

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Decision

Case No. 1204122

RECEIVED

JUN 26 2017

SC Court of Appeals

South Carolina Uninsured Employers Fund.....Appellant.

v.

Lamar Group, LLC and/or Green Valley Country Club, Employer, and Bridgefield Casualty
Insurance Company, Carrier, and Rey Perez, Claimant,

..... Respondents.

NOTICE OF APPEAL

South Carolina Uninsured Employers Fund appeals the Decision and Order of the
Workers' Compensation Commission Appellate Panel dated May 25, 2017. Appellant received
written notice of entry of this order on May 25, 2017.

June 23, 2017



David Hill Keller
Post Office Box 1509
Greenville, SC 29202
(864) 552-4622
Attorney for Appellants

Other Counsel of Record:

Donald E. Kamb, Jr.
Kathryn Williams, P.A.
Post Office Box 10693
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Attorney for Respondent, Rey Perez
(864) 235-6254

Tracy Welsh Tiddy
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607
Attorney for Respondents, EA Operations and Bridgefield Casualty Insurance Company
(864) 527-3271

It is respectfully submitted that the Full South Carolina Workers' Compensation Commission erred in:

(1) In finding as a fact that EA Operations sole business is the managing of a Golf and Country Club, the error being that the substantial evidence on the whole record fails to support such a finding.

(2) In finding as a fact that EA Operations "commissioned" a renovation project, the error being that EA Operations undertook as part of their regular business a renovation project.

(3) In finding as a fact that the Executive Director of EA Operations consulted with John Coleman, the error being EA Operations hired John Coleman as a construction manager and employee.

(4) In finding as a fact that construction is not a part of EA Operations trade or business, the error being that the substantial evidence on the whole record fails to support such a finding.

(5) In finding as a fact that construction is not a part of the business of EA Operations, the error being that EA Operations voluntarily undertook the construction of buildings at their facility as part of their trade, business or occupation.

(6) In finding as a fact that no EA Operations employee worked on the building project, the error being that the substantial evidence on the whole record fails to support such a finding.

(7) In finding as a fact that no employees of EA Operations ever set trusses or performed construction work, the error being that the substantial evidence on the whole record fails to support such a finding.

(8) In finding as a fact that the work being performed by claimant was never performed by an employee of EA Operations, the error being the claimant is a statutory employee of EA Operations.

(9) In finding as a fact that EA Operations trade, business and occupation is the managing of golf courses, the error being EA Operations voluntarily made construction a part of their trade, business or occupation.

(10) In finding as a fact that there is no evidence to support that EA Operations was involved in the managing or renovation of construction projects, the error being that the substantial evidence on the whole record fails to support such a finding.

(11) In finding as a fact that EA Operations did not contemplate ongoing or continual construction projects, the error being that the substantial evidence on the whole record fails to support such a finding and that such finding is irrelevant based on EA Operations voluntary entry into the construction business.

(12) In finding as a fact that EA Operations did not anticipate obtaining revenue from the construction project, the error being that the substantial evidence on the whole record fails to support such a finding.

(13) In finding as a fact that operating as a general contractor does not make EA Operations subject to the South Carolina Workers' Compensation Act, the error being that the substantial evidence on the whole record fails to support such a finding and that such a finding is an error of law.

(14) In finding as a fact that the preponderance of the evidence does not support that EA Operations was in the trade, business or occupation of building construction, the error being that the substantial evidence on the whole record fails to support such a finding.

(15) In finding as a fact that the claimant was not a statutory employee of EA Operations, the error being that the substantial evidence on the whole record fails to support such a finding and the same constitutes an error of law.

(16) In finding as a fact that because there is no direct employer/employee relationship between EA Operations and the claimant, EA Operations is not responsible for paying workers' compensation benefits to the claimant, the error being the claimant was a statutory employee of EA Operations.

(17) In finding as a fact that the South Carolina Uninsured Employers Fund is responsible for this claim, the error being that the substantial evidence on the whole record fails to support such a finding.

(18) In finding as a fact that the South Carolina Uninsured Employers Fund is responsible for benefits to the claimant, the same constitutes an error of law.

(19) In finding as a fact that the South Carolina Uninsured Employers Fund is responsible for providing benefits to the claimant, the error being such a finding is substantial violation of public policy.

(20) In finding as a fact that the South Carolina Uninsured Employers Fund is responsible for causally related medical benefits, the error being that the substantial evidence on the whole record fails to support such a finding.

(21) In finding as a fact that the South Carolina Uninsured Employers Fund is responsible for ongoing medical care for the claimant, the error being that the substantial evidence on the whole record fails to support such a finding.

(22) In finding as a fact that the South Carolina Uninsured Employers Fund is liable for the payment of back-due temporary total disability compensation, the error being that the substantial evidence on the whole record fails to support such a finding.

