

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

COMMISSIONERS AISHA G. TAYLOR, GENE MCCASKILL AND SUSAN S. BARDEN

WCC FILE NO. 1200329

JUAN YSLAS JR., EMPLOYEE, ... Appellant

v.

JUAN YSLAS, EMPLOYER, and RIVERPORT INSURANCE,
ALLEGED CARRIER FOR EMPLOYER, and FULL CIRCLE
CONSTRUCTION, ALLEGED STATUTORY EMPLOYER, and
THE SOUTH CAROLINA UNINSURED EMPLOYERS'S FUND Respondents

FINAL BRIEF OF APPELLANT

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April 14, 2015

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APR 25 2014

SC Court of Appeals

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ISSUES ON APPEAL

ISSUE 1. THE APPELLATE PANEL DECISION AND ORDER IS VAGUE, AMBIGUOUS AND SUBJECT TO CONTRADICTION.

ISSUES 2
AND 4. THE APPELLATE PANEL ERRED IN FINDING OF FACT #14 ON PAGE 19 OF THE DECISION IN CONCLUDING THAT THE MATTER OF LAW, CONCLUSION OF LAW #2 ON PAGE 19 OF THE DECISION, THAT THE APPELLATE WAS NOT A STATUTORY EMPLOYEE AND WAS SPECIFICALLY EXCLUDED FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT SIMPLY BECAUSE HE WAS NOT COVERED AS AN INSURED UNDER THE "GHOST POLICY" OBTAINED THROUGH PEOPLES CHOICE INSURANCE. THE PANEL ERRED IN EQUATING A PERSON'S STATUS AS A STATUTORY EMPLOYEE IN COVERAGE UNDER THE SOUTH CAROLINA WORKERS'S COMPENSATION ACT WITH COVERAGE UNDER A PARTICULAR POLICY OF INSURANCE. THE APPELLATE PANEL ERRED IN CONCLUDING AS A MATTER OF LAW THAT THE APPELLANT WAS NOT A STATUTORY EMPLOYEE OF FULL CIRCLE CONSTRUCTION SIMPLY BECAUSE HE EXCLUDED HIMSELF FROM COVERAGE UNDER THE PEOPLES CHOICE INSURANCE POLICY INDICATING THAT HE HAD ZERO PEOPLE ON HIS PAYROLL.

ISSUE 3. THAT THE APPELLATE PANEL ERRED IN FINDING AS A MATTER OF FACT AND CONCLUDING AS A MATTER OF LAW THAT THE APPELLANT FAILED TO HONESTLY COMPLETE THE INSURANCE APPLICATION WITH PEOPLES CHOICE INSURANCE.

STATEMENT OF THE CASE

Juan Yslas, Jr. was born in Immokalee, Florida of Mexican parents, who did not speak English well. His family was primarily agricultural workers, and he dropped out of school in approximately the ninth grade, and went to work in the fields. He cannot read and write the English language very well, and his son, daughter and wife help him with the same. The record is replete with statements of his inability to read or write the English language. [TOR, pg. 495, ll. 20-22; pg. 502, ll. 4-15]. He was not good at spelling [TOR, pg. 506, ll. 1-14; pg. 503, ll. 4-9], showing that he got locked up with English words and only knew the little words. Also, at the time he signed the insurance documents in regards to this case, he had no glasses on, and his son and daughter were not with him. [TOR, pg. 478, ll. 9-16; pg. 492, ll. 9-20]. These all show he never read the contract in question, the same was prepared by Jackie Fernandez, the agent of First Choice Insurance Company], prior to his going to the office to sign the contract without assistance.

Juan Yslas, Jr. was a contractor and worker, working for Full Circle Construction Company pursuant to a contract entered into between Juan Yslas, Jr. and Full Circle Construction Company. This involved the building of a home and garage located in Beaufort County, State of South Carolina. [See TOR, pg. 255, Exhibit 1, Contract]. Juan Yslas, Jr., while working on the construction site, fell from the side of the building into the interior of the building while trying to place a roof truss on the building. He landed on concrete, breaking both ankles and injuring his feet, ankles, heels, legs, hip, back and neck, for which he was hospitalized for a period of time, and for which he has continued to suffer disability.

