No. 127067

In The Supreme Court of Illinois

DONOVAN MUNOZ,

Plaintiff-Appellant,

vs.

BULLEY & ANDREWS, LLC.,

Defendant-Appellee,

ON APPEAL FROM THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT
CASE NO: 1-20-0254

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

CASE NO.19-L-3878

HONORABLE DANIEL T. GILLESPIE, JUDGE PRESIDING

BRIEF OF DEFENDANT-APPELLEE, BULLEY & ANDREWS, LLC

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RULES, STATUTES, AND OTHER AUTHORITIES

NATURE OF THE CASE

This case involves a construction accident. Appellee/Defendant, Bulley & Andrews, LLC ("B&A"), served as the construction manager for a construction project at 222 S. Riverside in Chicago, IL. On March 20, 2015, B&A entered into a prime contract with RAR2-222 South Riverside, LLC, the property owner, to serve as the project's construction manager. Under B&A's prime contract with the RAR2-222 South Riverside, LLC, B&A agreed that it would procure and provide workers' compensation benefits for all workers on the project that it employed directly or indirectly. As part of its scope of work, B&A agreed to self-perform many tasks, including concrete restoration and finishing work. B&A completed those tasks using its wholly-owned subsidiary, Bulley & Andrews Concrete Restoration, LLC ("BACR"). Because BACR was B&A's wholly-owned subsidiary, B&A did not enter into subcontracts with BACR on this project.

On December 4, 2016, Plaintiff-Appellant, Donovan Munoz, a BACR worker, went to the 222 S. Riverside jobsite in order to pull the warming blankets off of the concrete so that workers from a subcontractor could perform additional concrete work. While pulling the blankets off of the concrete, Mr. Munoz injured his back. Following his injury, B&A paid $91,138.01 for Mr. Munoz's workers' compensation claim - of which, more than $78,000 went directly to Mr. Munoz in the form of medical bill payments and temporary total disability payments.

On April 11, 2019, Mr. Munoz filed a two-count personal injury complaint in the Circuit Court of Cook County's Law Division. Against B&A, Mr. Munoz raised two claims - liability under Sections 414 and 343 of the Restatement Second of Torts.

On July 2, 2019, B&A filed a 735 ILCS 5/2-619(a)(9) Motion to Dismiss both counts against B&A. B&A argued that the Illinois' Workers' Compensation Act's Exclusive Remedy provision barred Mr. Munoz from seeking additional recovery against B&A at common law tort. B&A supported its dispositive motion with sworn testimony and records. Over B&A's objection, Mr. Munoz secured leave to depose B&A's affiant and did so.

On December 27, 2019, the Circuit Court issued its memorandum opinion and order granting B&A's 2-619 motion and dismissing B&A from the litigation with prejudice. The Circuit Court ruled that the March 20, 2015 contract between RAR2-222 South Riverside, LLC and Bulley & Andrews, LLC "is evidence of Bulley & Andrews, LLC's pre-existing contractual obligation to pay for Bulley & Andrews Concrete Restoration, LLC's workers' compensation insurance benefits and premiums." In addition to dismissing B&A, with prejudice, the Circuit Court issued a finding that pursuant to Ill. S. Ct. R. 304(a), no just reason existed for delaying enforcement or appeal of the Circuit Court's dispositive order.

On December 23, 2020, the Appellate Court of Illinois, First District, issued an Ill. S. Ct. R. 23 order affirming the Circuit Court's order dismissing

B&A from the litigation with prejudice. Following B&A's motion to publish, on February 10, 2021, the Appellate Court of Illinois, First Division published its prior opinion. The Appellate Court ruled that B&A had a preexisting legal obligation to pay for workers' compensation insurance and any benefits that may result by virtue of B&A's contract with RAR2-222 South Riverside, LLC.

This appeal followed.

STATEMENT OF JURISDICTION

Pursuant to Illinois Supreme Court Rule 341(i), Bulley & Andrews, LLC adopts Mr. Munoz's jurisdictional statement.

ISSUES PRESENTED FOR REVIEW

1. Did the Appellate Court correctly affirm the Circuit Court's finding that Illinois' Workers' Compensation Act's exclusive remedy provision properly applied to Defendant, Bulley & Andrews, LLC, barring Mr. Munoz's personal injury claim against Bulley & Andrews, when Bulley & Andrews had a pre-existing contractual obligation to provide workers' compensation coverage for Mr. Munoz, and Bulley & Andrews paid out more than $78,000 in workers' compensation benefits to Mr. Munoz for a workplace injury under that workers' compensation policy?

STATUTES INVOLVED

820 ILCS 305/5(A)

(a) Except as provided in Section 1.2, no common law or statutory right to recover damages from the employer, his insurer, his broker, any service organization that is wholly owned by the employer, his insurer or his broker and that provides safety service, advice or recommendations for the employer or the agents or employees of any of them for injury or death sustained by any employee while engaged in the line of his duty to such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

820 ILCS 305/11

Except as provided in Section 1.2, the compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility of any employer engaged in any of the enterprises or businesses enumerated in Section 3 of this Act, or of any employer who is not engaged in such enterprises or business, but who has elected to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this Act, and whose election to continue under this Act, has not been nullified by any action of his employees as provided for in this Act.

SUPPLEMENTAL STATEMENT OF FACTS

I. The Parties

Plaintiff-Appellant, Mr. Munoz, was an employee of BACR serving as a construction worker on a construction project located at 222 S. Riverside, Chicago, Illinois. (C9-10).

Defendant-Appellee, B&A, served as the construction manager for a construction project located at 222 S. Riverside in Chicago. (A035); (C74).

II. The Construction Project at 222 S. Riverside

Defendant, RAR2-222 South Riverside, LLC, the Property Owner owned a building in Chicago. (C74). On March 20, 2015, B&A executed a prime contract with RAR2-222 South Riverside, LLC to act as the project's construction manager. (C74).

Pursuant to B&A's prime contract with the Owner, B&A agreed to the following provision regarding insurance on the Project:

§ 11.1.1 "The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts any of them may be liable:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;" (A093).

Thus, B&A's agreement with the Owner required B&A to purchase and maintain workers compensation insurance for anyone that B&A directly or indirectly employed on this Project. (A093).

As part of its scope of work, B&A agreed to self-perform a substantial amount of concrete repairs, including concrete finishing work, on the Project. (C74). BACR is B&A's wholly owned subsidiary. (Sup. C. 23). While the two companies have different Presidents, the remaining three officers of BACR are all also B&A officers. (Sup. C. 25).

BACR performs concrete masonry work. (Sup. C. 24). B&A brought BACR into the project in order to perform the concrete construction work. (C74). Because B&A and BACR are the same entity from their perspective, they did not execute a subcontract between B&A and BACR, as B&A does with its actual subcontractors. See (C74); (Sup. C. 27). The prime contract defined a subcontractor as a "person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site." (A093). Thus, BACR was not considered B&A's subcontractor on this jobsite. (A093); (C74).

Prior to the Project's commencement, B&A secured various lines of insurance for B&A and its subsidiary companies. (C74); (Sup. C. 32). Gregory Marquez manages B&A's insurance programs across all entities. (Sup. C. 22-24; 28). Mr. Marquez provided testimony in this matter via both affidavit and deposition. (Sup. C. 20); (C73). He was personally involved in

the purchase of the applicable insurance policy at issue in this appeal. (Sup. C. 28).

