses were owners, directors, officers, and employees. Western possessed, maintained, controlled, and occupied the premises from December 18, 1986 through January 8, 1997. As directors, officers, and employees of Western, the Holmeses were

responsible for the day-to-day management of the business, property, operations, and affairs of Western. Plaintiff-Appellant, Gibbs, began working for Western on December 2, 1992. On January 8, 1997, Gibbs slipped and fell on the exterior stairway of the premises and was injured.

[3] At the time of Gibbs' accident, Western had worker's compensation insurance coverage underwritten by American Home Assurance Company ("American"). Gibbs filed a claim for under the Guam Worker's Compensation Law, Title 22 GCA § 9109 *et seq*. (1996), and received worker's compensation benefits for lost wages and medical treatment from American.

[4] On September 17, 1997, Gibbs filed an action in the Superior Court seeking damages as a result of the slip-and-fall under the theory of negligence. Gibbs named the Holmeses and "John Doe Insurance Co." as defendants. Gibbs subsequently amended his Complaint naming, as defendants, American in its capacity as the Holmeses' general liability insurer. American filed a Complaint in Intervention against the Holmeses and American in its capacity as liability insurer, seeking recovery for any and all worker's compensation benefits paid to Gibbs.

[5] The Holmeses sought summary judgment on the ground that the triple net commercial lease with Western absolved them from liability for injuries on the premises after Western took possession. The trial court denied this motion for summary judgment citing factual disputes. The Holmeses subsequently filed a Motion for Reconsideration, which the court also denied.

[6] The Holmeses then filed a second Motion for Summary Judgment on the ground that as officers and employees of Western at the time of Gibbs' injury, they were personally immune from civil liability for

negligence, and that Gibbs was limited to the exclusive remedy of worker's compensation benefits.[1] On November 9, 1999, the trial court granted the motion, accepting the Holmeses' legal argument.

[7] On January 14, 2000, Gibbs filed a Motion for Reconsideration arguing that the Holmeses' status as defendants for the exclusivity of workers compensation defense should be determined at the time of the tortious act or omission, rather than at the time of the injury. The court rejected this argument and denied Gibbs' motion on July 11, 2000.

[8] The lower court filed and entered Judgment in favor of the Holmeses on August 11, 2000, dismissing the negligence action against all defendants. Gibbs filed a timely Notice of Appeal on September 8, 2000.

II.

[9] This Court has jurisdiction over the appeal of final judgments of the Superior Court of Guam pursuant to Title 7 of the Guam Code Annotated §§ 3107 and 3108(a) (1994).

III.

[10] At issue is whether the trial court erred in granting summary judgment in favor of the Holmeses on the ground that Gibbs was precluded from maintaining the instant action by virtue of the exclusive remedy provision of the Guam Worker's Compensation Law. We review a grant of summary judgment *de novo*. *See Villalon v. Hawaiian Rock Products, Inc.*, 2001 Guam 5, ¶ 7 (citing *Kim v. Hong*, 1997 Guam 11,

[1]American did not oppose this motion in the lower court.

¶ 5) (additional citations omitted). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Guam R. Civ. P. 56(c).

[11] We must further determine whether the trial court erred in denying the Appellant's Motion for Reconsideration. We review a denial of a motion for reconsideration for an abuse of discretion. *See Merchant v. Nanyo Realty, Inc.*, 1998 Guam 26, ¶ 6.

[12] To the extent that the parties dispute the interpretation of provisions of the Guam Worker's Compensation Law, we review the issue *de novo*. *See Villalon*, 2001 Guam 5 at ¶ 9; *cf. Mudrovich v. Soto*, 617 N.W.2d 242, 245 (Wis. Ct. App. 2000) (reviewing *de novo* the issue of whether the plaintiff's claim is subject to the Worker's Compensation Act's exclusive remedy provision).

[13] The Guam Worker's Compensation Law is set forth in Chapter 9 of Title 22 of the Guam Code Annotated. *See* 22 GCA § 9101 *et seq.*; *see also Villalon*, 2001 Guam 5 at ¶ 10. Under the law, a person hired in Guam is entitled to compensation under the laws of Guam if he "receives a personal injury by accident arising out of and in the course of his employment." Title 22 GCA § 9104(c) (1996). Further, every employer is liable to pay compensation to his employees regardless of fault as to the cause of the injury. *See* Title 22 GCA § 9105 (1996). Employer liability under the Worker's Compensation Law is "exclusive and in place of all other liability of such employer to the employee." Title 22 GCA § 9106 (1996); *see also Villalon*, 2001 Guam 5 at ¶ 10; *Shim v. Vert Constr. Co.*, Civ. No. 91-00019A, 1991 WL 255832, *2 (D. Guam App. Div. Nov. 18, 1991) (stating that "worker's compensation is the exclusive

remedy for accidental injuries").

