

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS **S.C. Supreme Court**

APPELLATE CASE NO. 2012-213376
OPINION NO. 27509 (Filed March 18, 2015)

LeAndra Lewis, Claimant,

Petitioner

v.

L.B. Dynasty, dba Boom Boom Room Studio 54 and
S.C. Uninsured Employers' Fund, Defendants,

Of Whom S.C. Uninsured Employers' Fund is,

Respondent

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Respondent South Carolina Uninsured Employers' Fund respectfully petition this Court for a rehearing in the above-entitled matter. This Court issued its Opinion on March 18, 2015, reversing the decision of the Court of Appeals, and holding that "the Club exercised control over the manner in which she (Lewis) performed her work and therefore conclude she was an employee." Therefore she is entitled to Workers' Compensation benefits. The Court further held that the Court

of Appeals should determine Ms. Lewis' compensation rate. The Uninsured Employers' Fund respectfully submits that the Court misapprehended the amount of control the Club exercised over the Lewis in the performance of her work. Additionally, the Court misapprehended Lewis's entitlement to benefits by ruling that the Court of Appeals should determine the Compensation Rate.

ARGUMENT

In order to be entitled to Workers' Compensation benefits, a claimant must show that he or she is an employee and not an independent contractor. Employee is defined as "every person engaged in an employment under any appointment, contract of hire or apprenticeship, express or implied, oral or written." §42-1-130 (Supp. 2013).

Conversely, "A person engaged to do work for another is an independent contractor not covered by workers' compensation if he/she contracts to do the particular work according to his/her own knowledge, skill, judgment, means and methods, free from the employers' control except as to the result of the work." *Farrar v. D.W. Daniel High Sch.*, 309 S.C. 523, 424 S.E.2d 543 (Ct. App.. 1992).

In order to reach a conclusion regarding whether or not LeAndra Lewis is an employee or independent contractor four factors must be determined. First, direct evidence of the right or exercise of control; second, furnishing of equipment; third, method of payment; and fourth, right to fire. *Shatto v. McLeod Regional Medical Center*, 406, S.C. 470, 475-76, 753 S.E.2d 416, 419 (2013). Each factor is considered

with equal force and the mere presence of one factor indicating an employment relationship is not dispositive of the inquiry. *Id.*

1. Direct Evidence of the Right or Exercise of Control

LeAndra Lewis (herein referred to as Lewis) worked at L.B. Dynasty, Inc. dba Boom Boom Room Studio 54 as a dancer/stripper on three occasions during the year 2008. During her testimony, Lewis testified that she could not recall the first two dates she worked but was able to recall that the last time she danced was July 23, 2008. At this time, the Claimant suffered a gunshot wound when a fight broke out between two patrons of the club.

Lewis testified that she is a resident of the state of North Carolina. Lewis testified that upon arriving at L.B. Dynasty, Inc. (herein referred to as the Club) she presented identification that she was eighteen years old or older, read and signed a Rules Sheet and paid a "tip-out fee." This fee is based on time of arrival. This fee is lower if the dancers arrive early in the evening and progressively higher the later the dancer arrives at the Club. Lewis testified that she did not fill out an employment application nor sign any type of contract. Lewis testified that she choreographed her own routines for all of the dances she performed.

2. Furnishing of Equipment

Lewis testified that she provided her own costumes to perform her dance routines in. The club had a stage, a pole, tables, chairs, a bar, music, a dressing area and lockers. None of these items were provided specifically for the Lewis. However,

Lewis testified that she could not dance without music and used the table and chairs as props.

3. Method of Payment

The Lewis testified that she earned Five hundred dollars (\$500.00) on her first two visits and Three hundred fifty-seven dollars (\$357.00) on the night she was injured. Lewis testified that she could earn money by dancing on the stage individually and with other dancers in a group, by performing table dances or by performing "VIP" dances. Lewis was not required to perform table dances or VIP dances. Patrons requested table dances and VIP dances. Lewis earned more money by performing table dances and VIP dances. Lewis testified that the money she earned came from tips given to her by the patrons. Lewis further testified that she was obligated to pay the Club a tip-out fee, a tip for the DJ, and a percentage of the VIP dance fee. The Club never paid the Lewis any money. Lewis assumed responsibility for all cost associated with her dancing at the Club.

4. Right to Fire

The Lewis testified that the Club did not have to let her dance if her appearance was not comely. Lewis further testified that she could be asked to leave the Club for fighting, dancing bottomless and disregarding her personal hygiene. This request was based on repeated violations. Lewis testified that she was never asked to leave the Club for any of these violations because she did not engage in such activities.

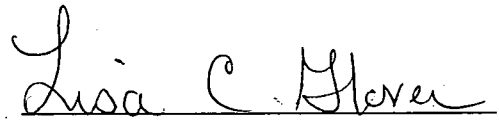
I. The Court misapprehended the "Right to or Exercise of Control" prong in examining the actual work performed by Lewis.

The Lewis testified that the actual work to be performed was the dancing itself. Lewis testified that she choreographed her own dance routines. As noted above "a person engaged to do work for another is an independent contractor not covered by workers' compensation if he/she contracts to do the particular work according to his/her own knowledge, skill, judgment, means and methods, free from the employers' control except as to the result of the work." *Farrar v. D.W. Daniel High Sch.*, 309 S.C. 523, 424 S.E.2d 543 (Ct. App.. 1992).

The Fund contends that the Club did not exercise sufficient control over Lewis to create an employee/employer relationship. Lewis controlled if and when she showed up to work at this particular club. Lewis testified that she danced at clubs throughout North and South Carolina when she wanted to. There is no testimony in the record that she was required to dance at any particular club at any particular time.

In conclusion, the Court's decision misapprehends the right to or exercise of control test in finding Lewis an employee and not an independent contractor. For the reasons stated above, the Fund contends the Lewis was an independent contractor and not an employee. Therefore, the Lewis is not entitled to any benefits. Therefore, the South Carolina Uninsured Employers' Fund request the Court grant this Petition, rehear this matter, withdraw its previous decision, and issue a new opinion affirming the Court of Appeals' decision.

April 2, 2015

A handwritten signature in cursive script that reads "Lisa C. Glover". The signature is written in black ink and is positioned above a horizontal line.

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THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Appellate Panel, Workers' Compensation Commission

Opinion No. 5032 (S.C. Ct. App. filed September 5, 2012)

LeAndra Lewis.....Petitioner,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom room Studio 54, and
The S.C. Uninsured Employers' Fund.....Defendants,

Of whom

The S.C. Uninsured Employers' Fund
Is the.....Respondent.

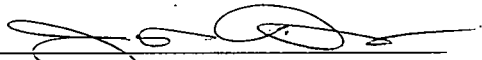
PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Petitioner with a copy of the *Brief of Respondent* by depositing a copy of it in the United States Mail, with first class postage prepaid to the following addresses:

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April 2, 2015

By 
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South Carolina Uninsured Employers' Fund