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**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

MAUNG SAN DIN,)
)
 Plaintiff,)
)
 v.)
 EASTERN HOPE CORPORATION, d.b.a.)
 KERRAKU & RAKUEN RESTAURANT)
 and KEE JOON YOM,)
)
 Defendants.)

CIVIL ACTION NO. 99-0561D

**ORDER GRANTING DEFENDANT
EASTERN HOPE'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

I. INTRODUCTION

THIS MATTER came on for hearing on August 20, 2001 in courtroom 205A at 9:00 a.m. on Defendant Eastern Hope Corporation dba Kerraku & Rakuen Restaurant's [hereinafter Defendant Eastern Hope] motion for judgment on the pleadings under Rule 12 of the Commonwealth Rules of Civil Procedure. Attorney Steven P. Pixley, Esq. appeared on behalf of Defendant Eastern Hope. Attorney Stephen J. Nutting, Esq. appeared on behalf of Maung San Din [hereinafter Plaintiff]. The court, having considered all the pleadings and having heard the arguments of counsel, and being otherwise fully advised, now renders its decision.

II. BACKGROUND

On September 29, 1999, Plaintiff filed a complaint against Defendants for: (1) pain and

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1 suffering as well as medical damages resulting from Defendant Yom's alleged assault and battery on
2 Plaintiff; and (2) for breach of contract as a result of Plaintiff's alleged wrongful termination. On
3 November 8, 1999, Defendants, through John Cool, Esq. filed their answer. On November 16, 1999,
4 Defendants filed an amended answer.

5 On July 2, 2001, Defendant Eastern Hope, through newly appointed counsel Steven P. Pixley,
6 Esq., filed a motion for judgment on the pleadings under Rule 12(c) of the Commonwealth Rules of
7 Civil Procedure. On July 16, 2001, Plaintiff filed his opposition to Defendant Eastern Hope's motion
8 for judgment on the pleadings. On July 23, 2001, Defendant Eastern Hope filed its reply to Plaintiff's
9 opposition. A hearing on the motion was heard on August 20, 2001 whereupon, at the request of the
10 court, the parties supplemented the court's record with a copy of Plaintiff's employment contract with
11 Defendants.

12 III. FACTS

13 Defendant Eastern Hope employed Plaintiff as a waiter at Rakuen Restaurant for a term of one
14 year commencing on January 12, 1999 and ending on January 13, 2000.¹ At the same time, Defendant
15 Eastern Hope employed Kee Joon Yom [hereinafter Defendant Yom] as the manager of Rakuen
16 Restaurant.² Defendant Yom allegedly assaulted Plaintiff on or about June 15, 1999 inside the kitchen
17 at Rakuen Restaurant.³

18 IV. ISSUE

19 Whether Defendant Eastern Hope's motion for judgment on the pleadings should be granted
20 where the personal injuries claimed were caused by the willful or accidental act of a third person upon
21 an employee in the course of his employment and where the Commonwealth Workers' Compensation
22 Law, at 4 CMC §§ 9301-9357, provides an exclusive remedy for such injuries.

23
24 ¹ See Pl.'s Compl. at ¶ 7 and admitted in Def.'s Answer at ¶ 2 aint

25 ² See Pl.'s Compl. at ¶ 6 and admitted in Def.'s Answer at ¶ 2.

26 ³ See Pl.'s Compl. at ¶¶ 11-15. Although this fact is not admitted in the Answer, Defendant Eastern Hope
27 does not dispute the fact that the alleged assault occurred at Rakuen Restaurant, Defendant Eastern Hope's place of
28 establishment. See Def. Eastern Hope's Memorandum of Law in Support of Motion for Judgment on the Pleadings
under Rule 12(c) of the Commonwealth Rules of Civil Procedure at 2 (July 2, 2001).