Per Mr. Marquez, Arch Insurance Company underwrote B&A's workers' compensation insurance policy. (Sup. C. 23). Arch Policy 41CCI8921902 pays the workers' compensation claims for B&A and BACR. (Sup. C. 26). The Arch policy includes a list of covered entities that names both B&A and BACR as covered entities. (Sup. C. 26).

The workers' compensation policy carries a $250,000 deductible, so until that deductible is met, B&A self-pays any workers' compensation claims. (Sup. C. 32). B&A pays the workers' compensation premium for the policy covering B&A, BACR and all other B&A companies because, per Mr. Marquez, "they're in essence, the same company." (Sup. C. 27)

III. The Underlying Accident

Prior to December 4, 2016, BACR employees, allegedly, poured concrete on the worksite and covered the concrete with blankets in order to prevent it from freezing in the December cold. (C10-11). On December 4, 2016, Plaintiff-Appellant, Mr. Munoz, went to the 222 S. Riverside jobsite in order to pull the blankets off of the concrete so that workers from a subcontractor could perform additional concrete work. (C11). On December 4, 2016, while pulling the blankets off of the concrete, Mr. Munoz injured his back. (C11).

IV. The Underlying Litigation

On April 11, 2019, Mr. Munoz filed a two-count personal injury complaint in the Circuit Court of Cook County's Law Division. (C9). Mr. Munoz sued the following Defendants: B&A, the construction manager for the 222 S. Riverside project; Behringer Harvard South Riverside, LLC, a management company that operated, managed, and maintained the 222 S. Riverside building; and RAR2-222 South Riverside, LLC, the alleged property owner. (C9; C10; C12).

Mr. Munoz raised two counts. (C9). First, he sued all three Defendants for liability based on Section 414 of the Restatement (2d) of Torts. (C9). Second, he sued all three Defendants for liability based on Section 343 of the Restatement (2d) of Torts. (C12).

On July 2, 2019, B&A filed a 735 ILCS 5/2-619(a)(9) Motion to Dismiss all counts that Mr. Munoz raised against B&A. (C58-C66). B&A argued that other affirmative matters barred Mr. Munoz's claim against B&A - specifically, the Illinois' Workers' Compensation Act's Exclusive Remedy provision. (C61-62). As B&A argued, Mr. Munoz filed for and received more than $78,000 in workers' compensation benefits. (C63-64). B&A paid those benefits. (C63-64). Therefore, the Workers' Compensation Act's exclusive remedy provision applied and barred Mr. Munoz from suing B&A in tort for those same damages. (C63-64).

In support, B&A attached Mr. Marquez's affidavit providing testimony based on Mr. Marquez's personal knowledge as to the contract documents at issue, B&A's relationship with BACR, B&A's insurance program, and the itemized list of workers' compensation benefits payments B&A paid Mr. Munoz. (C72-74). In total, B&A paid Mr. Munoz $76,046.34 in medical payments and $2,157.71 in temporary total disability ("TTD"), with another $12,933,96 in expenses administering Mr. Munoz's three (3) year workers' compensation claim. (C85). Beyond Mr. Marquez's affidavit, B&A also attached the itemized printout of workers' compensation payments that B&A made to Mr. Munoz from 2016-19. (C76-85).

Mr. Munoz responded to B&A's dispositive motion and accompanying exhibits by requesting leave to conduct discovery, including deposing the affiant, Mr. Marquez. (C88). Over B&A's objection, the Circuit Court Judge granted Mr. Munoz's request and ordered Mr. Marquez's deposition. (C96). Following Mr. Marquez's deposition, the Parties completed briefing on B&A's dispositive motion, and the Court entered a written ruling. (C105); (Sup C 195-200).

V. The Circuit Court Grants B&A's Dispositive Motion

On December 27, 2019, the Circuit Court issued its memorandum opinion and order granting B&A's 2-619 motion and dismissing B&A from the litigation with prejudice. (C111-C112). The Circuit Court ruled that the March 20, 2015 prime contract between RAR2-222 South Riverside, LLC and

Bulley & Andrews, LLC "is evidence of Bulley & Andrews, LLC's pre-existing contractual obligation to pay for Bulley & Andrews Concrete Restoration, LLC's workers' compensation insurance benefits and premiums." (A001); (C111).

The Circuit Court continued that Section 11.1.1.1 of the Contract was "evidence that the contract imposed a duty on Bulley & Andrews LLC to provide agents of Bulley & Andrews Concrete Restoration, LLC with workers' compensation insurance...Moreover, there is no evidence that Bulley & Andrews Concrete Restoration, LLC was self-insured or that Bulley & Andrews, LLC had the option to reimburse Bulley & Andrews Concrete Restoration, LLC for any payments that the latter may have made because there is no contract between Bulley & Andrews, LLC and Bulley & Andrews Concrete Restoration, LLC." (A002); (C112). Accordingly, Illinois Workers' Compensation Act's Exclusive Remedy barred Mr. Munoz's tort suit against B&A. (A002); (C112).

In addition to dismissing B&A, with prejudice, the Circuit Court issued a finding that pursuant to Ill. S. Ct. R. 304(a), no just reason existed for delaying enforcement or appeal of the Circuit Court's dispositive order. (A002); (C112).

VI. The Appellate Court Affirms B&A Dismissal

On February 10, 2021, the Appellate Court of Illinois, First District, issued its opinion affirming the Circuit Court's dismissal of B&A. (A001). In

reaching its decision, the Appellate Court noted that Mr. Munoz did not dispute that on December 4, 2016, he was considered an employee under the Workers' Compensation Act or dispute that he sustained his injury while engaged in the line of duty as an employee. (A006). Instead, all that Mr. Munoz argued on appeal was that because B&A was not his direct employer, B&A could not enjoy the immunity afforded by the Act's exclusive remedy provision. (A006-7).

The Appellate Court conducted a detailed survey of on-point authorities spanning the last forty-five years. (A008). First, the Appellate Court noted that in Laffoon v. Bell & Zoller Coal Co., 65 Ill. 2d 437 (1976), this Court held that a general contractor did not become an injured worker's employer for purposes of the Act merely because it paid the workers' compensation benefits. (A008). Next, the Appellate Court discussed Ioerger v. Halverson Const. Co., 232 Ill. 2d 196 (2008), where this Court considered whether injured workers could sue a joint venture for damages sustained on a jobsite. (A008-9). This Court held that the workers could not sue the joint venture for two reasons – one, because the joint venture was legally inseparable from its constituent entities and two, because of the principles underlying the Act's remedial scheme – the person paying the benefit should not have to pay twice. (A009). Finally, the Appellate Court considered another Appellate Court decision, Burge v. Exelon Generation Co., 2015 IL App (2d) 141090, ¶ 2, where the injured worker was directly employed by the

wholly-owned subsidiary of a parent company who provided the workers' compensation benefits. (A010). The Burge Court held that because the parent company could not demonstrate a pre-existing legal obligation to pay workers' compensation benefits to an injured worker, it could not avail itself of the Act's exclusive remedy provision. (A010-11).

