

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Decision

Case No. 2017-001422

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OCT 05 2017
SC Court of Appeals

Rey Perez, Claimant,.....Respondent.

v.

The Lamar Group, LLC and/or Green Valley Country Club, Employer, and Bridgefield Casualty Insurance Company, Carrier,..... Respondents.

and

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

REPLY BRIEF OF APPELLANT

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ISSUE I

THE STANDARD OF REVIEW

The Brief of Respondent, Green Valley Country Club, and their Carrier, Bridgefield Casualty Insurance Company is quite confusing on this point. The beginning of the Brief states “The Appellant Court’s review of these Findings of Fact is limited to determining whether the findings are *clearly* supported by the substantial evidence in the record.” (Respondent’s Brief pg. 6). This is clearly *NOT* the standard of review.

However, it appears Respondent is conceding that the standard of review is based on the Court’s own view of the evidence as to whether the “preponderance of the evidence” supports the findings of the Commission. (Respondent’s Brief pg. 7) Since their argument is couched in terms of whether the preponderance of the evidence supports the Commission’s finding, the Appellant, South Carolina Uninsured Employers Fund (UEF), is assuming that Respondent concedes the standard of review is based on the Court’s own view of the preponderance of the evidence, since this issue involves subject matter jurisdiction, Glass v. Dow Chemical Co., 325 S.C. 198, 482 S.E. 2d 49 (1997).

ISSUE II

WHETHER THE PREPONDERANCE OF THE EVIDENCE SUPPORTS THE DETERMINATION OF THE COMMISSION THAT GREEN VALLEY COUNTRY CLUB WAS NOT IN THE TRADE BUSINESS OR OCCUPATION OF CONSTRUCTION

The issue in this case is *NOT* whether Green Valley Country Club previously was in the trade business or occupation of construction. The issue *IS* whether Green Valley Country Club, by taking on all the indicia of a construction company, became a construction company for

purposes of this claim. The UEF has previously cited all of the factual evidence in this case concerning why and how Green Valley Country Club voluntarily undertook the trade business and occupation of construction. Without going into great detail as this is covered in our Brief-in-Chief, Greenville Valley Country Club: (1) Obtained a contractor's license; (2) Used the contractor's license to obtain building permits; (3) Hired a construction manager; (4) Established procedures for a construction process; (5) Let contracts to subcontractors for various portions of a construction project; (5) Maintained personal control over the ultimate decisions of the construction process.

Common sense, alone, should make it clear what Green Valley Country Club is attempting to do. Green Valley Country Club is attempting to shift liability, which is properly theirs, to the taxpayer funded South Carolina Uninsured Employers Fund. If the argument of Green Valley Country Club is followed to its most logical conclusion, someone who has never been in the construction business previously can do all of the things necessary to become a construction company, hire a subcontractor whose employees are subject to The Act pursuant to § 42-1-400 et. seq. but get "one free bite of the apple" because they have never been in the trade, business, or occupation of construction prior to the first accident occurring. This is, beyond a doubt, an illogical result and certainly not the result that could have been intended by the Legislature. If the reasoning of Green Valley is bought into by this Court, the claimant in this case would have had absolutely no remedy from the passage of the Workers' Compensation Act in 1935 until 1987 when the Uninsured Employers Fund was established. Such a result clearly cannot be what was intended by the statutory employment sections in Title 42.

ISSUE III

WHETHER THE POLICY ISSUES RAISED BY THE UEF ARE “IRRELEVANT”

As noted above, Respondent states “Appellant clumsily attempts to sway this Court from the legitimate legal analysis by arguing that is should not be responsible for the claim because it is a public entity and Respondent Bridgefield Casualty is an Insurance Company.”

(Respondent’s Brief Pg. 17) In actuality, the Respondent is attempting to divert the Court from what the issue in this case really is. The real issue in this case is whether Green Valley Country Club made itself a construction company and is now trying to dodge the responsibility placed upon it by the statutory employment sections in order to avoid paying a legitimate claim for which it should be responsible. Respondent also states that the Legislature obviously created the Uninsured Employers Fund for situations like this. In actuality the Legislature created the statutory employment sections for situations like this and the UEF was established so that individual workers, like Rey Perez, are not without a remedy when their employer fails to obtain workers’ compensation insurance; a situation which does not exist here.

This Court, when weighing the evidence in cases like this, *always*, liberally construes The Act in favor of coverage of injured workers. Shealy v. Aiken County, 341 S.C. 448, 555 S.E. 2d 438 (2000); Hall v. Desert Aire, Inc., 376 S.C. 338, 651 S.E. 2d 753 (Ct. App 2007).

His direct employer, The Lamar Group, did not have workers’ compensation insurance coverage. His statutory employer, Green Valley Country Club, did have workers’ compensation insurance coverage.

CONCLUSION

It is therefore respectfully submitted that the Order of the Full South Carolina Workers' Compensation Commission should be reversed and Green Valley Country Club and its Carrier, Bridgefield Casualty Insurance Company should be legitimately responsible for this claim.

Respectfully Submitted,



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

PROOF OF SERVICE

I certify that I have served the forgoing Reply Brief of Appellant, South Carolina Uninsured Employers Fund, on Rey Perez, by depositing a copy of it in the United States Mail, postage prepaid, on October 2, 2017, addressed to his attorneys of record, Donald E. Kamb, Jr., and Kathryn Williams 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.

October 2, 2017



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October 2, 2017

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

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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 please find a copy the Appellant, South Carolina Uninsured Employers Fund's, Reply Brief along with our certificate of service indicating service on all parties for filing in this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Yours truly,

TURNER PADGET GRAHAM & LANEY P.A.



David H. Keller

DHK/sbd

cc: Donald E. Kamb, Jr.

Tracy W. Tiddy

Amy Bracy, South Carolina Workers' Compensation Commission

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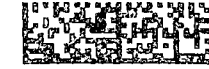
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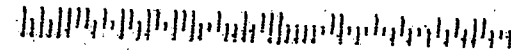


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Honorable Jenny Abbott Kitchings SC Court of Appeals

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