1 **V. ANALYSIS**

2 A. Motion for Judgment on the Pleadings

3 The standard for a motion for judgment on the pleadings is set forth in Rule 12(c) of the
4 Commonwealth Rules of Civil Procedure, which provides, "[a]fter the pleadings are closed but within
5 such time as not to delay the trial, any party may move for judgment on the pleadings." *See* Com. R.
6 Civ. P. 12(c). Here, Defendant Eastern Hope timely moved for judgment on the pleadings on July 2,
7 2001. At the hearing on Defendant Eastern Hope's motion, matters outside the pleadings were
8 presented to the court (i.e. Plaintiff's employment contract). As such, Rule 12(c) mandates that
9 Defendant Eastern Hope's motion for judgment on the pleadings be treated as a Rule 56 motion for
10 summary judgment. *See* Com. R. Civ. P. 12(c). Commonwealth Rules of Civil Procedure 12(c), in
11 pertinent part, reads:

12 If, on a motion for judgment on the pleadings, matters outside the pleadings
13 are presented to and not excluded by the court, the motion shall be treated
14 as one for summary judgment and disposed of as provided in Rule 56, and
all parties shall be given reasonable opportunity to present all material made
pertinent to such a motion by Rule 56.

15 *Id.* The court further notes that because Defendant Eastern Hope's motion and arguments at the
16 hearing only related to Plaintiff's assault and battery claim, the court will consider the motion at bar as a
17 motion for partial summary judgment only as to that cause of action. Plaintiff's claim for wrongful
18 termination against Defendant Eastern Hope remains at issue.

19 B. Motion for Partial Summary Judgment

20 The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil
21 Procedure. Rule 56(a) provides: "[a] party seeking to recover upon a claim, . . . may . . . move with or
22 without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof."
23 *See* Com. R. Civ. P. 56(a). Rule 56(c) continues:

24 The judgment sought shall be rendered forthwith if the pleadings, depositions,
25 answers to interrogatories, and admissions on file, together with the affidavits,
if any, show that there is no genuine issue as to any material fact and that the
26 moving party is entitled to judgment as a matter of law.

27 *See* Com. R. Civ. P. 56(c). Partial summary judgment is authorized by Com. R. Civ. P. 56(d). "Once a
28 movant for summary judgment has shown that no genuine issue of material fact exists, the burden shifts

1 to the opponent to show that such an issue does exist.” *Riley v. Pub. Sch. Sys.*, 4 N.M.I. 85, 89
2 (1994). In considering a motion for summary judgment, the trial court must review the evidence and
3 inferences in light most favorable to the non-moving party. *Estate of Mendiola v. Mendiola*, 2 N.M.I.
4 233, 240 (1991).

5 The legal issues raised by Plaintiff depends on whether the employment relationship between
6 Plaintiff and Defendants and the damages claimed fall within the scope of the Commonwealth Workers'
7 Compensation Law [hereinafter CWCL] contained in 4 CMC §§ 9301-9357. In 1989, the CNMI
8 Legislature enacted the CWCL through the passage of Public Law 6-33. Although P.L. 6-33 did not
9 include a policy statement, the court finds it appropriate to impute the general policies underlying the
10 enactment of workers' compensation laws across the United States to the CWCL. The general policy
11 of workers' compensation law is to require industry to bear the costs of injury or disease to workers,
12 and to avoid common law litigation by granting to employers immunity against liability for compensable
13 injuries. Such laws, on one hand, compel employees to give up their right to sue for negligence and
14 potentially secure a larger award of damages through a jury trial, and on the other hand, compel the
15 employers to give up its common law defenses to negligence and exposes it to liability regardless of
16 fault for the limited compensation provided by statute.⁴

17 The exclusivity provision of the Commonwealth Workers' Compensation Law contained in 4
18 CMC § 9305 provides:

19 Where the conditions of compensation exist, the right to recover such
20 compensation, pursuant to the provisions of this chapter, is the
21 exclusive remedy for injury or death of an employee against the
22 employer or against any other employee of the employer acting within
23 the scope of such other employee's employment

23 ⁴ See *Moustachetti v. State*, 858 P.2d 487, 489 (Or. Ct. App. 1993); see also *Lantz v. National*
24 *Semiconductor Corp.*, 775 P.2d 937, 938 (Utah Ct. App. 1989) (“The purpose of workers’ compensation act is to
25 provide speedy and certain compensation for workmen and their dependents and to avoid the delay and expense
26 which were involved prior to the act.”); *Thone v. Liberty Mut. Ins. Co.*, 549 A.2d 778, 780 (N.H. 1988) (“The workers’
27 compensation law was enacted to provide employees with certainty of relief and to abolish the evils of the common-
28 law remedies. In place of the common law remedies, the workers’ compensation law creates a balance of benefits and
limitations between the employer and employee. In return for limited compensation, the employee or the estate of the
employee no longer bears the cost of litigation, delays and uncertainty. While the employer must assume the risk of
employees’ injuries without the benefit of common law defenses, the workers’ compensation law limits the extent of
liability.”)