Considering those decisions, the Appellate Court found the instant case factually similar to Burge, except that here, B&A proved that it had a preexisting legal obligation to pay workers' compensation benefits to BACR's employees, including Mr. Munoz. (A011). The evidence of that preexisting legal obligation was the contract that B&A executed with South Riverside requiring B&A to obtain various insurance policies, including workers' compensation covering B&A and any subcontractor or "anyone directly or indirectly employed by any of them…." (A011). After Plaintiff's injury, B&A then paid $76,000 in medical bills. (A011). B&A proved those facts by citing to the contract, as well as the Arch insurance policy, and a list of medical payments made from B&A to Mr. Munoz. (A011-12).

Accordingly, because B&A bore the burden of furnishing workers' compensation benefits to Mr. Munoz, B&A was entitled to avail itself of the Act's exclusive remedy provision. (A012). Therefore, the Appellate Court affirmed the Circuit Court's dismissal of B&A.

This appeal followed.

LEGAL ARGUMENT

I. The Court Should Affirm the Appellate Court and Circuit Court's Ruling that the Workers' Compensation Act's Exclusive Remedy Provision Bars Mr. Munoz From Recovering Twice Against B&A for the Same Damages.

This Court should affirm the Appellate Court and Circuit Court's ruling that the Workers' Compensation Act's exclusive remedy provision bars Mr. Munoz from recovering twice against B&A for the same damages. In 2008, this Court held, succinctly, that "the immunity afforded by the [Workers' Compensation] Act's exclusive remedy provisions is predicated on the simple proposition that one who bears the burden of furnishing workers' compensation benefits for an injured employee should not also have to answer to that employee for civil damages in court." Ioerger, 232 Ill. 2d at 203. Mr. Munoz's brief asks this Court to set aside that simple proposition and subject B&A to paying him twice for the same damages - once in workers' compensation and a second time in tort.

Here, B&A is not trying to game the system, skirt the workers' compensation statute, or avoid its contractual obligations owed to RRA2-222 South Riverside, LLC. Before this construction project commenced, B&A agreed, in its contract with RAR2-222 South Riverside, LLC, that B&A would insure the workers' compensation risk on the construction project for itself and for its subcontractors, which included B&A's wholly-owned subsidiary, BACR, Mr. Munoz's employer. B&A strictly followed the requirements of that contract. While B&A hired many third-party subcontractors on this

project, it had its wholly-owned subsidiary, BACR, perform some construction work on the project. When Mr. Munoz sustained injury while working for that subsidiary, he submitted a claim for workers' compensation and B&A, not BACR, paid Mr. Munoz more than $78,000 in workers' compensation benefits. Mr. Munoz collected those benefits for three years and never once raised an issue that B&A was paying him those benefits instead of those payments coming from his direct employer, BACR. Then, after Mr. Munoz received over $78,000 in workers' compensation benefits from B&A, Mr. Munoz turned around and sued B&A in tort for those same damages - an impermissible double recovery - on the basis that B&A was not his direct employer, so, B&A was not immune from a tort suit under the Act.

As the Appellate Court noted, Mr. Munoz does not dispute that he was an employee under the Act or entitled to benefits under the Act. (A006-07). Instead, Mr. Munoz's entire dispute in this appeal relies on his belief that because B&A was not his direct employer, B&A does not enjoy the Act's immunity provision, even though B&A was contractually and statutorily obligated to, and undisputedly did, provide Mr. Munoz's workers' compensation benefits for his construction site injury.

By its plain language, the Act defines an employer as "every person, firm...or private corporation...who has any person in service or under any contract for hire, express or implied, oral or written." 820 ILCS 305/1(a)(2). But the Act does not stop there. It states further that, "in addition thereto, if

he directly or indirectly engages any contractor whether principal or subcontractor to do any such work, he is liable to pay compensation to the employees of any such contractor or sub-contractor, unless such contractor or sub-contractor has insured...the liability to pay compensation under this Act." 820 ILCS 305/1(a)(3).

While B&A may not be the entity issuing Mr. Munoz's paycheck, that fact did not relieve B&A of its preexisting legal obligation to provide workers' compensation benefits to BACR workers, like Mr. Munoz. After all, B&A contracted with RAR2-222 South Riverside, LLC before the construction projected started to pick up the workers' compensation risk on this project and, even if B&A had not contracted to insure that risk, the Act expressly states that B&A would be obligated to insure that risk absent some countervailing insurance coverage or guarantee of payment by the subcontractor. See 820 ILCS 305/1(a)(3) ("...is liable to pay compensation to his own immediate employees in accordance with the provisions of the Act, and in addition thereto if he directly or indirectly engages any contractor...he is liable to pay compensation to the employees of any such contractor...") In this case, because BACR is B&A's wholly-owned subsidiary, it would make no sense for BACR to take out a separate insurance policy. That is why BACR is on B&A's Arch policy.

The Act clearly applies to B&A, and the Circuit Court and the Appellate Court both correctly found that the Act's exclusive remedy

provision bars Mr. Munoz's suit against B&A. In order to get around this clear finding, Mr. Munoz focuses almost the entirety of his Supreme Court Brief on a forty-five year old case, Laffoon. He does so at the expense of more recent cases in this arena that this Court and the Appellate Court have handed down in the ensuing nearly half-century after Laffoon. See Ioerger, 232 Ill. 2d at 203-04; Burge, 2015 IL App (2d) 131090, at ¶ 14. Mr. Munoz makes no persuasive argument for why these newer cases do not apply to the analysis, other than claiming that the newer case's holdings abrogate his preferred holding from Laffoon.

In the end, it comes back to the proposition that this Court called "simple" in Ioerger, immunity under the Act is a benefit conferred on the party bearing the burden of furnishing workers' compensation benefits. He she, or it should not have to pay the same damages twice. B&A contracted with RAR2-222 South Riverside, LLC to provide Mr. Munoz's workers' compensation coverage before his accident occurred and paid Mr. Munoz's benefits after his accident happened. B&A has no recourse to obtain those payments back from some illusory source, as Mr. Munoz argues in this appeal. Instead, holding as Mr. Munoz requests subjects a general contractor that provides workers' compensation benefits for its wholly-owned subsidiary's injured employee to a second round of exposure for damages that it already insured, paid, and cannot recover. Therefore, B&A is entitled to immunity from Mr. Munoz's second attempt to recover the same damages.

This Court should affirm the findings that both the Appellate Court and the Circuit Court made on this Record - B&A is immune from this lawsuit and was properly dismissed on it 735 ILCS 5/2-619 motion to dismiss.

A. Legal Standard

This Court conducts a de novo review because the Appellate Court reviewed the Circuit Court's grant of dismissal under a 735 ILCS 5/2-619(a)(9) motion to dismiss. Doe v. Univ. Of Chi. Medical Ctr., 2015 IL App (1st) 133735, ¶ 35. To the degree that this case involves the interpretation of contract terms, it is a question of law reviewed by this Court under a de novo standard. Gallagher v. Lenart, 226 Ill.2d 208, 219 (2007). Finally, to the degree that answering this question involves interpreting Illinois' Workers' Compensation Act, any such review is a question of law also subject to a de novo review. Bayer v. Panduit Corp. Area Erectors, 2016 IL 119553, ¶ 17.