[14] The statute preserves the right to sue third parties for injuries sustained in the course of employment in addition to receiving worker's compensation benefits. *See* Title 22 GCA § 9134 (1996). Section 9134 provides:

> **Compensation for Injuries where third persons are liable.** When an injury for which compensation is payable under some person other than the employer a legal liability to pay damages in respect thereto, the injured employee a legal liability to pay damages in respect thereto, the injured employee may claim compensation under this Title and, at his option, may also obtain damages from a proceed at law against the other person in order to recover damages.

Id. However, section 9135 makes clear that the right to sue third parties for injuries does not encompass the right to sue a co-employee, officer, agent, or director of the employer, and that worker's compensation benefits are the exclusive remedy for injuries sustained by the negligence of another person in the same employ as the injured employee. *See* Title 22 GCA § 9135 (1996). Section 9135 provides:

> Nothing contained in §9134 of this title shall be deemed to create a cause of action by an injured employee against any co-employee, officer, agent or director of the employer. *The right to compensation for benefits under the Worker's Compensation Law of Guam shall be the exclusive remedy to an employee when he is injured, . . . by the negligence of any other person or persons in the same employ*; provided, that this provision shall not affect the liability of a person other than an officer or employee of the employer.

Id. (emphasis added). Thus, under the Worker's Compensation Law, immunity from suit extends to employees and officers of the employer. The test for whether the exclusive remedy provision applies is whether the plaintiff's injuries are due to the negligence of another person or persons "in the same employ." *See id*.

[15] Thus, we must determine what is meant by the language "in the same employ." Because the Worker's Compensation Law does not specifically address this issue, resort must be made to case law interpreting the language of section 9135. The Appellate Division of the District Court has previously relied on New York precedent in interpreting Guam's worker's compensation statutes. *See Shim*, 1991 WL 255832, at *2.[2] While this court considers Appellate Division cases to be persuasive authority, we are not at all bound by the Appellate Division's reliance on New York case law. *See People v. Quenga*, 1997 Guam 6, ¶ 13 n. 4. Thus, to the extent that the New York worker's compensation statutes contain provisions that are either identical or substantially similar to Guam's statutes, we find New York law to be persuasive. *Cf. Holmes v. Territorial Land Use Comm'n*, 1998 Guam 8, ¶ 6 (agreeing with a Ninth Circuit case's reasoning that because Guam's mandamus statute was adopted from California, California cases are persuasive). However, we do not hesitate to find guidance in the case law of those jurisdictions that have adopted worker's compensation statutes that are substantially similar to Guam's statutes.

[16] The New York co-employee exclusive remedy statute contains language similar to that contained in 22 GCA § 9135. The New York statute limits an injured employee to worker's compensation benefits if injured by the negligence of another "in the same employ." *See* N.Y. WORK. COMP. LAW § 29(6) (McKinney 1993). New York courts have determined that immunity under section 29(6) "is limited to acts or omissions of the tortfeasor within the scope of his or her employment." *Cusano v. Staff*, 595 N.Y.S.2d 248, 249 (App. Div. 1993). The rationale behind this interpretation is that "[c]oemployee immunity is only

[2]We note that the Appellate Division has previously declared that Guam's Worker's Compensation Law was adopted from New York. *See Shim*, 1991 WL 255832, at *2. This court has never expressed an opinion as to the source of the Guam Worker's Compensation Law.

justified when the tortfeasor's conduct is within the course of employment; otherwise, the coemployee's employment status is unconnected to the risk of injury to the fellow-worker from . . . [a work-related] accident." *Id*. (citing 2A Larson, Workmen's Compensation, § 72.23); *see also Sauve v. Winfree*, 907 P.2d 7, 11 (Alaska 1995). Thus, according to New York case law, the statutory language "in the same employ" essentially refers to tortious acts committed by another person acting *within the scope of employment*.

