

**Euceda v Troll**

2020 NY Slip Op 34844(U)

May 13, 2020

Supreme Court, Suffolk County

Docket Number: Index No. 612868/17

Judge: Carmen Victoria St. George

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT – STATE OF NEW YORK  
TRIAL TERM, PART 56 SUFFOLK COUNTY**

**PRESENT:**

*Hon. Carmen Victoria St. George*  
**Justice of the Supreme Court**

**ORIGINAL**

\_\_\_\_\_  
**PLACIDA EUCEDA,**

**Index No.  
612868/17**

**Plaintiff,**

**Motion Seq:  
002 MG  
Decision/Order**

**-against-**

**KATHLEEN M. TROLL and BAUMAN & SONS  
BUSES,**

**Defendants.**  
\_\_\_\_\_ x

The following papers were read upon this motion:

Notice of Motion/Order to Show Cause.....	30-46
Answering Papers.....	49-55
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Briefs: Plaintiff's/Petitioner's.....	
Defendant's/Respondent's.....	

Plaintiff Placida Euceda, an employee of ACME Bus Corp., seeks damages for personal injuries she sustained when the bus she was driving was struck by a bus driven by Defendant Kathleen Troll, an employee of Bauman & Sons Buses, Inc. On October 13, 2016. Plaintiff sues the driver of the bus that struck her and the owner of the bus.

Plaintiff alleges that she sustained serious and severe personal injuries as a result of the recklessness and negligence of Defendants.

Defendants seek the summary judgment dismissal of the complaint. Plaintiff has made a claim for Workers' Compensation benefits and Defendants maintain that they are entitled to summary judgment because Bauman & Sons Buses, Inc. is the alter ego of ACME Bus Corp., and as such, plaintiff's claim is barred under Workers' Compensation Law §11. In addition, Defendants argue that the Workers' Compensation Law defense applies to Defendant Kathleen Troll as she and Plaintiff are co-employees a result of the relationship between ACME Bus Corp. and Bauman & Sons Buses, Inc., pursuant to WCL §29(6).

Defendants submitted two Westchester County Supreme Court decisions issued on September 30, 2016 and January 12, 2017 which found that ACME Bus Corp. and Bauman & Sons Buses, Inc. are entities that operate as a single integrated entity such that the Workers' Compensation Law defense precluded plaintiff's claim. (See Exhibits F and G to Defendants' Reply Affirmation.)

Plaintiff argues that Defendants have failed to submit evidence in the appropriate admissible form sufficient to sustain the summary judgment motion. Specifically, Plaintiff argues that Exhibits A, B, C and E to the Affidavit in Support of the Motion of Ronald Bauman, President and co-owner of both companies, are not properly certified and that Ronald Bauman's Affidavit is insufficient to establish that Acme Bus Corp. and Bauman & Sons Buses, Inc. are alter egos and operating as a single integrated entity.

The Court recognizes that summary judgment is a drastic remedy and as such should only be granted in the limited circumstances where there are no triable issues of fact (*Andre v. Pomeroy*, 35 NY2d 361 [1974]). Summary judgment should only be granted where the court finds as a matter of law that there is no genuine issue as to any material fact (*Cauthers v. Brite Ideas, LLC*, 41 AD3d 755 [2d Dept 2007]). The Court's analysis of the evidence must be viewed in the light most favorable to the non-moving parties, herein the plaintiff. (*Makaj v. Metropolitan Transportation Authority*, 18 AD3d 625 [2d Dept 2005]).

The proponent of a summary judgment motion must tender sufficient evidence to demonstrate the absence any material issue of fact (*Winegrad v. New York University Medical Center*, 64 MY2d 851, 853 [1985]). Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Id.*) "Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v. Prospect Hospital*, 68 NY2d 320, 324 [1986]).

"Generally, the sole remedy of an employee injured in the course of employment against his or her employer is recovery under the Workers' Compensation Law" (*Constantine v. Premier Cab Corp.*, 295 AD2d 303, 303 [2d Dept 2002]). "A parent corporation may be deemed to be an employer of an employee of a subsidiary corporation for Workers' Compensation purposes if the subsidiary functions as the alter ego of the parent. However, the parent corporation must exercise complete dominion and control of the subsidiary's day-to-day operations" (*Dennihy v. Episcopal Health Services, Inc.*, 283 AD2d 542, 543 [2d Dept 2001]).

"A defendant may establish itself as the alter ego of a plaintiff's employer by demonstrating that one of the entities controls the other or that the two operate as a single integrated entity" (*Quizhpe v. Luvin Construction Corp.*, 103 AD3d 618, 619 [2d Dept 2013]).

The Affidavit of Ronald Bauman states that ACME Bus Corp., Bauman & Sons Buses, Inc. and several other companies "have been wholly owned subsidiaries of parent corporation ABA, a corporation founded in 2009 and which also has the identical officers, stockholders and corporate structure as the other entities comprising the Family Bus Company." (See Affidavit of

Ronald Bauman at pages 2 to 3.) Ronald Bauman was President of the companies at the time of the incident and remains in that position.