B. The Illinois Workers' Compensation Act Governs This Case Because Mr. Munoz Sustained Injury on B&A's Jobsite and B&A Paid His Workers' Compensation Benefits Pursuant to a Preexisting Legal Obligation

The Illinois Workers' Compensation Act governs this case because Mr. Munoz sustained injury on B&A's jobsite and B&A paid his workers' compensation benefits pursuant to a preexisting legal obligation. In Illinois, an injured worker cannot sue his employer for on-the-job injuries. Va. Sur. Co. v. Northern Ins. Co., 224 Ill.2d 550, 556 (2007). Instead, the employer directly pays benefits to the injured worker under the Workers' Compensation Act. 820 Ill Comp. Stat. 305/1 et seq. (2012). This Court has

called the Workers' Compensation Act the result of legislative balancing of rights, remedies, and procedure governing disposition of employees' work-related injuries. Zimmerman v. Buchheit of Sparta, Inc., 164 Ill.2d 29, 44 (1994). In exchange for creating a system of no-fault liability upon the employer, the employee is subject to "statutory limitation on recovery for injuries." Folta v. Ferro Engineering, 2015 IL 118070 ¶ 12.

Succinctly, there are two elements for the Workers' Compensation Act to apply, and both elements exist in this matter. First, Mr. Munoz must qualify as an employee entitled to benefits under the Act. 820 ILCS 305/1(b). As noted, on appeal, Mr. Munoz does not dispute that he was an employee entitled to benefits under the Act. (A006-07).

Thus, this appeal is only about the Act's second element, whether B&A qualifies as an "employer" under the Act. As defined in the Act, an "Employer" is "[e]very person, firm, public or private corporation...who has any person in service or under any contract for hire, express or implied, oral or written, and who is engaged in any of the enterprises or businesses enumerated in Section 3 of this Act." 820 ILCS 305/1(a)(2).

Section 3 of the Act lists businesses enumerated in the Act - "erection, maintaining, removal, remodeling, altering or demolishing of any structure" and "construction." 820 ILCS 305/3. Mr. Munoz sustained injury performing construction work on a jobsite, so the scope of his injury clearly falls under

the Act's protection, another fact that Mr. Munoz does not dispute on appeal. (A006-07).

However, the Act does not end there. The Act further provides that: "in addition thereto if he [the employer] directly or indirectly engages any contractor whether principal or sub-contractor to do any such work, he is liable to pay compensation to the employees of any such contractor or sub-contractor unless such contractor or sub-contractor has insured, in any company or association authorized under the laws of this State to insure the liability to pay compensation under this Act…" 820 ILCS 305/1(a)(3). In fact, if one looks to Section 4 of the Act, the text is even more conspicuous that the Act fully contemplates coverage beyond immediate employees. See 820 305/4(a) ("Any employer, including but not limited to general contractors and their subcontractors...")

Thus, our Act provides that an employer is liable for on-the-job construction injuries sustained by its immediate employees, plus any person it directly or indirectly engaged to perform the work, such as subcontractors, unless that person's employer has, itself, insured its workers' risk or guaranteed liability to pay for that risk.

1. B&A is clearly an Employer under the Act because it is a corporation that had persons in service or under contract for hire on the date of Mr. Munzoz's accident performing construction jobs.

B&A is clearly an Employer under the Act because it is a corporation that had persons in service or under contract for hire on the date of Mr.

Munoz's accident performing construction jobs. On March 20, 2015, B&A executed a prime contract with RAR2-222 South Riverside, LLC to serve as the construction manager on a redevelopment project at that property. (C74). Amended to that prime contract was a set of agreed general conditions. (A093). The General Conditions required B&A, the Contractor, to purchase and maintain multiple insurance lines prior to the project's commencement, including workers' compensation coverage:

"The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts any of them may be liable:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;" (A093)

Thus, per the Contract's plain language, B&A agreed that it would serve as the Project's construction manager, provide construction workers, and also purchase and maintain a workers' compensation policy covering not only B&A's employees, but "anyone directly or indirectly employed by any of them." (A093).

Consistent with B&A's contractual obligation to RAR2-222 South Riverside, LLC, B&A provided workers for this project, like Mr. Munoz, through B&A's wholly-owned subsidiaries, and also B&A subcontracted out to other third-party companies to provide the remaining workers for this

project. (C74). Furthermore, and consistent with B&A's prior contractual obligation to RAR2-222 South Riverside, LLC, B&A procured a workers' compensation policy from Arch Insurance Company covering not only its own employees, but also the employees of its wholly-owned subsidiaries like BACR, Mr. Munoz's employer. (C74). Both B&A and BACR are listed as the named insureds on that Arch Insurance workers' compensation policy. (C74); (A104).

Clearly, B&A qualifies as an "Employer" under the Act. Given that B&A qualifies as an employer, and Mr. Munoz does not dispute that he qualifies as employee entitled to benefits under the Act, there is no question that B&A is, therefore, entitled to the Act's immunity shield.

2. The case citations that Mr. Munoz offers in his brief purportedly holding that B&A cannot invoke the Act's immunity benefit are misplaced because B&A had a preexisting legal obligation to provide workers' compensation and actually did provide Mr. Munoz with those benefits.

The case citations that Mr. Munoz offers in his brief purportedly holding that B&A cannot invoke the Act's immunity benefit are misplaced because B&A had a preexisting legal obligation to provide workers' compensation and actually did provide Mr. Munoz with those benefits. Initially, Mr. Munoz centers his argument on the claim that because Mr. Munoz was not B&A's direct employee, B&A cannot avail itself of the Illinois Workers' Compensation Act. (Appellant's Brief, 8-10). In support, Mr. Munoz cites two cases, but both cases are distinct on this point.

First, Mr. Munoz directs this Court to Forsythe v. Clark USA, Inc., 224 Ill. 2d 274 (2007). He argues that Forsythe held that if parent company and its subsidiary are operated as separate entities, only the entity that was the injured worker's immediate employer may claim immunity under the Act. (Appellant's Brief, 10). But Forsythe contains a material factual distinction from the instant case.

In Forsythe, the subsidiary not only employed the injured worker, but the subsidiary also paid that injured worker's compensation benefits. 224 Ill. 2d at 298. The defendant parent company in Forsythe neither employed the worker nor paid that worker's compensation benefits. Id. As a result, when the defendant parent company claimed immunity under the Act, the defendant was actually attempting to pierce its own corporate veil in order to realize the benefit of a burden that it never shouldered. Id. Therefore, this Court declined to apply the Act's immunity shield to the defendant parent company. Id. After all, an entity that does not bear the Act's burden cannot enjoy the Act's benefit.

Conversely, here, the defendant parent company (B&A) contracted with RAR2-222 South Riverside, LLC to provide workers' compensation benefits before this accident; the parent company (B&A) paid premiums for those benefits; and the parent company (B&A) actually paid over $78,000 in benefits out of its own pocket to Mr. Munoz because the amount of Mr. Munoz's workers' compensation claim fell below the Arch policy's deductible

limit. (A113). Unlike the Forsythe parent company, B&A shouldered a substantial burden in this case in fulfillment of the Act's requirements. Therefore, unlike the Forsythe parent company who shouldered no burden, it is only equitable that B&A should realize the Act's chief benefit, the civil liability immunity shield.