1 See 4 CMC § 9305. In determining whether the CWCL exclusivity provision applies to the assault and
2 battery cause of action against Defendant Eastern Hope, the initial question is whether the alleged injury
3 falls within the scope of the exclusivity provision. See *Gunnell v.*
4 *9 Metrocolor Laboratories, Inc.*, 112 Cal.Rptr.2d 195 (Cal. Ct. App. 2001).

5 In this case, Defendant Eastern Hope contends that the injuries allegedly sustained by Plaintiff
6 fall within the scope of the CWCL. Defendant Eastern Hope argues that 4 CMC § 9305 limits
7 Plaintiff's right to recover compensation by mandating that the exclusive remedy for injury or death of an
8 employee is in the CWCL. Specifically, Defendant Eastern Hope asserts that Plaintiff's alleged injuries
9 caused by Defendant Yom, the manager at Rakuen Restaurant, constitute "injury caused by the willful
10 act of a third person inflicted upon any employee in the course of employment" as provided in 4 CMC
11 § 9302(o). Defendant Eastern Hope argues that as such, Plaintiff's claim for assault and battery
12 damages against Defendant Eastern Hope's Restaurant should therefore be dismissed.

13 In his opposition to Defendant Eastern Hope's motion, Plaintiff asserts that while the exclusive
14 remedy provision of the CWCL restricts an employee's right of recovery for an accidental injury, the
15 CWCL does not restrict an employee's rights to recover for injury committed by his employer through
16 an intentional tort such as assault and battery. Plaintiff contends that the exclusivity provision of the
17 CWCL does not bar legal actions against employers who personally assault employees or who, by
18 ratifying an assault by an employee became joint participants in the act. Plaintiff further cites numerous
19 cases that hold that a physical assault by the employer upon an employee has often been held to justify
20 an action at law against the employer despite the exclusivity provisions of a Workers' Compensation
21 Act. See *Magliulo v. Superior Court*, 121 Cal. Rptr. 621 (Cal. Ct. App. 1975); *Ramey v. General*
22 *Petroleum Corp.*, 343 P.2d 787 (Cal. Ct. App. 1959); *Johns-Manville Products Corp. v. Superior*
23 *Court*, 612 P.2d 948 (Cal. 1980).

24 The essence of Plaintiff's argument is that the so called limited "exception" to the exclusivity
25 provision of the workers' compensation law applies in this case. Plaintiff's claims that the limited
26 exception exists where an employee is injured in the course of his employment and where the injury is
27 the product of an intentional or deliberate act by the employer directed at causing harm to that
28 particular employee. See *Orzechowski v. Warner-Lambert Co.*, 460 N.Y.S.2d 64, 66 (N.Y.1983).

1 In furtherance of his argument, Plaintiff asserts that employees covered under workers' compensation
2 laws have consistently been permitted to maintain common law causes of actions for an intentional tort
3 against their employers and co- employees where their injuries have been the product of deliberate acts
4 undertaken to injure a particular employee or to have him injured. *Id.*

5 After a careful review of the pleadings filed, this court disagrees with Plaintiff's arguments. The
6 first point of error of Plaintiff's argument stems from the fact the alleged assailant in this case is the
7 manager rather than the employer or the owner of the restaurant, which is Eastern Hope Corporation.
8 See Employment Contract at 1. The second point of error is that Plaintiff failed to establish in his
9 complaint that Defendant Eastern Hope, as the employer, expressly authorized or directed Defendant
10 Yom, the manager, to inflict the injuries sustained by Plaintiff. See *Meerbrey v. Marshall Field and*
11 *Company, Inc.*, 564 N.E.2d 1222, 1226 (Ill.1990) ("Such injuries are also accidental from the
12 employer's point of view, at least where the employer did not direct or expressly authorize the co-
13 employee to commit the assault.").