[17] Indiana's worker's compensation statute is also similar to Guam's statute. In *Seiler v. Grow*, 507 N.E.2d 628 (Ind. Ct. App. 1987), the issue was whether the plaintiff's injuries were within the exclusive remedy provision of the worker's compensation act. The Indiana statute allowed the injured employee to receive worker's compensation benefits if the injury arose out of and in the course of plaintiff's employment. *See id.* at 630 (citations omitted). Further, the statute allowed the plaintiff to sue third parties in tort, but barred an action against persons "in the same employ." *See id*. (citations omitted). Thus, in determining whether the plaintiff was allowed to maintain the negligence action against the defendant, the determinative issue was whether the defendant was "in the same employ" as the plaintiff. *See id*. The court determined that a defendant works "in the same employ" as the plaintiff if he was acting in the course of employment. *See id.* at 630-31. The court emphasized that "[t]he worker's compensation act is not designed to insulate co-employees from liability for act which are not in the course of employment," thus, the relevant inquiry is whether the defendant acted "in the course of employment," and if so, then he may claim immunity from suit pursuant to the exclusive remedy provision of the worker's compensation law. *See id* at 631; *see also Utah Home Fire Ins. Co. v. Manning*, 985 P.2d 243, 250 (Utah 1999) (recognizing that immunity only

attaches to a co-employee if the co-employee was acting "in the course of his employment") (citation omitted).

[18] If an officer or director of a corporation is specifically charged with ensuring a safe workplace, the exercise or failure to exercise that duty is an act or omission which is distinctly within the scope and course of employment. *See Parrinello v. Mancuso*, 674 N.Y.S.2d 484, 485 (App. Div. 1998) (recognizing that the exclusive remedy provision which bars actions for injuries caused by the negligence of another "in the same employ" allows an officer of a corporation to claim immunity from suit for negligently failing to maintain a safe workplace); *see also Cusano*, 595 N.Y.S.2d at 249-50. Therefore, because the Holmeses were officers of Western and were specifically charged with maintaining a safe workplace, Gibbs was injured by the negligence of another "in the same employ," thus triggering the exclusive remedy provision of the Worker's Compensation Law. We hold that under 22 GCA § 9135, the Holmeses are immune from liability in their capacity as *officers* of Western.

[19] The determinative issue on appeal is whether the Holmeses can be sued in their individual capacities, as landowners, notwithstanding their status as officers of Western. Gibbs argues that such a suit is maintainable under the "dual persona" doctrine. The "dual persona" doctrine is a judicially created mechanism that allows a plaintiff to sue his employer for work-related injuries despite the exclusive remedy provision of worker's compensation law. The doctrine has been described in *Hatch v. Lido Co. of New England*, 609 A.2d 1155 (Me. 1992), as follows:

> Under the dual persona doctrine, . . . an otherwise exempt employer (or officer) may become liable to suit *as a third party* "if – and only if – he possesses a second persona so completely independent from and unrelated to his status as employer that by established

> standards the law recognizes [the employer] as a separate legal person." . . . [T]he dual persona doctrine applies only when "the second set of obligations [are] independent of the defendant's obligations as an employer . . . [I]t must be possible to say that the duty arose *solely* from the *non-employer* persona. . . ." The duties "must be totally separate from and unrelated to those of employment."

Id. at 1156 (quoting 2A A. Larson, *The Law of Workmen's Compensation*, § 72.81 (1989)). The "dual persona" doctrine has been extended to allow for suits against co-employees or officers of the employer. *See e.g. Cusano*, 595 N.Y.S.2d at 250.

[20] Gibbs argues that the Holmeses, as landowners and lessees, had the duty under *Camacho v. Du Sung Corp.*, 121 F.3d 1315, 1317 (9th Cir. 1997), to transfer the property in a safe condition. Gibbs claims that for breach of this duty he is entitled to maintain a suit against the Holmeses as *landowners* notwithstanding 22 GCA § 9135. We disagree.

[21] Determining whether a landowner, who is also an officer of the employer, is entitled to immunity from a negligence action under the exclusive remedy provision of the worker's compensation law depends on whether the landowner's negligent acts are in the course of employment; that is, whether the landowner's acts are "incidental" to employment, as opposed to actions taken independent of the landowner's status as officer of the corporation. *See Sauve*, 907 P.2d at 13; *see also Cusano*, 595 N.Y.S.2d at 250. The landowner is immune from liability if the "additional duties [arising from the landlord's obligation] are *inextricably intertwined* with those of the . . . [corporate officer] status." *Sauve*, 907 P.2d at 13 (citations omitted).