Second, Mr. Munoz directs this Court to Laffoon. Initially, in saying that "the Appellate Court decision [in this case] is irreconcilable with Laffoon," Mr. Munoz ignores the case law in this area that has developed in the forty-five (45) years following Laffoon. See e.g., Ioerger, 232 Ill. 2d 196.

Next, because Laffoon pre-dated subsequent cases in this arena by several decades, Laffoon never considered the situation presented in this case, where the general contractor had a pre-existing legal obligation to pay benefits for all workers. See also Munoz v. Bulley & Andrews, LLC, 2021 IL App (1st) 200254, ¶ 23 (noting that the Laffoon court did not have to consider a situation where there existed a preexisting contractual obligation to provide workers' compensation benefits). In fact, in Laffoon, there was no contractual obligation by the general contractor to pick up the workers' compensation benefits for the subcontractors. 65 Ill. 2d at at 441-42. Instead, when the Laffoon workers sustained injury, and their respective employers did not have workers' compensation coverage, the general contractors voluntarily stepped in and paid the benefits. Id. at 441-42. Thus, on its surface, Laffoon is factually distinct from the instant case.

3. Mr. Munoz's claim that Munoz abrogates the forty-five year old Laffoon decision is incorrect, because, here, B&A had a prior obligation to provide coverage and could not selectively pick when it was and when it was not an employer under the Act as best suited B&A's needs.

Mr. Munoz's claim that Munoz abrogates the forty-five year old Laffoon decision is incorrect, because, here, B&A had a prior obligation to provide coverage and could not selectively pick when it was and when it was not an employer under the Act as best suited B&A's needs.

Initially, the specific concern that this Court addressed forty-five (45) years ago in Laffoon was that a nefarious general contractor would purposefully hire an independent subcontractor without any insurance coverage and then when an injury occurred, step in and voluntarily provide that subcontractor's injured worker with workers' compensation coverage after the fact in order to shield itself from the injured worker's tort liability claim. Id. at 445-46. The idea being that endorsing such a scheme would reward the general contractors who purposefully retained subcontractors lacking workers' compensation insurance while penalizing the general contractors who "mindful of the purpose and spirit of said Act, only employ insured subcontractors." Id. at 446. Such inconsistent application of the Act would violate the injured employees' right to due process and equal protection of the laws because employee X may be entitled to sue the general contractor but employee Y could not. Id.

There was no evidence of that situation actually occurring in the Laffoon record and not even all of the Laffoon Court's justices agreed with the majority's concern, calling the hypothetical concern expressed by the majority "illusory" and "unreasonable" in the dissent. See id. at 449-50 (questioning that any general contractor would choose to accept absolute liability for all compensation claims on a jobsite in order to gain immunity "from the remote possibility of an adverse judgment in a personal injury suit.")

Now, on appeal, Mr. Munoz, joined by the Illinois Trial Lawyer's Association's ("ITLA") amicus brief, amplifies that forty-five year old hypothetical concern by arguing that if this Court affirms Munoz, general contractors will enact illusory contracts extinguishing all third-party construction liability claims across Illinois. (Appellant's Brief, at 16-17); (ITLA, at 17-19). There are several issues with that hypothetical concern.

One, there is no evidence in this case's actual Record that the hypothetical concern occurred. Quite the opposite, and unlike Laffoon, B&A could not freely pick when it was and was not an "employer" under the Act. Under B&A's contract with RAR2-222 South Riverside, B&A agreed on day one of this construction project that it would handle workers' compensation coverage for all workers. That is to say, unless some other entity agreed by contract to take the insurance burden for B&A's wholly-owned subsidiary off of B&A's hands, which would never occur, B&A was always legally obligated to provide those workers' compensation benefits.

Two, the idea that general contractors will contractually agree to pick up all workers' compensation claims on a jobsite in order to avoid third-party liability is not logical. At a minimum, doing so would certainly increase the insurance premiums the general contractors pay. After all, if a carrier is writing a policy providing coverage for a risk that the insured does not directly control - like would be the case if a general contractor preemptively insured workplace injuries for another entity's employees - the insurance carriers are going to want more money in premiums in order to cover the increased cost of insuring risk that the insured general contract lacks any ability to mitigate, such as liability for subcontractors that it does not control.

While ITLA's brief calls this hypothetical a "cost-free financial alteration," it provides no citation for that proposition and, as discussed above, the claim that insuring additional risk would cost nothing defies belief. (ITLA, at 16). In any aspect of life, if one takes to insuring more risk, be it adding a teenager onto the family automobile policy or adding the number of employees working on a jobsite, the insurance premiums go up. Thus, it does not stand to reason that insuring all workers' on a project would present the general contractors of this state with a simple, "cost-free" alteration, like ITLA suggests. If general contractors began insuring all risks on projects without passing any of those insuring obligations down to their subcontractors, the general contractors would certainly face increased insurance premiums because they are insuring more risks.

Nor is it clear how this purported "financial slight of hand" would "essentially end all third-party construction negligence claims in Illinois." (ITLA, at 16). After all Munoz did not hold, nor is B&A arguing, that every trade on a jobsite would receive the Act's immunity provision. Rather, Munoz, Ioerger, Burge and B&A's argument in this case are clear - the Act's immunity only falls on the entity under a pre-existing obligation to provide the workers' compensation benefits. There is no claim that this duty could or would be split. Not every entity on the jobsite could invoke the Act's immunity provision.

Moreover, as this Court knows, plaintiffs rarely bring Section 414 construction liability and Section 343 premises liability lawsuits against just one defendant; rather plaintiffs file these claims against the property owner, the general contractor, and multiple other trades on the jobsite. See (C67) (Mr. Munoz's Complaint in this case suing the property owner, construction manager, and property manager); see also e.g. LePretre v. Lend Lease US Constr., 2017 IL App (1st) 162320, ¶ 3 (noting that only one count in a plaintiff's nine-count construction negligence claim was actually raised against the general contractor). Here, at a minimum, the property owner and the other trades could not invoke the Act's exclusive remedy provision. ITLA's argument that affirming Munoz will "essentially end all third-party construction negligence claims in Illinois" is unfounded hyperbole.

Three, ITLA's claim that affirming Munoz will lead to general contractors onboarding all of a jobsite's workers' compensation obligations in order to escape civil tort liability is equally unfounded because that practice has not happened in the thirteen years after this Court's Ioerger decision. Munoz relied on Ioerger's holding that in order to receive the Act's benefit there must be evidence of a preexisting legal obligation to pick up that risk. Munoz, 2021 IL App (1st) 200254, at ¶¶ 22-23. But Ioerger is now thirteen (13) years old. The last thirteen years have hardly seen a practice develop where general contractors are seeking out uninsured subcontractors let alone the end of construction litigation in Illinois, as Mr. Munoz and ITLA posit will occur if this Court affirms Munoz.