Juan Yslas, Jr. was required by Full Circle Construction Company to obtain Workers' Compensation insurance. He did this through a local agency, Peoples Choice Insurance Agency of Beaufort, under the South Carolina Assigned Risk Plan. This is what was referred to as a "ghost policy," and many have been issued in the State of South Carolina at a substantially similar price of \$750.00. Although Juan Yslas, Jr. did not realize he was excluded under the policy, the policy apparently did exclude him. There was a liability policy also issued by the same agent.

THE INSURANCE CONTRACT

Jacqueline Fernandez, a twenty-two (22) year old agent with Peoples Choice Insurance of Beaufort, South Carolina issued the Riverport policy in question. Additionally, Mr. Yslas was required by the general contractor to take out liability policies, all of which, including the "ghost policy", were forwarded to Full Circle Construction. [TOR, *Deposition of Letvy Jacquelyn Fernandez* pg. 414, ll. 3 - pg. 415, ll. 17). The agent testified concerning the ghost policy as follows:

"Q. Now when you say ghost policy, what do you mean?

A. It doesn't cover him if he were to get injured.

Q. Does it cover anybody?

A. From what I have heard, if he has an employee working with him at the time, they will cover it, but then they will do an audit and then his - - they will charge him for whatever time period employee worked for him, and then his future policy will be, I guess, prorated or adjusted with the employee included." (emphasis added). [TOR, *Deposition of Letvy Jacquelyn Fernandez*, pg. 415, l. 18 - pg. 416, l. 1].

It is also clear that she typed the application, not Mr. Yslas. She was asked the question:

"Q. Now, you said this application was actually filled out earlier than it was signed, is that correct, because you had to wait for the audit?

A. Yes." [TOR, *Deposition of Letvy Jacquelyn Fernandez*, pg. 416, ll. 9 - 11].

It appears that she actually filled out the application herself, and was probably done by phone on the 14th of November, 2011 or earlier, and it was not signed by Mr. Yslas until the 21st of November, 2011, when he came to the office. Clearly, she was also the one who typed the contract. [TOR, *Deposition of Letvy Jacquelyn Fernandez*, pg. 416, ll. 1-22].

The owner of Full Circle Construction, Mr. Bader, testified concerning insurance as follows:

"Q. And did they, in fact, give the insurance information to her (Full Circle employee) or tell her where to get it from?

A. Sometimes she helps them and calls the numbers that they give. I mean, we're pretty, you know we're pretty helpful to the subcontractors. If they do the work, you know as long as they play by the rules, we want to satisfy them. We don't want to just string them out for weeks and weeks and weeks.

Q. Right.

A. When those one or two guys came in, and she probably gave them a list of what they needed to turn in in order to do our bid or bid our work to do or bid our work. (emphasis added).

Q. And they did at some time turn that in, I assume.

A. Yes. I believe so.

Q. In any event, she didn't tell you they weren't approved or they weren't able to do it or didn't have the right insurance?

A. She won't write a check and I won't sign it unless it's all been checked off." (emphasis added). [TOR, *Deposition of Matthew Bader*, pg. 376, ll. 1 - 5].

This was the testimony of Mr. Bader, the owner of the Full Circle Construction, LLC, who testified that they hired as many as sixteen (16) to twenty-two (22) subcontractors, all of whom

were licensed. [TOR, *Deposition of Matthew Bader*, pg. 374 ll. 7-18]. Mr. Bader was also very clear that immediately when the accident occurred, he was called by his supervisor, and knew that it all happened on the job. [TOR, *Deposition of Matthew Bader*, pg. 376, 14 - pg. 377, ll. 21]. The general contractor is basically admitting that his subcontractor and employees of his subcontractor were injured on the job, and notice was immediately given to the general contractor by his supervisor.

PROCEDURE

This action was commenced with the filing of a Form 50. The following items are all that is required to comply with the Workers' Compensation Act:

1. There was an injury; the date of the injury; the Claimant sustained an injury; the parts of the body that were injured; and the month, day and year, County and State of the injury.
2. 1B of the Form 50 then requires that the body parts affected are listed. Then the Form 50 states: Briefly describe how the accident occurred. [TOR, *Amended Form 50*, dated May 16, 12, pg. 33].