(23) In finding as a fact that the South Carolina Uninsured Employers Fund shall provide any other benefits consistent with the terms and provisions of the South Carolina Workers' Compensation Act, the error being that the substantial evidence on the whole record fails to support such a finding.

(24) In concluding as a matter of law that the claimant was not a statutory employee of EA Operations, the error being that the substantial evidence on the whole record fails to support such a conclusion.

(25) In concluding as a matter of law that construction was not a part of the trade, business or occupation of EA Operations, the error being that the substantial evidence on the whole record fails to support such a conclusion.

(26) In citing Glass v. Dow Chemical Co., the error being that under the facts of this case, Glass is irrelevant.

(27) In relying on the Glass case, the error being that EA Construction voluntarily undertook construction as part of its trade, business or occupation and Glass, therefore, is irrelevant.

(28) In concluding as a matter of law that construction was not a part of the trade, business or occupation at EA Operations, the error being the same constitutes an error of law and the error being that the substantial evidence on the whole record fails to support such a conclusion.

(29) In concluding as a matter of law that there is no evidence that EA Operations had undertaken construction as part of its trade, business or occupation, the error being that the substantial evidence on the whole record fails to support such a conclusion.

(30) In concluding as a matter of law that the work performed by the Lamar Group was not part of the trade, business or occupation of EA Operations, the error being that the substantial evidence on the whole record fails to support such a conclusion.

(31) In concluding as a matter of law that the Lamar Group, solely, is responsible for paying benefits in this matter, the error being the same constitutes an error of law and the error being that the substantial evidence on the whole record fails to support such a conclusion.

(32) In concluding as a matter of law that the South Carolina Uninsured Employers Fund is responsible for paying benefits, the error being the same constitutes an error of law and the error being that the substantial evidence on the whole record fails to support such a conclusion.

(33) In ordering that EA Operations is not responsible for payment of workers' compensation benefits, the error being that the substantial evidence on the whole record fails to support such an order.

(34) In ordering that EA Operations is not responsible for the payment of workers' compensation benefits to the claimant, the error being such an error constitutes an error of law.

(35) In ordering that the South Carolina Uninsured Employers Fund pay temporary total disability compensation benefits to the claimant, the error being that the substantial evidence on the whole record fails to support such an order.

(36) In ordering that the South Carolina Uninsured Employers Fund pay temporary total disability compensation benefits to the claimant, the error being such an order constitutes an error of law.

(37) In ordering that the South Carolina Uninsured Employers Fund shall pay the claim with rights to collect from the Lamar Group, the error being the claimant was a statutory employee of EA Operations.

(38) In ordering that the defendants, EA Operations and Bridgefield Casualty Company, be dismissed from the claim with prejudice the error being such an order constitutes an error of law.

(39) In ordering that the defendants, EA Operations and Bridgefield Casualty Company, be dismissed from the claim with prejudice the error being that the substantial evidence on the whole record fails to support such an order.



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(864) 552-4622
Attorney for Appellants

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..... Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Rey Perez, by depositing a copy of it in the United States Mail, postage prepaid, on June 23, 2017, addressed to his attorney of record, Donald E. Kamb, Jr., at Kathryn Williams P.A., Post Office Box 10693, Greenville, South Carolina 29603, and on Green Valley Country Club (EA Operations) and their carrier Bridgefield Casualty Insurance Company, addressed to attorney of record, Tracy Welsh Tiddy, at Willson Jones Carter & Baxley, P.A., 872 S. Pleasantburg Drive, Greenville, South Carolina 29607, and on the South Carolina Workers' Compensation Commission, addressed to Amy Bracy, Judicial Director, P.O. Box 1715, Columbia, South Carolina 29202.

June 23, 2017



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Turner | Padget

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REPLY TO:

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June 23, 2017

Honorable Jenny Abbott Kitchings
Clerk of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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JUN 26 2017

SC Court of Appeals

Re: Rey Perez v. Durham Greene, et. al.
SAF No. 12-4308
WCC File No. 1204122
Date of Injury: 3/28/2012
TPGL File No. 04206.00112

Dear Ms. Kitchings:

Enclosed is defendants/appellants' Notice of Appeal in the above-referenced matter along with the required \$100.00 filing fee. Pursuant to South Carolina Code of Laws Annotated Section 42-17-60, we have also attached the required grounds of appeal. By copy of this correspondence, we are serving the same on the respondents and the South Carolina Workers' Compensation Commission.

Yours truly,

TURNER PADGET GRAHAM & LANEY P.A.



David H. Keller

DHK/sbd
Enclosures
cc: Donald E. Kamb
Tracy W. Tiddy
South Carolina Workers' Compensation Commission

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JUN 26 2017

SC Court of Appeals

Turner | Padgett

P.O. Box 1509, Greenville, SC 29602

04206.00112
Honorable Jenny Abbott Kitchings
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