Perhaps this hypothetical practice did not develop because, as this Court acknowledged in the Laffoon dissent, it is more expensive for a general contractor to insure against every workplace injury risk, for every subcontractor on a project, without passing the insuring obligations down to the subcontractors, than simply facing the far less likely to occur risk of an adverse personal injury finding under Section 414 or Section 343 of the Restatement (2d) of Torts. See id. at 449-50. ITLA's claim that affirming Munoz will lead to general contractors onboarding all of a jobsite's workers' compensation obligations and passing none of those insuring obligations down to the subcontractors in order to escape tort liability is an unfounded

concern because it has not happened in the thirteen years after this Court's Ioerger decision.

Four, Ioerger and its progeny work in tandem with Laffoon to strike a balance between the Act's benefits and burdens and accomplish the simple proposition of giving the Act's immunity shield to the entity that earned it while keeping the shield away from the party gaming the system. The concern is Laffoon was gaming the Act – a nefarious general contractor using the Act's plain text as a sword to escape liability versus the exclusive remedy's intended function as a shield so that the person paying the benefits does not pay the damages twice. See e.g. Laffoon, 65 Ill. 2d at 445-46; see also Forsythe, 224 Ill. 2d at 298 (noting that no useful societal purpose would be served if a defendant could use the Act as a sword instead of a shield).

The Act's exclusive remedy provision "serves a balancing function. On one hand, the Act establishes a new system of liability without fault designed to distribute the cost of industrial injuries without regard to common law doctrines...On the other hand, the Act imposes statutory limitations upon the amount of the employee's recovery...and provides that the statutory remedies under it shall serve as the employee's exclusive remedy." Forsythe, 224 Ill. 2d at 296.

Six (6) years ago in Burge, our Appellate Court considered this Court's prior statements in Ioerger and Forsythe about the Act's balancing function, and noted that "[i]f the system is to maintain this balance, an entity cannot

be permitted to choose whether to be treated like an employer or like a third party, depending on what appears the most to its advantage in a particular case." Burge, 2015 IL App (2d) 131090, at ¶ 14.

That unbalanced application was this Court's concern forty-five years ago in Laffoon, some general contractors would adhere to the law's spirit, some general contractors would not, and th imbalance penalized workers. See e.g. Laffoon, 65 Ill. 2d at 445-46. Thirty years after Laffoon, Ioerger recognized the need for striking that balance; recognized that the Act by its plain text allows coverage to more than just an employee's immediate employer; and made clear that if a non-direct employer is going to qualify as the employer entitled to secure the Act's exclusive remedy benefit, that employer must show evidence of a pre-existing legal obligation. Ioerger, 232 Ill.3d at 203.

Thus, Ioerger's holding of requiring evidence of a pre-existing legal obligation in order to receive the exclusive remedy provision actually furthers Laffoon's aims by preventing entities from picking and choosing when they are the employer and when they are not the employer depending on which classification is most advantageous to the entity at a particular point in time. Consistency and uniformity are the hallmarks of the workers' compensation scheme, and allowing participants to pick when they are and are not subject to the Act defeats that consistency.

Therefore, Iorger, Burge and Munoz all promote the Laffoon idea that harm would result if an employer could pick and choose when the Act applies. By interpreting and explaining the Act's parameters, namely in the form of the preexisting legal obligation holding, Ioerger, Burge, and Munoz actually further Laffoon's policy aim from forty-five years ago. Thus, it remains unclear why Mr. Munoz and ITLA now ask this Court to focus only on Laffoon and disregard the more recent cases of Ioerger and the Appellate Court's decisions in Burge and Munoz that actually further the policy concerns expressed in Laffoon.

Here, B&A did exactly what a good and responsible contractor should do. It contracted before this project began to insure the risk; paid the premiums to insure that risk; and when Mr. Munoz sustained injury, B&A paid Mr. Munoz his statutory benefit. Now Mr. Munoz wants to keep the $78,000 in benefits B&A paid and also sue B&A in tort to recover those same damages a second time. The Act's exclusive remedy provision "serves a balancing function," but Mr. Munoz's instant claim is anything but balanced - it is one sided, exclusively in his favor. Forsythe, 224 Ill. 2d at 296.

The Act's exclusive remedy is predicated on a simple proposition, the one bearing the burden of furnishing compensation benefits should not have to answer to that employee a second time for the same damages. Ioerger, 232 Ill. 2d at 203. This Court should affirm the Appellate Court and reject Mr. Munoz's request. After all, Mr. Munoz's request is the exact same request

that this Court previously analogized to arguing that "the party who has paid for the cake may neither keep it nor eat it." Id. at 203.

4. Because B&A owed workers' compensation benefits, and Mr. Munoz was entitled to receive those benefits, the Act provides Mr. Munoz's exclusive remedy for his work-related injury.

Because B&A owed workers' compensation benefits, and Mr. Munoz was entitled to receive those benefits, the Act provides Mr. Munoz's exclusive remedy for his work-related injury. Under the Act:

> "...the compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility of any employer engaged in any of the enterprises or businesses enumerated in Section 3 of this Act, or of any employer who is not engaged in such enterprises or businesses, but who has elected to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this Act, and whose election to continue under this Act, has not been nullified by any action of his employees as provided for in this Act." 820 ILCS 305/11.

Despite the Act providing Mr. Munoz's exclusive remedy, he impermissibly sued B&A in Cook County Circuit Court.

Pursuant to Section 2-619(a)(9), "Defendant may within the time for pleading, file a motion for dismissal of the action [on the grounds that] ... the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." A motion to dismiss filed under section 2-619 asserts that the claim is defeated based on certain defects, defenses, or other affirmative matter. Mount Mansfield Insurance Group, Inc. v. American International Insurance Group, Inc., 372 Ill. App. 3d 388, 392 (1st Dist. 2007).

Here, the Act's exclusive remedy constitutes an affirmative matter barring Mr. Munoz's tort claim against B&A. 820 ILCS 305/11; see e.g., Incandela v. Giannini, 250 Ill. App. 3d 23, 25 (2d Dist. 1993).

The Lower Courts correctly recognized that the Workers' Compensation Act provides Mr. Munoz's exclusive remedy against B&A. (C112); (A002). Both Lower Courts correctly noted that B&A paid Mr. Munoz's workers' compensation benefits pursuant to a contractual obligation. (C112); (A002). Thus, both Lower Courts concluded that the Workers' Compensation Act represented Mr. Munoz's exclusive remedy against B&A, and appropriately dismissed Mr. Munoz's tort claims against B&A. (C112); (A002). This Court should join with the Lower Courts in affirming B&A's dismissal from this lawsuit.

5. Mr. Munoz's claim that the Appellate Court usurped the legislature's domain by creating a basis for liability under the Act that is not specified in the statute is incorrect because the Act already provides for liability beyond one's direct employee.

Mr. Munoz's claim that the Appellate Court usurped the legislature's domain by creating a basis for liability under the Act that is not specified in the statute is incorrect because the Act already provides for liability beyond one's direct employee. In his Brief, Mr. Munoz argues that the Appellate Court ignored "the constraints of Laffoon" and created a new "category of immunity based on payment of benefits" that is not specified in the Act itself. (Appellant's Brief, 14). Mr. Munoz's argument has four flaws.

First, the Appellate Court did not rule that B&A can invoke the Act's exclusive remedy provision because it paid benefits. Rather, the Appellate Court ruled that B&A falls under the Act's protection because B&A demonstrated that it had a pre-existing legal obligation to pay those benefits. Munoz, 2021 IL App (1st) 200254, at ¶¶ 22-23.

