

**The State of South Carolina
In the Court of Appeals**

Appeal from Charleston County
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Judge

S.C. Ct. Op. No. 2013-UP-130, filed March 27, 2013

Williams Smalls

Appellant,

v.

Alex Antonion Coreas and
Hightrak Staffing, Inc., a/k/a Hitrak Staffing,

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Defendants,

OF whom Hightrak Staffing Inc., a/k/a Hitrak Staffing is

Respondent.

RETURN TO PETITION FOR REHEARING

The Plaintiff, a welder employed by Detyens Shipyard, sustained work-related injuries when a co-worker by the name of Alex Coreas allegedly left without shutting off the gas in the confined area where they were working. Although the Plaintiff already has applied for and received workers' compensation benefits from his Employer, Detyens Shipyard for the injuries he sustained in the explosion, the Plaintiff has sued his co-worker alleging that Coreas was

negligent in failing to shut off the welding gas. The Plaintiff has also sued the staffing company that lent Coreas to Detyens Shipyard, alleging that Hightrak Staffing was a subcontractor of Detyens Shipyard and that Hightrak was negligent in hiring, training, and supervising Coreas.

The trial court granted summary judgment to Hightrak Staffing on the grounds that (1) Hightrak Staffing was not a subcontractor, but merely a staffing agency that supplied laborers to Detyens Shipyard, and (2) Defendant Coreas was a lent employee under the control of Detyens Shipyard. The Court of Appeals has affirmed the trial court's conclusion that Coreas was an employee of Detyens at the time of his alleged negligence and rejected the Plaintiff's argument that Hightrak was a subcontractor of Detyens because it is undisputed that Hightrak was not performing any shipyard-related work at the time of Coreas' alleged negligence. In addition, although the Plaintiff did not specifically allege that Defendant Hightrak Staffing is vicariously liable for Coreas' alleged negligence, the Court of Appeals held that any possible assertion that Hightrak is vicariously liable for Coreas' alleged negligence is barred by Section 42-5-10 of the Workers Compensation Code. The Plaintiff does not seek a rehearing on any of these three holdings.

Rather, the Plaintiff requests rehearing on his claim against Hightrak for negligent training and supervision. As to the Plaintiff's assertion that he should be allowed to go to trial on his claim for negligent hiring/training/supervision, the Court of Appeals correctly ruled that:

Here, there is nothing in the record to indicate that Hightrak knew or should have known that Coreas would be a danger to his co-workers or that Hightrak could foresee any harm to third parties. Further, the evidence shows that Detyens assumed the training and supervision of Coreas. Therefore, even though the circuit court did not specifically address the grounds for his summary judgment ruling as to the negligent hiring, training, and supervision cause of action, we affirm the ruling.

South Carolina law recognizes a cause of action for negligent hiring only if the plaintiff can demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice that the employee would be a possible danger to third parties. *Doe v. ATC, Inc.*, 367 S.C. 199, 624 S.E.2d 447, 451 (Ct. App. 2005). As the Court of Appeals noted in its opinion, under settled caselaw a negligent hiring case has two fundamental elements: (1) knowledge of the employer and (2) foreseeability of harm to third parties. The law requires proof that the employment of a specific person created an undue risk of harm to the public. *Kase v. Ebert*, 392 S.C. 57, 63, 707 S.E.2d 456, 459 (Ct. App. 2011).

The Plaintiff argues that the Court of Appeals overlooked the “fact”, from the Plaintiff’s own testimony, that Hightrak sent over many Hispanic workers for short periods of time and the “fact” that Coreas, and other Hispanic workers, did not speak English. However, the generalized, conclusory testimony on these points of alleged “fact” does not give rise to any reasonable inference that Coreas had any particular propensity, proclivity, or course of conduct sufficient to put Hightrak on notice that he would be a possible danger to third parties.

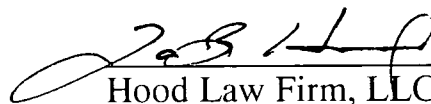
The Plaintiff also argues that his claim can be sustained on his own testimony that the training of the Hispanic workers was inadequate and they had bad work habits of taking shortcuts. Even if accepted as true by a jury, such evidence could not support his negligent hiring/training/supervision claim because the evidence is too generalized and not specific as to Coreas. Moreover, all the evidence establishes that Detyens, not Hightrak, did the testing, training, and supervising. The Plaintiff’s repeated invective about the “Hispanic workers” “who don’t speak English” is completely irrelevant to the question of whether Hightrak had any knowledge that Coreas posed a threat to his co-workers. In addition, the vicious, inflammatory rhetoric is of a type that the Supreme Court has found to be wholly inappropriate. See *Toyota of*

Florence, Inc. v. Lynch, 314 S.C. 257, 442 S.E.2d 611, 615 (1994) (discussing the outrageous conduct of trial counsel in evoking racial prejudice with depictions of mushroom cloud explosions).

The trial court properly granted summary judgment to Hightrak Staffing because there is no evidence in the Record that could support any reasonable inference that Hightrak was on notice that Coreas would be a danger to the other Detyens' employees. In fact, the Plaintiff himself testified that there had not been any prior accidents because of any of the Hightrak workers. [ROA 100; Smalls Dep. 115-16.]

Wherefore, based on the foregoing, the Respondent Hightrak Staffing respectfully submits that the Court of Appeals properly considered the evidence in the record under the correct legal standards in affirming the trial court's decision to grant summary judgment on the direct negligence claims against Hightrak Staffing and the Petition for Rehearing should be denied.

Respectfully submitted,



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Attorneys for the Respondent

Hightrak Staffing, Inc.

April 15, 2013

April 15, 2013

V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: William Smalls v. Alex Antonion Coreas and Hightrak Staffing, Inc., a/k/a Hitrak Staffing
Case No. 2007-CP-10-2354
Court of Appeals Tracking No. 2011196106
HLF File No. 48.004

Dear Claire:

Enclosed please find the original and seven copies of our Return to the Petition for Rehearing in the above captioned matter. By copy of this letter, we are serving counsel for Appellant. Please return a clocked-in copy in the enclosed return envelope.

Kind personal regards,

Yours truly,


James B. Hood

JBH/jad
Enclosure
cc: Kevin B. Smith, Esquire

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