It is unquestioned in this case that the Claimant, Juan Yslas, Jr., was injured as a result of a fall where one (1) foot was on a scaffold, and one (1) foot was on the wall. No safety plan from General Contractor was ever presented, nor was compliance with OSHA standards shown by the general contractor, Full Circle Construction, nor was it required to be shown in a Workers' Compensation case. These may be issues for civil litigation, but they are not issues concerning a Workers' Compensation claim.

Ryan Montgomery, at all times, represented Full Circle Construction, LLC and, although he was allowed to ask questions concerning the mechanism of the fall, he objected to the Claimant's doing the same. Prior to the issuance of the Final Order, the Commissioner had already ruled that Juan Yslas, Jr. was not covered under the Workers' Compensation Act. [Oral Order issued post hearing date]. It was decided and announced prior to the preparation of the Order. Therefore, prior to the preparation of the Order, it was announced by the Commissioner that Juan Yslas, Jr. was not covered by the Workers' Compensation Act and was excluded from the Riverport policy as a statutory employee of Full Circle. Ryan Montgomery, attorney for Full Circle Construction, LLC, prepared the Order. After that oral Order, a lawsuit was filed in the Jasper County Court of Common Pleas against Full Circle Construction, LLC. (See Summons and Complaint).

THE 1ST ORDER COMMISSIONER

In the Statement of the Case, the Commissioner states, "It was the position of the Claimant that on or about January 16, 2012, he was working when he fell from scaffolding injuring his bilateral ankle and legs." [TOR, *Decision & Order*, 10/11/12, pg. 511]. The Commissioner goes on to state on Page 6, "It was the position of Full Circle Construction that it was undisputed that the Claimant sustained an injury." (emphasis added) [TOR, *Decision & Order*, 10/11/12, pg. 512]. Here, the Commissioner admits that it is undisputed that the Claimant sustained an injury on the job and in the scope of his employment. Injury or injury by accident is defined under 42-1-160 which states "injury" and "personal injury" "mean only injury by accident arising out of and in the course of employment and shall not include"

As stated in *Larsen on Workers' Compensation*, Chapter 32: "Misconduct of the Employee, whether negligent or wilful, is immaterial in compensation law ... unless the state Workers' Compensation law made it a defense."

It is clear that there was no lift, no lull, and no crane on the job site when the trusses were delivered. Full Circle Construction, LLC ordered the pre-made trusses, and had them delivered to the job site. The trusses were all purchased by Full Circle Construction. (TOR, pg. 41). Although many of the Commission's findings go into issues of "negligence", it has no place in the Workers' Compensation law. *Id. Larsen*.

Although the OSHA standards were not offered, it was clear from the Commissioner's ruling that he was not going to allow opinions concerning OSHA standards, nor the fact that OSHA required a protection plan. (See OSHA Sample Fall Protection Plan, Appendix E Subpart M, 29 CFR 1926). The Commissioner would have been correct, as this was a Workers' Compensation claim, and the issue was not whether Mr. Yslas was caused to fall, but whether or not he fell during and within the scope of his employment, and was injured on the job. (See also, 29 CFR 1926.502(K) providing for this type of scaffold system without guardrails, etc. All of the below Findings of Fact had nothing to do with the Workers' Compensation claim.

Each Finding of Fact is now responded to:

Finding of Fact #2. Ankles and feet were not the only areas injured. [TOR, *Amended Form 50*, pg. 33]. Hips, back, knees.

Finding of Fact #3. The scaffold was built by his crew but was not defective.

Finding of Fact #4. Trusses and all wood came from general contractor.

Finding of Fact #5. There was no safety plan or fall protection plan as required by OSHA.

Finding of Fact #6. Truss was being pushed up from first floor to Yslas, Jr.

Finding of Fact #7. One (1) foot was on scaffolding, and one (1) was on gable wall. [TOR, *Transcript of Hearing from 07/08/12*, pg. 504, ll. 1 - 9].

Finding of Fact #8. Nothing to do with the ultimate issues in this Workers' Compensation case.

Finding of Fact #9. Scaffold was twenty-two (22") inches wide (complied with OSHA).

Finding of Fact #10. No way to move trusses to resting position if hand rails are put up. [TOR, *Transcript of Hearing from 07/08/12*, pg. 504, l. 1 - pg. 505, l. 24]. [See OSHA Sample Fall Protection Plan, Appendix E Subpart M; 29 CFR 1926.502(K)].