14 The last point of error is that Plaintiff failed to establish that Defendant Yom is the alter ego of
15 Defendant Eastern Hope so as to hold Defendant Eastern Hope liable for Defendant Yom's alleged
16 assault on Plaintiff. See *Jett v. Dunlap*, 425 A.2d 1263, 1265 (Conn.1979) ("If the assailant is of such
17 a rank in the corporation that he may be deemed the alter ego of the corporation under the standards
18 governing disregard of the corporate entity, then attribution of the corporate responsibility for the
19 actor's conduct is appropriate. It is inappropriate where the actor is merely a foreman or supervisor.");
20 *Perry v. Stitzer Buick GMC, Inc.*, 637 N.E.2d 1282, 1287 (Ind. 1994) ("Tortious intent will be
21 imputed to an employer that is a legal entity or artificial person where either (1) the corporation is the
22 tortfeasor's alter ego or (2) the corporation has substituted its will for that of the individual who
23 committed the tortious acts."). If the assailant is only another employee who cannot be identified as the
24 alter ego of the corporation, then the strict liability remedy provided by the workers' compensation law
25 is exclusive and cannot be supplemented with common-law damages. See *Jett*, 425 A.2d at 1265. As
26 such, the court finds that Plaintiff failed to establish that Defendant Yom's conduct as the manager may
27 be imputed to the employer, Defendant Eastern Hope. Having determined that Defendant Yom's
28 alleged conduct cannot be imputed to Defendant Eastern Hope, the court now looks to whether

1 Plaintiff's injuries fall within the scope of the CWCL.

2 Under the Commonwealth Workers' Compensation Law, "injury" is defined at 4 CMC §
3 9302(o) as follows:

4 "Injury" means accidental injury or death arising out of and in the
5 course of employment, and such occupational disease or infection as
6 arises naturally out of such employment or as naturally or unavoidably
7 results from such accident or injury. The term includes an injury caused
8 by the willful act of a third person inflicted upon any employee in the
9 course of his employment.

10 *See* 4 CMC § 9302(o). Here, Defendant Eastern Hope contends that Plaintiff's injuries were caused by
11 the willful act of Defendant Yom in the course of Plaintiff's employment, therefore, Plaintiff's assault and
12 battery claim is barred by the CWCL. The issue then is whether Defendant Yom, as manager of
13 Defendant Eastern Hope's business, is considered a "third person" for purposes of the CWCL.

14 Under the CWCL, a "third person" is defined as "any person other than the employer." *See* 4
15 CMC § 9342. In addressing the issue of compensation for injuries where third persons are liable, the
16 CNMI Legislature stated that "[t]he claim of an employee for compensation does not affect his claim or
17 right of action for all damages proximately resulting from such injury or death against *any person other*
18 *than the employer.*" *Id.* (emphasis added). A basic principle of statutory construction is that language
19 must be given its plain meaning. When language is clear, the court will not construe it contrary to its
20 plain meaning. *See King v. Board of Elections*, 2 N.M.I. 398, 403 (1991). The court finds that based
21 on the plain meaning of the applicable provision of 4 CMC § 9342, a third person is any person other
22 than the employer. In the case at bar, the court finds that Defendant Yom is a third person for purposes
23 of the CWCL, as he is a person other than the employer. Therefore, the court further finds that Plaintiff
24 s injuries fall within the scope of the CWCL, as they are injuries allegedly caused by the willful conduct
25 (assault) of a third person (Defendant Yom, the manager).

26 The court notes, however that even assuming that Plaintiff's injuries were not caused by the
27 willful act of a third person, Plaintiff's injuries still fall within the jurisdiction of the CWCL as his injuries
28 may be categorized as "accidental." *See* 4 CMC § 9302(o) ("Injury" means accidental injury or death
arising out of and in the course of employment"). The Superior Court in *Muna*, similarly addressed the
issue of whether the Commonwealth Workers' Compensation Law is the exclusive remedy for an