Nor did the Appellate Court invent this basis; rather, Munoz cited to this Court's decision thirteen years ago in Ioerger. Id. at ¶ 22. In fact, Munoz expressly rejected the idea that simply paying benefits allows an entity to invoke the Act's exclusive remedy provision. Id. at ¶ 20. Instead, the Appellate Court cited to Burge, where the Appellate Court specifically held that post-Ioerger, immunity depends on evidence of a preexisting obligation to pay workers' compensation benefits not simply paying the benefits. See Munoz, 2021 IL App (1st) 200254, at ¶ 21 (citing Burge, 2015 IL App (2d) 141090, at ¶ 2) ("In other words, immunity under [exclusive remedy provisions] cannot be predicated on [a] defendant's payment of workers' compensation unless [the] defendant was under some legal obligation to pay") (internal quotations omitted).

Second, Munoz did not usurp the legislature by finding that B&A could invoke the Act for someone who was not B&A's immediate employee because, as noted above, the Act's plain text already extends beyond an employer's immediate employees and covers anyone that the employer engages directly or indirectly, "whether principal or sub-contractor" to do any such work." 820

ILCS 305/1(a)(3). Indeed, in his Brief, Mr. Munoz even acknowledges that immunity under the Act extends beyond only the immediate employee when he lists the entities entitled to immunity as including, "the employer of the injured workers, agents of the employer, the employer's insurer, and broker, any service organization that is wholly owned by his employer." (Appellant's Brief, 15) (internal quotations omitted).

Third, in his Complaint at Law, Mr. Munoz even calls Mr. Munoz a subcontractor of B&A. (C67-68) ("by all subcontractors, including Plaintiff's employer.") In his Section 414 retained control claim, Mr. Munoz pleads further that B&A controlled the means and methods of work on the construction site. (Id.) While a Section 414 claim is actually a direct liability claim versus an agency claim, there is still no question that per Mr. Munoz's own allegations, B&A retained Mr. Munoz "directly or indirectly" to perform construction work. (Id.) In fact, Mr. Munoz accepted B&A's workers' compensation payments for three (3) years and raised no issue that BACR - his alleged, actual, employer - never made a single payment. (C85).

Fourth, Mr. Munoz's reliance on Folta v. Ferro Engineering, 2015 IL 118070, for the proposition that the Act's plain language must be strictly construed even if strictly construing the text produces a harsh result is not on point with the instant fact pattern. In Folta, this Court was asked to rule that the Act covered a latent disease - asbestos - when the Act's plain text expressly limited covered injuries to "any disease contracted or sustained in

the course of employment." Folta, 2015 IL 118070, at ¶ 41 (citing 820 ILCS 310/11). The Folta appellant asked this Court to ignore the Act's unambiguous text and expand its scope to cover the latent disease. Id.

But here, B&A is not requesting to read an expansion into the Act because the Act's text already provides for coverage beyond the immediate employer-employee relationship, a fact that this Court has recognized previously. 820 ILCS 310/5 Ioerger, 232 Ill. 2d at 201 ("Under the express terms of the [Act], the law's exclusive remedy provisions extend not only to the employer, but to various other specified entities.")

6. Mr. Munoz's argument that the RAR2-222 South Riverside, LLC and B&A contract did not obligate B&A to provide benefits is incorrect because the contract states so in its plain language.

Mr. Munoz's argument that the RAR2-222 South Riverside, LLC and B&A contract did not obligate B&A to provide benefits is incorrect because the contract states so in its plain language. Mr. Munoz incorrectly argues that B&A is not entitled to the Act's exclusive remedy poison because the contract between RAR2-222 South Riverside, LLC and B&A, purportedly, provided no pre-existing legal obligation to pay these benefits. Initially, Mr. Munoz does not dispute that the Contract at issue contains the below provision:

"The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the

Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts any of them may be liable:

> .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;" (A093)

Clearly, the above quoted language obligated B&A to purchase and provide workers' compensation coverage for all employees on the jobsite, including its own employees and its subcontractors. In order to get around this unambiguous contractual obligation, Mr. Munoz's brief argues that the clause is illusory because Mr. Munoz was not B&A's direct employee, so under his reading of the Act, B&A could never owe workers' compensation benefits under the contract. (Appellant's Brief, 17). As noted, the Act actually does provide for coverage by a general contractor for claims made by subcontractors on a construction project. 820 ILCS 305/1(a)93). Moreover, even if the Act did not provide that language, this contract states that B&A agrees to provide coverage for "any of them [who] may be liable." Clearly, the contract has B&A assume all obligations for any workers' compensation insurance owed on this Project from the Property Owner – including injuries sustained by an employee of B&A's wholly-owned subsidiary.

Next, Mr. Munoz incorrectly argues that because B&A employee Gregory Marquez testified that he was not aware of any documentation memorializing that B&A had to secure BACR's workers' compensation premiums, B&A, allegedly, had no legal obligation to provide that coverage to

BACR workers. (Appellant's Brief, 16). But Mr. Marquez followed that quote up by stating that the reason why there was no contract between B&A and BACR was because "they're in essence, the same company." (Sup. C 27). Likewise, when Mr. Munoz argues that B&A and BACR have different presidents, he also ignores the testimony that every other officer at BACR, besides its president, was also a B&A board member. (Sup. C 25).

Mr. Munoz's lack of contract argument is fatally flawed because it ignores the concept of pass-thru liability on a jobsite. If RAR2-222 South Riverside had undertaken to do this construction project itself and hired the workers directly, there is no question that RAR2-222 South Riverside, LLC would owe workers' compensation coverage to any injured worker. However, RAR2-222 South Riverside, LLC voluntarily contracted with B&A to not only build this project but also pick up the compensation coverage for all workers. (A093). By the terms of its contract with RAR2-222 South Riverside, LLC, B&A could pass-thru B&A's own contractual obligations to RAR2-222 South Riverside, LLC down to B&A's subcontractors, including B&A's obligation to procure workers' compensation insurance for those workers. (Sup. C 109-10). However, if B&A did not specifically pass one of its contractual obligations down to a subcontractor by separate contract, then B&A remained legally obligated to RAR2-222 South Riverside, LLC to fulfill that contractual obligation itself.

That is how pass-thru liability works. A property owner initially contracts with a general contractor to build a building, and the general contractor then sub-contracts out the various tasks necessary to actually construct that building to other trades.

Here, B&A never passed thru its obligation of furnishing workers' compensation insurance for BACR's workers down to BACR, its wholly owned-subsidiary. (A093). Instead, B&A held onto that obligation and B&A fulfilled its insuring obligation by taking out the Arch policy and directly paying Mr. Munoz $78,000 in benefits when his total workers' compensation claim fell below the Arch policy's deductible limit. (Sup. C. 26); (C63-64). Therefore, B&A is properly entitled to the Act's exclusive remedy provision. Ioerger, 232 Ill. 2d at 204; Burge, 2015 IL App (2d) 141090, at ¶ 14.

7. The various policy arguments proffered by Mr. Munoz and the Amicus Brief are unconvincing because they circumvent the simple proposition that because B&A was obligated to pay Mr. Munoz's benefits and did pay those benefits, Mr. Munoz cannot sue B&A to recover those same damages a second time.