Finding of Fact #11. Use of crane would have lifted the entire truss, placing it where it could be secured. Three men, two on wall and one on scaffold, would be required to put truss in place.

Finding of Fact #12. Argumentative but a crane or lull lift would be correct way to place trusses (pre-made) on the building.

As stated, all of these, Findings 2 - 12, had nothing to do with the Workers' Compensation claim and were not necessary in the *Decision and Order*.

I make this next statement as an Officer of the Court, and as one who has been practicing law since 1967: When I attended the Court of Common Pleas concerning the Motion made by the new attorney representing Full Circle Construction, one of the grounds for dismissing my lawsuit prior to my knowledge of the issuance of this Order was that my client was collaterally estopped

from bringing the civil action. [TOR, *Answer (Full Circle Construction)*, 08/07/12, pg. 17 - 21; *Motion to Dismiss (Full Circle Construction)*, pg. 22 - 23]. At that time, I had not received the *Decision and Order* of the Single Commissioner and, of course, did not know all of these Findings of Fact as set forth above, as well as the ones I am about to address. Specifically, this is Finding of Fact #25 which states:

"I further find that this injury was a result of Mr. Yslas failing to construct a proper scaffold; failing to wait on a younger worker to assist, and failing to request a crane to assist with the lifting of the trussed." [TOR, *Decision & Order*, 10/12/12, pg. 526].

This statement was put in specifically for the purpose of defeating this man's civil action in the Court of Common Pleas. This is what we refer to as collateral estoppel, and the purpose for which they have placed the same in this Order so that my client would be collaterally estopped from bringing the action in civil court. This was transferred to #1 in the Decision and Order setting forth as follows:

"Claimant's negligence of building the scaffold, working in an area where a younger worker should have been and not requesting any type of assistive device or equipment was the direct and proximate cause of Junior's injuries."
[TOR, *Decision & Order* 10/12/12, pg. 528; see also, TOR, *Hearing Transcript from 07/08/12*, pg. 504, l. 11. 1 - 9].

This is the Commissioner's finding as a matter of law, and an issue that was not litigated in the Workers' Compensation claim.

JURISDICTION AND COVERAGE

The issue of whether the Claimant was an employee at the time he was injured is jurisdictional, so the Commissioner's conclusions were subject to judicial review, even though supported by the evidence. Revis v. Watkins, 256 S.C. 30, 180 S.E.2d 648.

In this case, the Commissioner first ruled orally, and then ruled in his Order that the Claimant is not entitled to the benefits under the South Carolina Workers' Compensation Act. Here, we have a general contractor, Full Circle Construction, LLC, a subcontractor, Juan Yslas, Jr., a policy taken out by Juan Yslas, Jr., which apparently excluded Juan Yslas, Jr. from the coverage of the policy. This does not exclude coverage under the South Carolina Workers' Compensation Act, and the fact that an individual may be excluded from the insurance policy does not remove him from the Act. The question is whether or not he is a statutory employee. Apparently, in the Commissioner's ruling, he concluded that Appellant was excluded from Riverport Insurance, and, therefore, also excluded from the Act.

REFERRAL TO ATTORNEY GENERAL

Lastly, as if Mr. Yslas had not suffered enough from his injuries, the Commissioner referred the Claimant to the Attorney General to determine if prosecution is appropriate based upon the evidence incorporated herein. Nothing has happened to Mr. Yslas since that referral, and I certainly welcome the Attorney General's Office to read this record to, first of all, decide the legality of the ghost policies and how they are being used by the insurance industry of the State, and why the practice of selling these ghost policies, in most instances, provide no coverage for anyone. Certainly, individuals like Mr. Yslas, scrapping to make a dollar, and who has a chance

to earn \$12,000.00 on a contract, would jump at the chance to comply with Full Circle Construction's requirements, and did meet those requirements.

ARGUMENT

ISSUE 1. THE APPELLATE PANEL DECISION AND ORDER IS VAGUE, AMBIGUOUS AND SUBJECT TO CONTRADICTION.