Ronald Bauman submitted documentation that he received from the New York Workers' Compensation Board regarding approval of ABA's application for self insurance which covers ABA, ACME Bus Corp., Bauman & Sons Buses, Inc., and Brookset among others. (See Affidavit Exhibit A.) Certificates of Excess Insurance Contract for Self-Insurer, which list all of the aforementioned companies, were submitted as Exhibits B and C. Ronald Bauman stated that "ABA maintained a policy of insurance issued by Protective Insurance Company which provided both Auto Liability and General Liability coverage to ABA and which, by endorsement, named ACME, Bauman, Alert and Brookset as names insureds." (See Affidavit of Ronald Bauman at page 4.) He attached a certified copy of the endorsement as Exhibit D. Ronald Bauman further reported that ABA filed a single consolidated 2016 federal income tax return for its subsidiary corporations, including ACME Bus Corp., Bauman & Sons Buses, Inc. and Brookset. He represented that the income tax return included in Exhibit E is the income tax return that was filed (See Affidavit Exhibit E.) Ronald Bauman stated that Brookset is the management company for ACME Bus Corp. and Bauman & Sons Buses, Inc. and that Brookset "prepares and maintains the business, financial and insurance records for Brookset, ACME, Bauman and Alert and, when necessary, transfers money from other operating companies' accounts to meet payroll and payroll tax obligations" (See Affidavit at page 4). Ronald Bauman further stated that "Acme and Bauman (as well as ABA, Brookset and Alert) have shared (and continue to share) once common office space and one common support staff at the Family Bus Company's principal place of business and headquarters in Ronkonkoma, New York."

Defendants cite the aforementioned Westchester County Supreme Court decisions dated September 30, 2016 and January 12, 2017 respectively, wherein the respective courts found that ACME Bus Corp. and Bauman & Sons operate as a single integrated entity warranting the imposition of the Workers' Compensation law defense.

Plaintiff argues that Exhibits A, B, C and E cannot be considered in determining whether ACME Bus Corp. and Bauman & Sons Buses, Inc. operate as a single integrated entity as they are not in admissible form in that they are not accompanied by a certification. Plaintiff also objects to the consideration of the decisions made by the Westchester Supreme Court which found that ACME Bus Corp. and Bauman & Sons, Inc. were, in fact, operating as a single integrated entity on the ground that the evidence before those courts was not presented in the instant matter. Plaintiff concedes, however, that the evidence submitted in those matters was sufficient to find that ACME Bus Corp. and Bauman & Sons Buses, Inc. operate as a single integrated entity sufficient to trigger the provisions of WCL §§11 and 29(6) in that matter.

Ronald Bauman's affidavit and attached Exhibits establish that ACME Bus Corp. and Bauman & Sons Buses, Inc. operate as a single integrated entity. Ronald Bauman is the President and one-third owner of both corporations. He submitted a sworn affidavit detailing the operations of the two corporations and their relation to each other. He identified documents that both businesses are required to be maintained. Both companies are subsidiaries of the ABA parent company and both are managed by Brookset, another ABA subsidiary. Funds are transferred between the various companies' accounts to meet their financial obligations and a

single consolidated income tax return is filed for the companies. All of the companies share the same officers, stockholders and corporate structure as well as the same principal place of business, headquarters and support staff.

Inasmuch as this Court has determined that ACME and Baumann operate as a single entity, and there is no dispute that Kathleen Troll is an employee of Baumann, then this Court further determines that Troll is a co-employee of the plaintiff.

While the Westchester Supreme Court decisions are not binding on this court, it is noteworthy that findings were made that ACME Bus Corp. and Bauman & Sons Buses, Inc. were found to be operating as a single integrated entity during the same time period in which instant incident occurred. In addition, the testimony of Richard Bauman, President and one-third owner of both companies, and the documentation submitted support a finding that ACME Bus Corp. and Bauman & Sons Buses, Inc. operate as a single integrated entity sufficient to invoke the exclusive remedy provisions of WCL §§ 11 and 29(6). Accordingly, the defendants' summary judgment motion is granted on this basis.

In view of the foregoing determination, it is unnecessary to determine whether Plaintiff's alleged injuries reached the threshold level required by Insurance Law §§5102(a) and (d).

Defendants' summary judgment motion is granted, and the complaint is dismissed

The foregoing constitutes the Decision and Order of this Court.

Dated: May 13, 2020  
Riverhead, NY

**HON. CARMEN VICTORIA ST. GEORGE**  
CARMEN VICTORIA ST. GEORGE, J.S.C.

*EF S.C.*

FINAL DISPOSITION [ X ] NON-FINAL DISPOSITION [ ]