The various policy arguments proffered by Mr. Munoz and the Amicus Brief are unconvincing because they circumvent the simple proposition that because B&A was obligated to pay Mr. Munoz's benefits and did pay those benefits, Mr. Munoz cannot sue B&A to recover those same damages a second time. The "immunity afforded by the [Workers' Compensation] Act's exclusive remedy provisions is predicated on the simple proposition that one

who bears the burden of furnishing workers' compensation benefits for an injured employee should not also have to answer to that employee for civil damages in court." Ioerger, 232 Ill. 2d at 203. B&A contracted to bear the burden of workers' compensation coverage for BACR employees, like Mr. Munoz, and when Mr. Munoz submitted a workers' compensation claim, B&A paid those benefits. (C63-64). Now, Mr. Munoz and ITLA ask this Court to overturn the "simple proposition" that both lower courts in this case embraced - the person paying the workers' compensation benefit cannot be sued civilly for the same damages.

In order to get around this "simple proposition," and the clear statute, and the directly analogous cases that B&A cited in its underlying briefing, both Mr. Munoz and ITLA propose several policy arguments. Yet, each such argument has a glaring flaw and none can stand up to the overriding simple proposition that if someone agrees to and then actually does pay the workers' compensation benefit, they should not have to answer for those damages a second time in civil court.

First, ITLA's claim that the Munoz holding violates the Anti-Indemnification Act (740 ILCS 35/1) is unsupported. (ITLA, 15). The Anti-Indemnification Act prevents two parties from drafting a construction contract to promise to indemnify or hold harmless "another person's own negligence." 740 ILCS 35/1. However, the Anti-Indemnification Act expressly states that "[t]his Act does not apply to construction bonds or

insurance contracts or agreements." 740 ILCS 35/3. Thus, on its face, the Anti-Indemnification Act does not apply to a situation where one party agrees to pick up the workers' compensation insurance because that agreement would clearly be "an insurance contract[] or agreement[]." Accordingly, the policy articulated in the Anti-Indemnification Act cannot provide a basis for denying B&A the Workers' Compensation Act's exclusive remedy provision.

Second, ITLA's claim that the Munoz holding creates an absurd result is unfounded. (ITLA, at 17). ITLA argues that under Section 1(a)(3) of the Act if an entity, such as a general contractor, has to pay compensation benefits for one of its subcontractors, it can recover the money it paid out in benefit directly from the subcontractor. (ITLA, at 17) (citing 820 ILCS 305/1(a)(3). As ITLA's brief posits, this recovery mechanism produces an absurd result because the general contractor "effectively gets to have its cake and eat it too." (ITLA, at 17).

ITLA's phrasing is interesting in two respects. Initially, the phrasing is clearly a play on a line from this Court's Ioerger decision. Ioerger, 232 Ill.2d at 203. Left unsaid in ITLA's brief is that the source quote was this Court actually stating in Ioerger that a plaintiff recovering workers' compensation benefits and then claiming the entity who paid those benefits cannot avail itself of the Act's exclusive remedy provision - exactly what Mr. Munoz is claiming in this case - would be "the same as declaring that a party who has paid for the cake may neither keep it nor eat it." Id.

Next, the Act's reimbursement provision contained at Section 1(a)(3) makes no sense when applied to this case's particular facts. Under ITLA's theory, B&A could seek reimbursement from Mr. Munoz's direct employer for the workers' compensation benefits B&A paid, therefore, B&A shouldered no actual burden in paying Mr. Munoz's workers' compensation benefits because the statute gives B&A a mechanism for recovering that money from Mr. Munoz's direct employer. Thus, it is absurd giving an entity who faced no actual burden complying with the Act the benefit of the Act's exclusive remedy provision. (ITLA, at 17).

The problem with ITLA's statutory reimbursement argument is that the direct-employer entity that B&A could potentially recover against in this case is BACR, a wholly-owned subsidiary of B&A. It is the same pot of money for both companies. See (Sup. C. 27) ("they're in essence, the same company.") By way of analogy, ITLA's reimbursement argument applied to this fact pattern is akin to saying that a parent who paid for damage caused by his or her child technically did not incur any financial burden because the parent could always seek contribution from the responsible party, his or her child. True, the remedy may be legally available, but because it is the parent's money either way, the remedy is of no value. The burden remains.

The clear flaw visible in ITLA's analogy when applied to the specific facts in Mr. Munoz's case explains why Munoz did not produce an absurd result. Even if B&A could seek reimbursement under the Act against B&A's

wholly-owned subsidiary, BACR, for the benefits that B&A paid to Mr. Munoz, B&A would just be subrogating against itself. It is B&A's money either way.

Thus, there is no situation in this case where B&A will not shoulder the entire burden of paying Mr. Munoz's workers' compensation benefits. If B&A shouldered the entire burden of complying with the Act then B&A should also receive the entire benefit of the Act's exclusive remedy provision. Certainly, Mr. Munoz should not be able to recover against B&A twice for the same accident. Accordingly, this Court should affirm the lower courts' invocation of the Act's exclusive remedy provision that resulted in B&A's dismissal from this case.

CONCLUSION

This Court previously held that "the immunity afforded by the [Workers' Compensation] Act's exclusive remedy provisions is predicated on the simple proposition that one who bears the burden of furnishing workers' compensation benefits for an injured employee should not also have to answer to that employee for civil damages in court." Ioerger, 232 Ill. 2d at 203. There is no question that B&A bore the burden of paying Mr. Munoz's benefit. B&A did not do so voluntarily; but rather, did so pursuant to its pre-existing contractual obligation to provide those benefits to Mr. Munoz. This Court should follow its clear, prior precedent in this area of law by affirming

the reasoned decisions of the Appellate Court and Circuit Court that Mr. Munoz cannot sue B&A in tort and recover twice for the same damages.

WHEREFORE, for the foregoing reasons, the Defendant/Appellee, Bulley & Andrews, LLC, respectfully requests that this Honorable Court affirm the Appellate Court's order affirming dismissal in B&A's favor.

Respectfully submitted,

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RULE 341 CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of the brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 46 pages.

Respectfully submitted,

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No. 127067

In The Supreme Court of Illinois

DONOVAN MUNOZ,

Plaintiff-Appellant,

vs.

BULLEY & ANDREWS, LLC.,

Defendant-Appellee,

.

ON APPEAL FROM THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT
CASE NO:

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

CASE NO.19-L-3878

HONORABLE DANIEL T. GILLESPIE, JUDGE PRESIDING

NOTICE OF FILING AND PROOF OF SERVICE

To: See Attached Service List

PLEASE TAKE NOTICE THAT ON **August 4, 2021,** the undersigned attorney caused to be filed the **Response Brief of Defendant-Appellee, Bulley & Andrews, LLC,** by filing the attached via the Odyssey eFileIL system with the Supreme Court of Illinois.

The undersigned further certifies that on August 4, 2021, the parties listed above were served via email with a copy of this notice and brief.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Respectfully submitted,

CASSIDAY SCHADE LLP

By: /s/ James F. Maruna
One of the Attorneys for
Defendant/Appellee, BULLEY
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