The Decision clearly and unambiguously states on Page 4 that the Order of the Single Commissioner shall be amended, deleting all references to Findings of Fact and Rulings of Law with regard to negligence and OSHA. [TOR, *Appellate Panel Decision & Order*, pg. 571]. Yet, on Page 584, it states, "We incorporate the findings of evidence above and the citations as if listed herein and verbatim where consistent without Amendments." [TOR, *Appellate Panel Decision & Order*, pg. 584]. The Appellate Panel incorporates the findings of evidence made by the Single Commissioner. These Findings of Fact by the Single Commissioner include findings which relate to negligence and OSHA. The Findings of Fact are set forth on Pages 524 - 527 of the *Decision & Order*, including Findings of Fact 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 25. [TOR, *Decision & Order*, 10/12/12, pg. 524 - 527]. These Findings of Fact have no relevance to the Appellant's Workers' Compensation Claim and, contrary to the express finding and conclusion of the Appellate Panel as set forth on Page 4 of the Decision, that all references to Findings of Fact and rulings of law with regard to negligence and OSHA should be deleted, these findings only have relevance to alleged negligence or OSHA violations, but were included in the *Appellate Panel Decision & Order*. [TOR, *Appellate Panel Decision & Order*, pg. 580 - 583].

Mr. Montgomery, attorney for Full Circle Construction Company, prepared all Orders which were appealed from and then, pursuant to the Orders of the Commissioner, prepared the Final Order. The Findings of Fact and Conclusions of Law, which were objected to by the

Appellant, were reinserted by Mr. Montgomery. Obviously, as stated, none of these Findings of Fact and Conclusions of Law were necessary in a Workers' Compensation proceeding and should never have been addressed. Immediately after the filing of the civil suit, these specifically were set forth as a reason to dismiss the civil suit on the grounds of collateral estoppel.

This Court needs to find that any Order by the Commission in this case would have no precedential value in any civil action filed in Jasper County or elsewhere.

ISSUES 2

AND 4.

THE APPELLATE PANEL ERRED IN FINDING OF FACT #14 ON PAGE 19 OF THE DECISION IN CONCLUDING THAT THE MATTER OF LAW, CONCLUSION OF LAW #2 ON PAGE 19 OF THE DECISION, THAT THE APPELLATE WAS NOT A STATUTORY EMPLOYEE AND WAS SPECIFICALLY EXCLUDED FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT SIMPLY BECAUSE HE WAS NOT COVERED AS AN INSURED UNDER THE "GHOST POLICY" OBTAINED THROUGH PEOPLES CHOICE INSURANCE. THE PANEL ERRED IN EQUATING A PERSON'S STATUS AS A STATUTORY EMPLOYEE IN COVERAGE UNDER THE SOUTH CAROLINA WORKERS'S COMPENSATION ACT WITH COVERAGE UNDER A PARTICULAR POLICY OF INSURANCE. THE APPELLATE PANEL ERRED IN CONCLUDING AS A MATTER OF LAW THAT THE APPELLANT WAS NOT A STATUTORY EMPLOYEE OF FULL CIRCLE CONSTRUCTION SIMPLY BECAUSE HE EXCLUDED HIMSELF FROM COVERAGE UNDER THE PEOPLES CHOICE INSURANCE POLICY INDICATING THAT HE HAD ZERO PEOPLE ON HIS PAYROLL.

The South Carolina Workers' Compensation Act should be given liberal construction in furtherance of the purposes for which it was designed. Carter v. Penney Tire and Recapping Co., 1973, 261 S.C. 341, 200 S.E.2d 64.

It is established law in the State of South Carolina that any reasonable doubt as to the construction of a Workers' Compensation law must be resolved in favor of the claimant, its provisions reconciled if possible, for purposes effectuated and its presumptions and penalties directed toward the end of providing coverage rather than noncoverage. DeBerry v. Coker Freightlines, 1959, 234 S.C. 304, 108 S.E.2d 114. All questions about jurisdiction should be resolved in favor of inclusion of employees within Workers' Compensation coverage. Porter v. Labor Depot, S.C. App. Ct. 2007, 372 S.C. 560, 643 S.E.2d 96.

The determination of the employer/employee relationship is jurisdictional, and the relationship must be proven by a preponderance of the evidence. Hairston v. Rey Leasing, Inc., S.C. Ct. App. 1985, 286 S.C. 493, 334 S.E.2d 825.

Under South Carolina law, the hiring or contract for employment, and not the actual commencement of work, is the jurisdictional factor necessary to bring the act into operation. Simpkins v. Lumbermen's Mutual Casualty Co., 200 S.C. 228, 20 S.E.2d 733.

