

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

FIDEL AMESQUITA, et al.,)	No. ED99266
)	
Appellants,)	Appeal from the Circuit Court
)	of Perry County
vs.)	
)	Honorable Benjamin Frederick Lewis
GILSTER-MARY LEE)	
CORPORATION, et al.,)	
)	
Respondents.)	FILED: September 10, 2013

Fidel Amesquita, Georgia Hawthorne, Sara Lane, Rachane Thitakom, and Mary Whiteside (collectively “Plaintiffs”) appeal from the trial court’s order granting the motions to dismiss of Gilster-Mary Lee Corporation (“GML”) and Eric Asselmeier (“Asselmeier”), Donald Welge (“Welge”), Anthony Berry (“Berry”), and Gary Layton (“Layton”) (collectively “Employee Defendants”). Plaintiffs alleged they suffered occupational diseases from diacetyl exposure while working at GML’s popcorn production facility and that GML is liable in tort for ordinary negligence and punitive damages (Count I). Plaintiffs also alleged that Employee Defendants were individually liable under the “something more” doctrine and for civil conspiracy (Count II). Finally, Plaintiffs alleged the Employee Defendants were also liable for ordinary negligence (Count III). The trial court granted GML’s and Employee Defendants’ (collectively “Defendants”) motions to dismiss Plaintiffs’ amended petition on the ground that The Workers’ Compensation Law, as amended in 2005, provided Plaintiffs’ exclusive remedy against GML, and that Plaintiffs failed to state a claim against Employee Defendants.

AFFIRMED IN PART, REVERSED IN PART.

Division III holds: A petition may not be dismissed based on an affirmative defense unless the petition establishes “on its face and without exception” that the defense applies. Cornelius v. CJ Morrill, 302 S.W.3d 176, 178 (Mo. App. E.D. 2009) (quoting K.G. v. R.T.R., 918 S.W.2d 795, 797 (Mo. banc 1996)). Because The Workers’ Compensation Law as amended in 2005 did not provide the exclusive remedy available to Plaintiffs’ seeking damages for occupational disease injuries that occurred within the scope of their employment, Defendants’ affirmative defense of workers’ compensation exclusivity fails as a matter of law. Accordingly, we reverse the trial court’s judgment dismissing Plaintiffs’ claim against GML and remand Plaintiffs’ claim for trial. Because Plaintiffs do not allege an independent duty owed by Defendant Employees to Plaintiffs, Plaintiffs allegations fail to state a cause of action against Employee Defendants for negligence, or any related action for civil conspiracy. Therefore, we affirm the trial court’s judgment dismissing Counts II and III.

Opinion by: Kurt S. Odenwald, J., Mary K. Hoff, P.J., and Angela T. Quigless, J., Concur.

Attorney for Appellants: Gary G. Matheny and Robert L. DeVoto

Attorney for Respondents: Charles Elbert, Kevin A. Sullivan and David M. Remley

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.