

# MASSACHUSETTS Lawyers Weekly

## Workers' compensation – Joint venture – Single employer

*Appeals Court*

Where the plaintiff, a restaurant employee who received workers' compensation benefits, brought suit against other entities allegedly liable for the plaintiff's injury, a judgment in favor of those entities should be affirmed, as a jury finding that they were engaged in a joint enterprise or joint venture with the plaintiff's employer was not unreasonable.

"The Massachusetts Workers' Compensation Act (act) provides that the acceptance of workers' compensation benefits by an injured worker is deemed a release of any and all claims the employee might have against the employer. ... This, however, does not prohibit an injured worker from bringing a claim against other persons or entities who may be legally liable for the injury. ... The question presented is whether the judge properly denied the plaintiff's motion for judgment notwithstanding the verdict (judgment n.o.v.) where, as here, there was sufficient evidence for the jury to find that certain entities were engaged in a joint enterprise or joint venture rendering them a single employer for purposes of the act. ... We conclude that a reasonable jury could have found that they were and therefore affirm the denial of the plaintiff's motion for judgment n.o.v. or in the alternative new trial, and the judgment entered in favor of the defendants. ...

"Bloomin' Brands, Inc. (Bloomin' Brands), is an umbrella entity that operates four restaurant concepts, including Outback Steakhouse. At issue here are three entities within Bloomin' Brands: OSI Restaurant Partners, LLC (OSI), Outback Steakhouse of Florida, LLC (Outback), and OS Restaurant Services, LLC (OS Restaurant). These entities operate pursuant to operating agreements which establish that OSI owns, manages, and controls Outback, which in turn owns, manages, and controls OS Restaurant. ...

"The plaintiff, James Z. Dakin, was injured while working as a prep cook at an Outback Steakhouse restaurant in Hanover, Massachusetts. He filed a claim for and received workers' compensation benefits, paid from an insurance policy that listed OSI, Outback, and OS Restaurant, among others, as the insureds. As relevant here, the plaintiff filed a complaint in the Superior Court against OSI and Outback alleging negligence. The defendants answered contending, inter alia, that the plaintiff's claims were barred by the act. The jury, in response to special questions, found that OSI and Outback were both engaged in a joint enterprise or joint venture with OS Restaurant. As a result, the plaintiff's claims were barred by the act and judgment entered for the defendants. The plaintiff filed a motion for judgment n.o.v. or in the alternative a new trial (motion). The judge denied the motion and this appeal followed. ...

"The plaintiff contends that the jury's verdict was not supported by sufficient evidence, was against the weight of the evidence, and reflected a misunderstanding of the law. He argues that the evidence merely established a 'run-of-the-mill' parent-subsidiary corporate relationship and did not establish that Outback and OSI had an intent to associate as and were engaged in a joint venture with OS Restaurant. Therefore, he claims that the judge erred in denying his motion.

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“The defendants counter that they met their burden to prove that the entities were engaged in a joint venture and thus are a single employer for purposes of the act. ... For the reasons that follow, we agree with the defendants. ...

“Whether the act’s exclusivity remedy precludes the plaintiff’s claims turns on whether the entities engaged in a joint venture or joint enterprise such that they constitute a single employer under the act. ...

“As discussed in detail *infra*, a reasonable jury could have found that the evidence demonstrated the existence of a joint venture where a series of interrelated entities engaged in a common undertaking to manage and operate the Bloomin’ Brands restaurant concepts, including the Hanover Outback Steakhouse where the plaintiff worked. ...

“The interrelated management, financial interdependence, and connectivity of the entities, as captured by the *Shain [Inv. Co. v. Cohen*, 15 Mass. App. Ct. 4 (1982)] considerations/*Gurry [v. Cumberland Farms, Inc.*, 406 Mass. 615 (1990)] factors supported the jury’s findings that the defendants met their burden to prove ‘an intent to associate’ ‘so as to render them a single employer under [the act].’ ... Indeed, although not required, there is ample evidence of each of the *Shain* considerations/*Gurry* factors, all of which supported the jury’s verdict. Accordingly, there was no error in the denial of the plaintiff’s motion for judgment n.o.v. or in the alternative a new trial.”

*Dakin v. OSI Restaurant Partners, LLC, et al. (Lawyers Weekly No. 11-084-21) (18 pages) (Blake, J.) The case was tried before Gregg J. Pasquale, J., and a motion for judgment notwithstanding the verdict or for a new trial was considered by him. Scott E. Charnas for the plaintiff; Christopher A. Callanan for OSI Restaurant Partners, LLC, and another (Docket No. 20-P-819) (Aug. 2, 2021).*

[Click here to read the full text of the opinion.](#)

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