§ 42-1-130 defines an employee as follows:

"The term employee means every person engaged in an employment under any appointment, contract of hire, or apprenticeship, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, but excludes a person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer;" (emphasis added).

A fundamental test of employment relationship is the right of an employer to control details of employee's work for purposes of determining whether individual is employee of independent contractor for Workers' Compensation purposes. It is not actual control exercise, but whether there exists right and authority to control and direct the particular work or undertaking as to the manner or means of its accomplishments. Nelson v. Yellow Cab Company, S.C. Ct. App. 2000, 343 S.C. 102, 538 S.E.2d 276., cert. granted and affirmed at 349 S.C. 589, 564 S.E.2d 110; Dawkins v. Jordan, S.C. Ct. App. 2000, 341 S.C. 434, 534 S.E.2d 700. This also includes an employee who was a statutory employee of a textile mill where the employee who was employed by a company hired to install certain machinery at the textile mill was killed while installing the machinery and testimony indicated that (1) the mill's employees had previously installed the

machinery; (2) the machinery was essential to the mill's manufacture of certain materials; and (3) the mill was able to continue its usual operation while the machinery was being installed; thus installing the machinery was an integral part of the mill's general trade. Gentry v. Milliken & Co., 307 S.C. 235, 414 S.C. 180, 1992.

The general test of control of the employer is not the actual control then exercised, but whether there exists a right and authority to control and direct the particular work or undertaking as to the manner or means of its accomplishment. In this case, Full Circle Construction Company, LLC was definitely the general contractor, and had a right to control whatever Mr. Yslas and his employees did. Additionally, they were the ones who had the trusses brought to the location as they were ordered by the general contractor to be delivered to the location. They also were the ones responsible for having sufficient equipment to place the trusses on the top of the building. The four (4) factors under South Carolina law bearing on the crucial right of control are (1) direct evidence of the right to or exercise of control; (2) method of payment; (3) furnishing of equipment; and (4) right to fire. Chavis v. Watkins, 1971, 256 S.C. 30, 180 S.E.2d 648.

Under § 42-1-310 of the Code of Laws concerning Workers' Compensation, there is a presumption of acceptance of the provisions of the title. It states:

"Every employer and employee, except as stated in this chapter, shall be presumed to have accepted the provisions of this title respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment and shall be bound thereby." (emphasis added).

§ 42-1-400 provides for liability of owner to workmen or subcontractor as follows:

In discussing this, the term "Owner" is synonymous with the principal contractor, that is to say the party of the first part to the contract with the "Subcontractor" who is the second party of the contract for the execution or performance of the work to be done by the Owner. Kennerly v. Ocmulgee Lumber Co., 1945, 206 S.C. 481, 34 S.E.2d 792.

Continuing with § 42-1-400:

"When any person, in this section and Sections 42-1-420 and 42-1-430 referred to as 'owner,' undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section and Sections 42-1-420 to 42-1-450 referred to as 'subcontractor') for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him."

This section is applicable as making the "Owner" liable where such "Owner" contracts to have the work done by a contractor and an employee of the contractor is injured. Id.

A higher tier contractor is considered the statutory employer of an employee of a lower tier contractor, and thus the higher tier contractor remains liable to work workers' compensation benefits to the employee if he sustained a compensable injury. Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1.

Additionally, § 42-1-450 states:

"Nothing in Sections 42-1-400 to 42-1-450 shall be construed as preventing a workman from recovering compensation under this Title from a subcontractor instead of from the principal contractor but he shall not collect from both."

It is clear that Mr. Yslas could collect from the contractor he was working for, being a subcontractor, and could also collect from the general contractor. In this case, Juan Yslas, Jr. was

a workman, and was, in fact, working on the job performing the work of the owner and/or general contractor. It is clear that the activity (1) is an important part of the owner's business, (2) is the activity that is necessary or essential to, or an integral part of the employer's business, and (3) whether the work was performed by employees of the principal contractor. Carrier v. Westvaco Corporation, 1992, 806 F.Supp. 1242, aff'd. 46 Fd.3d 1122.

