

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-1005

LAURIE MALCOLM

vs.

ARCH GLOBAL PRECISION LLC.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant, Arch Global Precision LLC (Arch Global) appeals from the order denying its motion for judgment on the pleadings, Mass. R. Civ. P. 12 (c), 365 Mass. 754 (1974). Arch Global contends that (1) the court erred in declining to consider documents outside of the pleadings, (2) the court improperly put the burden of establishing immunity on Arch Global, and (3) even without considering the extrinsic documents, the court should have dismissed the complaint pursuant to the exclusivity provisions of the Workers' Compensation Act (act), G. L. c. 152, §§ 23, 24. We affirm.

"The effect of a motion for judgment on the pleadings is 'to challenge the legal sufficiency of the complaint.' Burlington v. District Attorney for the N. Dist., 381 Mass. 717, 717-718 (1980) 'For purposes of the court's consideration of the [rule 12 (c)] motion, all of the well pleaded factual allegations in the adversary's pleading are assumed to be true and all contravening assertions in the

movant's pleadings are taken to be false.' 5 C.A. Wright & A.R. Miller, Federal Practice and Procedure § 1368, at 691 (1969)."

Home Depot v. Kardas, 81 Mass. App. Ct. 27, 28 (2011), quoting Minaya v. Massachusetts Credit Union Share Ins. Corp., 392 Mass. 904, 905 (1984). Guided by these principles, we summarize the factual allegations in the complaint in the light most favorable to the nonmoving party.

The plaintiff, Malcolm, was employed by Richards Micro-Tool, LLC (Richards Micro-Tool) as a machinist when she injured her hand on a machine while at work. Richards Micro-Tool was a wholly-owned subsidiary of Arch Global. The plaintiff brought suit against Arch Global seeking recovery on the theories of general negligence and negligent supervision, claiming that Arch Global breached its duty to "provide a safe worksite" by failing to "reasonably supervise the worksite and ensure the proper training of employees on the worksite."

Arch Global moved for judgment on the pleadings pursuant to Mass. R. Civ. P. 12 (c), arguing that it was immune from suit under the exclusivity provisions of the act, G. L. c. 152, §§ 23 & 24. To its rule 12 (c) motion, Arch Global attached a copy of a lump-sum settlement agreement executed between the plaintiff and Richards Micro-Tool and of the workers' compensation insurance policy covering Arch Global and its subsidiaries. Neither of those documents were referenced in or attached to the

plaintiff's complaint. After a hearing, the judge issued a written decision denying the motion and noting that the defendant supported its claim for immunity with "extrinsic evidence not part of the original pleadings nor relied upon by the plaintiff in framing the complaint." Arch Global timely appealed.

We first address Arch Global's contention that the judge erred "in refusing to consider the extrinsic evidence" attached to its motion. While the motion judge could consider "[m]atters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint" without converting the motion into one for summary judgment, Rosenberg v. JPMorgan Chase & Co., 487 Mass. 403, 408 (2021), citing Golchin v. Liberty Mut. Ins. Co., 460 Mass. 222, 224 (2011), the lump-sum settlement agreement and insurance policy attached to Arch Global's motion here did not fall within any of those categories. Further, the plaintiff did not rely on those documents in framing her complaint for negligence. Contrast Galiastro v. Mortgage Elec. Registration Sys., Inc., 467 Mass. 160, 173 & n.11 (2014) (judge's consideration of extrinsic documents did not convert motion to dismiss into one for summary judgment where plaintiff relied on documents by attaching them as exhibits to complaint). Accordingly, we discern no error in the judge's ruling.

Where, as here, documents outside the pleadings are not referenced in the complaint, the judge may consider extraneous material only after providing notice to the parties that the motion will be converted to a motion for summary judgment. See Home Depot, 81 Mass. App. Ct. at 28 n.3 ("Rule 12 (c) provides that a motion for judgment on the pleadings shall be converted - - after notice -- to a motion for summary judgment . . . if matters outside the pleadings are considered"). At this early stage of the litigation, where discovery had yet to be conducted, the judge properly declined to consider the documents and convert the motion. Id.