1 employee assaulted by a co-employee or supervisor. *See Muna v. Pacific Development, Inc.*, Civ.
2 No. 96-1115 (N.M.I. Super. Ct. August 10, 1998) (Decision and Order Granting Motion for
3 Summary Judgment). In *Muna*, the Plaintiff who was a bus driver filed a civil complaint against his
4 employer and supervisor for personal injuries Plaintiff sustained when his supervisor, among other
5 things, allegedly beat him with a hand-held radio and his fist in the course of employment. *See Id.* at 2.
6 In determining whether the Plaintiff's injuries fell within the jurisdiction of the CWCL, the court in *Muna*
7 held that the term "accidental" has consistently been interpreted by court so mean "unexpected." *Id.* at
8 7; *see also Evans v. Yankeetown Dock Corp.*, 491 N.E.2d 969, 975 (Ind. 1986) ("'[I]njury or death
9 by accident,' as used in workmen's compensation laws, means unexpected injury or death.");
10 *Meerbrey*, 564 N.E.2d at 1226 ("[T]he term 'accidental' in the Act is not 'a technical legal term but
11 encompasses anything that happens without design or an event which is unforeseen by the person to
12 whom it happens.'").

13 The court in *Muna* further held that "unexpected and unforeseen injuries are 'accidental' from an
14 employer's point of view where an employer did not expressly authorize or direct the co-employee to
15 inflict the injury." *See Muna*, Civ. No. 96-1115 at 7 (*citing Meerbrey*, 564 N.E.2d at 1226). A
16 deliberate assault by a co-employee or a third person is an "accidental" injury by this definition. *See Id.*
17 at 7-8; *Meerbrey*, 564 N.E.2d at 1226 ("[I]njuries inflicted intentionally upon an employee by a
18 co-employee are 'accidental' within the meaning of the Act, since such injuries are unexpected and
19 unforeseeable from the injured employee's point of view."); *Williams v. Delta Steel Corp.*, 695
20 N.E.2d 633, 635 n.5 (Ind. Ct. App. 1998) (When it is intended by neither the victim-employee nor by
21 the employer, injury is by "accident" for workers' compensation purposes.); *Williams v. Salem Yarns,*
22 *Division of Chesterfield Yarn Mills*, 208 S.E.2d 855, 856
23 (N.C. Ct. App. 1974) ("An assault, although an intentional act, may be an 'accident' within the
24 meaning of the Compensation Act, when it is unexpected and without design on part of the employee
25 who suffers from it.").

26 In the case at bar, clearly Plaintiff's injuries were "accidental" for purposes of the
27 Commonwealth Workers' Compensation Law as there was no reference in the pleadings that
28 Defendant Eastern Hope, the employer, intended the injuries complained of in this case. *See Baker v.*

1 *Westinghouse Electric Corp.*, 637 N.E.2d 1271, 1273 (Ind. 1994) (“[A]n injury occurs ‘by accident’
2 only when it is intended by neither the employee nor the employer.”). Nor was there any reference in
3 the pleadings that Plaintiff expected or foresaw that Defendant Yom would assault him. *See Richardson*
4 *v. County of Cook*, 621 N.E.2d 114, 117 (Ill. Ct. App. 1993) (“[I]njury which was intentionally
5 inflicted upon an employee by another employee is considered ‘accidental’ for purposes of the
6 [Workers’ Compensation] Act if it was ‘unexpected and unforeseeable from the injured employee’s
7 point of view.’”). Based on the foregoing principles, the court finds that the Plaintiff’s alleged injuries
8 are at best “accidental” for the purpose of the CWCL; therefore, Plaintiff’s exclusive remedy against
9 Defendant Eastern Hope for personal injury claimed is the Commonwealth Workers’ Compensation
10 Law, 4 CMC §§ 9301-9357.

11 VI. CONCLUSION

12 For the foregoing reasons, the court hereby GRANTS Defendant Eastern Hope's motion for
13 partial summary judgment as to Plaintiff's claim for personal injury damages. Plaintiff's claim for breach
14 of contract damages as a result of Plaintiff's wrongful termination against Defendant Eastern Hope
15 remains an issue for trial as are all common law claims against Defendant Kee Joon Yom.

16 The Court further orders *sua sponte* that this matter be set for status conference on the
17 remaining issues on **Wednesday, March 20, 2002 at 9:00 a.m.**

18 **SO ORDERED** this 14th day of March, 2002.

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23 /s/
24 VIRGINIA S. SABLON ONERHEIM, Associate Judge
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