ISSUE 3. THAT THE APPELLATE PANEL ERRED IN FINDING AS A MATTER OF FACT AND CONCLUDING AS A MATTER OF LAW THAT THE APPELLANT FAILED TO HONESTLY COMPLETE THE INSURANCE APPLICATION WITH PEOPLES CHOICE INSURANCE.

Juan Yslas, Jr. could barely read and write the English language, let alone delve into the world of insurance contracts. It is clear that he applied for this contract after he got the agreement with Full Circle Construction, LLC. He went to First Choice and told them he needed a Workers' Compensation policy. Apparently, the insurance agent decided to sell him a "ghost policy", and informed him it would cost him \$750.00. The policy was clearly prepared by First Choice Insurance Agency, and Juan Yslas, Jr. was called back several days later to sign the same. Once he signed the same, the same was sent to Full Circle Construction, LLC. In other words, if his policy excluded him, Full Circle Construction, LLC would have been aware of the same. For the Commission to find that an individual with a 6th grade education, who had previously been a farm laborer, to have understood this policy, which was not prepared by him nor read by him, is ridiculous. It is clear that he relied on Ms. Hernandez to obtain the insurance and paid the \$750.00 for the "ghost policy."

CONCLUSION

The Commissioner and the Commission both erred in excluding the Claimant from Workers' Compensation benefits and the Act because he was excluded under an insurance policy.

"The Panel affirms the Decision and Order of the Commissioner while deleting all references to Findings of Fact and Rulings of Law with regard to negligence and OSHA. Amend the order to conform." [TOR, *Request for Proposed Decision & Order*, June 6, 2013, pg. 567].

The Commissioner then asked Mr. Montgomery to prepare the Order stating, "...make sure the Appellate Panel Decision and Order recites the specific Finds [sic. Findings] of Fact and rulings of law of the Single Commissioner's *Decision & Order*." [TOR, *Request for Proposed Decision & Order*, June 6, 2013, pg. 567].

In summary, this Final Order of the Commission and the original Order should have no precedential value as to any civil action filed against Full Circle Construction, LLC.

MOSS, KUHN & FLEMING, P.A.

By: _____

JAMES H. MOSS

Beaufort, South Carolina

April 14, 2014

CERTIFICATE OF SERVICE

I, James H. Moss, Esquire, counsel for the Appellant named in the foregoing action, do hereby certify that on the 30th day of April, 2014, I caused to be deposited in the United States Mails, via 1st class delivery, a service copy of the *Final Brief of Appellant*, with said copy being supplied to opposing counsel of record at the addresses indicated below:

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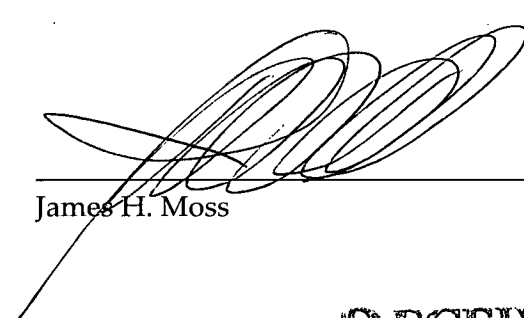
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

COMMISSIONERS AISHA G. TAYLOR, GENE MCCASKILL AND SUSAN S. BARDEN

WCC FILE NO. 1200329

JUAN YSLAS JR., EMPLOYEE, ... Appellant

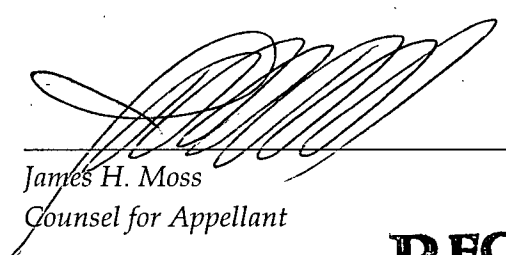
v.

JUAN YSLAS, EMPLOYER, and RIVERPORT INSURANCE,
ALLEGED CARRIER FOR EMPLOYER, and FULL CIRCLE
CONSTRUCTION, ALLEGED STATUTORY EMPLOYER, and
THE SOUTH CAROLINA UNINSURED EMPLOYERS'S FUND Respondents

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the *Final Brief of Appellant* complies with Rule 211(b),
SCACR.

Beaufort, South Carolina
May 15, 2014


James H. Moss
Counsel for Appellant

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SC Court of Appeals