

Issue of Control Dictates Duty Owed to Subcontractor's Employees

Contractors / May 27, 2021

A general contractor owes a duty of care to its independent contractor's employees only if the general contractor retains actual or contractual control over the means and methods of the independent contractor's work according to the Texas Supreme Court.

In December of 2013, Jose Hernandez was working for Capform, Inc. on a high-rise construction project in Dallas. JLB Builders, L.L.C. was the general contractor and had hired Capform to perform the concrete work. While standing on a "rebar tower" guiding the placement of concrete forms, the tower detached from the ground and fell, landing on Hernandez's legs as he tried to jump off. At the time of the accident, Hernandez was under the supervision of a fellow Capform employee.

Hernandez sued JLB, among others, on claims of negligence, alleging that JLB retained contractual and actual control over Capform's work and thus owed him a duty of care. JLB filed a motion for summary judgment asserting that it did not owe Hernandez, an employee of an independent contractor, any duty of care because JLB neither exercised control over the means, methods, or details of Hernandez's work nor did it have the contractual right to do so. Upon examining the undisputed facts, the trial court agreed with JLB's argument and granted its motion for summary judgment. The Fifth Court of Appeals reversed the trial court's judgment finding that a fact issue existed due to JLB retaining control over the daily schedule and the order in which the work was to be done and that it required use of safety harnesses. The Texas Supreme Court subsequently granted JLB's petition for review.

Upon review, the Texas Supreme Court reversed the court of appeals and upheld the trial court's initial ruling that JLB owed no duty of care to Hernandez because it did not have actual or constructive control over his work. The Court emphasized that, as a general rule, it has long been the law in Texas that one who employs an independent contractor has no duty to ensure that the contractor safely performs its work. As such, a general contractor cannot be liable for injuries to the subcontractor's employees on the basis of mere general supervisory authority. The only exception to this general rule, the Court clarified, arises when the general contractor retains some control over the manner in which the subcontractor performs the work that causes the damage.

The Court held that controlling the timing and sequence of work is merely evidence of JLB's role as general contractor. To give rise to a duty, control must be on the level of operative detail such as directing an employee to do a specific task at a specific time. The Court held that there was no evidence that JLB exercised any such control over Capform's employees. The Court further noted that the contract between JLB and Capform delegated all supervisory duties to Capform and withheld from JLB any authority to direct and control the "means, manner or method" of the work. Accordingly, summary judgment for JLB was appropriate. This ruling from the Texas Supreme Court provides a clear reminder of how important it is for contractors to have their contract documents and operating procedures reviewed on a regular basis to ensure that

the means, manner and methods of the work to be performed by the parties are clearly demarcated. By doing so, contractors can help limit their potential liability for any injuries sustained by their subcontractor's employees.

Related Attorneys

F. Colin Durham

Related Practices

Labor & Employment