We now turn to Arch Global's contention that the complaint, on its face, without consideration of the extrinsic documents, established that Arch Global was immune from suit pursuant to the act. The exclusivity provision of the act bars an employee from recovering workers' compensation benefits and also suing her employer to recover for an injury covered by the act. See G. L. c. 152, §§ 23 & 24. See also Estate of Moulton v. Puopolo, 467 Mass. 478, 483 (2014). An injured worker may, however, bring a claim against other persons or entities who may be liable for the injury. See G. L. c. 152, § 15. To determine whether a common law action is barred by the exclusivity provision of the act, we consider whether "(1) the employer [is] an insured person liable for the payment of compensation, and

(2) the employer [is] the direct employer of the employee." Wentworth v. Henry C. Becker Custom Bldg. Ltd., 459 Mass. 768, 770 (2011), quoting Lang v. Edward J. Lamothe Co., Inc., 20 Mass. App. Ct. 231, 232 (1985). Despite Arch Global's assertion that the plaintiff should bear the burden of proving that Arch Global was not her direct employer, on a rule 12 (c) motion, it is Arch Global as moving party that carries the burden of proving that it was her direct employer. See Home Depot, 81 Mass. App. Ct. at 28. See also Molina v. State Garden, Inc., 88 Mass. App. Ct. 173, 179 (2015) ("the employer asserting an immunity defense must establish that it is . . . the 'direct' employer").

We are unpersuaded by Arch Global's contention that the facts in the complaint "impliedly" allege that Arch Global was the plaintiff's direct employer. Determining whether an employer-employee relationship exists is a fact intensive inquiry. See Estate of Moulton, 467 Mass. at 489. See also Molina, 88 Mass. App. Ct. at 179, quoting Fleming v. Shaheen Bros., 71 Mass. App. Ct. 223, 227-228 (2008) ("The primary test is whether one has a right to control the individual's work performance"). Cf. Molina, supra at 175 (record established that defendant was direct employer of plaintiff hired through staffing agency, where defendant "set [the plaintiff's] hours,

established his duties and responsibilities, directed him to perform certain tasks, and managed his day-to-day performance").

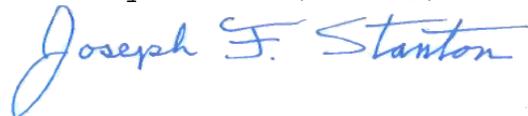
The plaintiff's complaint alleges that Richards Micro-Tool was the plaintiff's employer and that it was a subsidiary of Arch Global. The complaint further alleges that Arch Global "exercised control and/or had supervisory authority over the Richards Micro-Tool, LLC worksite" where the plaintiff was employed. However, an allegation that a parent company had authority over a subsidiary's worksite where the plaintiff was employed, without more, does not amount to an allegation that the parent company was the direct employer of the plaintiff employee. See Berger v. H.P. Hood, Inc., 416 Mass. 652, 658 (1993) ("[b]ecause [subsidiary] is a corporate entity separate from [parent], it does not benefit from the exclusivity provision of the Worker's Compensation Act"); Searcy v. Paul, 20 Mass. App. Ct. 134, 139 (1985) ("We apply [§ 15] . . . as allowing a corporation's employee to bring actions for negligence against third parties, either individuals or corporations, even if in some degree affiliated with the insured employer corporation").

Accordingly, we conclude that the motion judge appropriately denied the motion for judgment on the pleadings because there is an insufficient record, at this stage, to resolve the necessary factual inquiries. See Canter v. Planning

Bd. of Westborough, 7 Mass. App. Ct. 805, 808 (1979) ("neither a motion under rule 12 (c) nor one converted to a motion for summary judgment under rule 56 can be granted properly where there is a genuine issue of material fact").

Order denying motion for
judgment on the pleadings
affirmed.

By the Court (Sullivan,
Henry & Grant, JJ.¹),



Clerk

Entered: July 20, 2021.

¹ The panelists are listed in order of seniority.