

RECEIVED

Apr 28 2023

SC Court of Appeals

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

**Workers' Compensation Claim No.: 2023223
The Honorable Susan S. Barden
The Honorable Avery J. Wilkerson, Jr.
The Honorable Aisha Taylor**

APPELLATE CASE NO.: 2022-001012

Pablo Lopez, Claimant.....Appellant,

v.

**Alan F. McNeal, LLC, Employer, and
South Carolina Uninsured Employers' Fund, Carrier.....Respondents.**

APPELLANT'S FINAL REPLY BRIEF

**William G. Jenkins, Jr. (SC Bar #2982)
Jenkins Law Firm, P.A.
P.O. Box 21307
Hilton Head Island, SC 29925
(843)593-9989
*Attorney for Claimant, Appellant***

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

ARGUMENT.....1

TABLE OF AUTHORITIES

Statutes:

S.C. Code Ann. § 42-1-400.....1
S.C. Code Ann. § 42-1-410.....1

ARGUMENT

For purposes of determining whether the Claimant's injury is covered by the Worker's Compensation Act, it is necessary to determine the character of the relationship of the members of the group of four who were employed to complete the framing job on Defendant's job. Much has been made of this relationship in Defendant's brief so that an examination of this relationship is in order. The relationship is important, by virtue of the fact that workers of a subcontractor are covered as statutory employees under the act, whereas the actual subcontractor is not; Defendants assert that Claimant was either the sole proprietor of the group of four or, in the alternative, a member of a partnership comprised of each of the four members of the group, in either scenario, there would be no coverage afforded Claimant as he would not be a workman of the subcontractor. It is of note that there was no finding as to the nature of this relationship contained in the Full Commission's Order nor the type of entity, if any, which existed as to the group of four. The applicable Workers' Compensation statutes which would be in play here, in view of the fact that Defendant, McNeal, LLC, is both the owner and general contractor would be 42-1-400 and 42-1-410 which confer coverage on workman of a subcontractor by both the owner and the general contractor. The question then becomes whether Claimant is a subcontractor or the workman of a subcontractor or a direct employee of either the owner or general contractor. *This question was addressed on page (R. p. 104, lines 5-8) of Claimant's deposition.*

Q. Did you all have an actual business set up, like an LLC or anything?

A. No. We were just a group of individuals. We didn't have an established company. *And further on page (R. p. 110, lines 6-11).*

Q. The other individuals that you talked about, did any of them own their own business or anything like that, or were they kind of just freelance like you were?

A. Yeah. They work on their own. I don't think they have their own company. They're just like me.

Expounding further on the relationship of the parties, (R. p. 110, lines 17-19),

Q. Do you know any of their last names?

A. Honestly, I don't. Yeah, well by nicknames, so that's not going to help.

We thus have a group of people group of individuals who are carpenters who don't know each other's last names and who do not own, nor have ever owned, their own business who have heard about the job through word of mouth and reported for duty. *See Claimant's deposition, R. p. 112, lines 6-17),*

Q. Let me go back to the other three individuals you talked about earlier, Mario, Antonio, (Ontoniel), I'm not sure how you pronounce their name(s). But were they full time employees of Mr. McNeal?

A. No. We were just a group. We sought out Mr. McNeal so we could get some work, but I mean—yeah. McNeal didn't really talk to them at all because I'm the only one that really can speak English.

It is apparent that the 4 persons who began framing on the job where Claimant was injured were simply a loose confederation of employees who knew each other only by virtue of the fact that they worked for a subcontractor named Keith who was experiencing a work stoppage for a period of time. *See (R. p. 130, lines 16-25) of Claimant's deposition,*

Q. And who were you working for on the (previous project)?

A. There's a gentleman named Keith.

Q. And is Keith a general contractor, or did he own that house where you were working?

A. I believe he was a subcontractor.

Q. And do you know the name of his company?

A. I'm not sure.

Q. Was he a subcontractor?

A. The actual company was Pfifer. Okay. But I think he was a subcontractor under that.

This line of questioning brings into focus the relationship between the 4 individuals who began work on McNeal LLC's spec house. This was a loose confederation of employees who spoke little to no English (with the exception of Claimant) who really didn't know each other's full name and who typically worked as employees of a subcontractor (Keith). None of these 4 had ever owned their own business and were likely undocumented workers. Predictably, these 4 persons carried no workers compensation insurance, a fact which was known to McNeal as was the fact that, as the General Contractor and Owner, he didn't carry workers compensation insurance either. The question becomes, is this a business entity or just a group of workers working on a weekly basis with no formal organizational name or command structure. Claimant would submit that these 4 persons were not a business entity at all, but merely a group of employees who typically worked as employees for a subcontractor who merely changed their employment to McNeal for a period of time. There is no evidence of the fact that Claimant owned a business entity which employed the other three nor is there evidence that the four members of the group held themselves out as a partnership. Insofar as a command structure is concerned, there is evidence that the group of four made a collective decision on how the \$3,200 per week was to be divided up. *See Claimant's deposition (R. p. 109, lines 1-2).*

Respectfully submitted,

s/William G. Jenkins, Jr.

William G. Jenkins, Jr. (SC Bar No. 2982)

JENKINS LAW FIRM, P.A.

Post Office Box 21307

Hilton Head, South Carolina 29925

(843)593-9989

Attorney for Claimant, Appellant

April 28, 2023

RECEIVED

Apr 28 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Workers' Compensation Claim No.: 2023223
The Honorable Susan S. Barden
The Honorable Avery J. Wilkerson, Jr.
The Honorable Aisha Taylor

APPELLATE CASE NO.: 2022-001012

Pablo Lopez, Claimant.....Appellant,

v.

Alan F. McNeal, LLC, Employer, and
South Carolina Uninsured Employers' Fund, Carrier.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that Appellant's Final Reply Brief complies with Rule 211, SCACR.

s/William G. Jenkins, Jr.
William G. Jenkins, Jr. (SC Bar #2982)
Jenkins Law Firm, P.A.
P.O. Box 21307
Hilton Head Island, SC 29925
(843)593-9989
Attorney for Claimant, Appellant

April 28, 2023