[22] Case law indicates that a corporate officer who is in possession and control of the premises has the same duty to keep the premises safe as that of a landowner. *See id.*; *Parrinello*, 674 N.Y.S.2d at

485; *Cusano*, 595 N.Y.S.2d at 250; *Sylfa v. Stupnick*, 658 N.Y.S.2d 69, 70 (App. Div. 1997). The duties merge and are indistinguishable. *See Parrinello*, 674 N.Y.S.2d at 485; *Cusano*, 595 N.Y.S.2d at 250. Because a corporate officer's violation of his duty to maintain a safe workplace is an act that is "incidental" to employment, the violation of this exact same duty as a landowner is also an act that is "incidental" to employment. Thus, the corporate officer cannot be seen as having a different "persona" as landowner and the injured party is therefore precluded from maintaining a negligence action by the exclusive remedy provision of the worker's compensation statute. *See Cusano*, 595 N.Y.S.2d at 250; *see also Parrinello*, 647 N.Y.S.2d at 485; *see Hatch*, 609 A.2d at 1156-57; *Herbolsheimer v. SMS Holding Co.*, 608 N.W.2d 487, 493-94, 498 (Mich. Ct. App. 2000).

[23] Guam's Worker's Compensation Law specifically preserves the right to sue third parties. *See* 22 GCA § 9134. Thus, if the Holmeses *as landowners* were a separate legal identity from their identity as officers of Western, then the Holmeses *as landowners* would be considered third-parties and thus amenable to suit. Gibbs argues that because the alleged negligent act occurred in the transferring of the property, the Holmeses were acting outside the scope of their roles as employees, directors, and officers of Western. We disagree. As set forth previously, the Holmeses' duty to deliver a safe premises is the same duty the Holmeses possessed as officers of Western in that both duties seek to minimize the risk of injury to the employee due to the condition of the premises. The alleged negligent act of transferring the property in an unsafe condition in 1986 alleges a breach of the exact same duty the Holmeses had as officers and employees of Western. Therefore, the Holmeses, as landowners, do not have a separate legal identity as that of corporate officers thus barring application of the "dual persona" doctrine. Accordingly,

Gibbs is barred from bringing the instant negligence action against the Holmeses by the exclusive remedy provision of the Guam Worker's Compensation Law, 22 GCA § 9135. The trial court's grant of summary judgment for the Holmeses was proper.

[24] Finally, Gibbs argues that the trial court erred in denying his Motion for Reconsideration. Gibbs contends that reconsideration is necessary because the trial court erred in looking to the time of the injury in determining the availability of the exclusive remedy defense. Gibbs argues that the relevant time period is the time of the Holmeses' negligent act of turning over the premises in 1986. We find that the issue Gibbs raises lacks merit. The fact that the alleged negligent act occurred in 1986 is of no consequence in the instant case. As stated previously, a landowner's immunity for negligence under the exclusive remedy provision attaches as long as the landowner's negligent act or omission constitutes a breach of the same duties held as officers or employees of the employer corporation, and are thereby "incidental" to employment. Any other rule would contravene the purpose of the Worker's Compensation Law to limit an employer or co-employee's exposure to liability for negligent acts undertaken while in the course of employment.

IV.

[25] The exclusive remedy provision of the Guam Worker's Compensation Law, 22 GCA § 9135, limits a injured worker to worker's compensation benefits for injuries caused by the negligence of another person acting in the course of employment. Section 9135 protects a corporate officer from suit for injuries caused by failing to provide a safe workplace. Immunity from negligence liability under section 9135

extends to a landowner, who is also a corporate officer, if the duties as landlord are identical to the duties as corporate officer. Because the Holmeses' duty as landowners was identical to their duty as corporate officers, Gibbs is limited to worker's compensation benefits and is precluded from maintaining the instant negligence action against the Holmeses. Accordingly, we **AFFIRM** both the trial court's grant of summary judgment in favor of the Holmeses and the trial court's denial of Gibbs' Motion for Reconsideration.

PETER C. SIGUENZA, JR.
Associate Justice

F. PHILIP CARBULLIDO
Associate Justice

BENJAMIN J. F. CRUZ
Chief Justice