IN THE SUPREME COURT OF THE STATE OF NEVADA

FELIX DUMOLA,
Appellant,
vs.
LABRUM LANDSCAPE, INC., AND AMERICAN PREMIERE HOMES AND DEVELOPMENT, INC.,
Respondents.

No. 41020

FILED

MAR 1 8 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from the district court's order granting summary judgment in favor of defendants Labrum Landscape, Inc. (Labrum) and American Premier Homes and Development, Inc. (American Premier). Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge. We affirm.

In August of 1999, American Premier hired Labrum as a subcontractor to perform landscaping work at the Sunset Hills housing project in Las Vegas, Nevada. As part of the project, American Premier asked Labrum to demolish and remove an asphalt parking lot near its model homes so that it could build another home on the lot. To complete the required work, Labrum ordered two dumpsters from Silver State to accommodate the roughly 30-40 yards of asphalt debris from the demolition of the parking lot.

Labrum removed the asphalt from the site and loaded it into one of the Silver State dumpsters. Silver State dispatched one of its employees, Felix Dumola, to pick up the dumpster using a Silver State truck. Dumola suffered permanent injury to his spine when the weight of the dumpster overpowered the truck's winch assembly, causing the truck to shake and bounce violently.



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Because Dumola was working within the scope of his employment at the time of his injury, he recovered workers' compensation benefits for the cost of his medical care, lost wages, and a lump-sum payment for his permanent partial impairment. Dumola filed the present complaint, asserting that his injuries resulted from negligence on the part of Labrum and American Premier. The district court granted summary judgment in favor of Labrum and American Premier,[1] and Dumola filed the present appeal.

Summary judgment is appropriate only when, after viewing the pleadings and evidence in a light most favorable to the non-moving party, no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law.[2] This court reviews a grant of summary judgment de novo, without reference to the findings of the lower court.[3]

Pursuant to the Nevada Industrial Insurance Act (NIIA), NRS chapters 616A-616D, workers' compensation is the sole remedy that an injured employee may pursue against an employer for injuries sustained in the course of his or her employment.[4] Unique to Nevada's industrial insurance scheme is the fact that subcontractors, independent contractors,

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[1]Silver State Disposal was not a party to this action.

[2]NRCP 56; Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997); Oak Grove Inv. v. Bell & Gossett Co., 99 Nev. 616, 623, 668 P.2d 1075, 1079 (1983).

[3]Caughlin Homeowners Ass'n v. Caughlin Club, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993).

[4]Frith v. Harrah South Shore Corp., 92 Nev. 447, 452, 552 P.2d 337, 340 (1976); NRS 616A.020(1).

and the employees of either are considered the statutory co-employees of a principal contractor on a jobsite.[5]

This court has held that in the case of construction workplace injuries, if the defendant is a principal contractor licensed pursuant to NRS chapter 624, or is a licensed subcontractor working pursuant to a construction agreement with a licensed principal contractor, and is performing construction work for which it is licensed when the injury occurs, that contractor or subcontractor is immune from further suit as a matter of law.[6] This court has further concluded that for immunity purposes the term "principal contractor" includes subcontractors, sub-subcontractors, and independent contractors.[7]

In the present case, it is uncontroverted that Dumola works directly for Silver State Disposal, and that Silver State is not a licensed contractor under NRS chapter 624. However, Silver State was hired by Labrum as an independent contractor to deliver and remove dumpster boxes at the site. Furthermore, there is ample evidence in the record to demonstrate that Labrum and American Premier were, at the time of the accident, licensed contractors under NRS chapter 624. Therefore, we conclude that Dumola and Labrum are the statutory co-employees of American Premier, the principal contractor on the project, for purposes of NIIA immunity.

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[5]Meers v. Haughton Elevator, 101 Nev. 283, 285, 701 P.2d 1006, 1007 (1985); NRS 616A.210(1).

[6]Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1357, 951 P.2d 1027, 1032 (1997).

[7]Id. at 1357 n.6, 951 P.2d at 1032 n.6.

Additionally, the record contains sufficient uncontroverted evidence to establish that a construction agreement existed between American Premier and Labrum. Oral agreements are valid and enforceable when evidenced by the performance of the contract,[8] and the unsigned written contract is admissible as evidence of an agreement.[9] Therefore, we conclude that Labrum was working pursuant to a valid construction agreement with American Premier, the licensed principal contractor, at the time of Dumola's injury.

We further conclude that both American Premier and Labrum were performing work for which they were licensed. American Premier holds a class B2 general building license for residential and small commercial construction.[10] The Sunset Hills housing project involved the construction of new homes, which necessarily required the use of more than two building trades.

Moreover, Labrum's C-10 landscaping license permits it to "[g]rade and prepare plots of land for architectural horticulture." While the enabling statute, NRS 624.220, provides the board with the power to adopt regulations for the classification and subclassification of contractors consistent with industry custom, and to limit the field and scope of a contractor's operations, the board may not prevent a specialty contractor from performing tasks that are "incidental and supplemental to the

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[8]Tropicana Hotel v. Speer, 101 Nev. 40, 44, 692 P.2d 499, 502 (1985).

[9]Micheletti v. Fugitt, 61 Nev. 478, 488-89, 134 P.2d 99, 103-04 (1943).

[10]License No. 42749. Issued pursuant to NRS 624.215(3); NAC 624.160.

performance of work in the craft for which the specialty contractor is licensed."[11] Nothing contained in the record demonstrates that Labrum's work was not incidental and supplemental to the landscaping work American Premier contracted it to perform under the aforementioned agreement. Therefore, we conclude that a fair reading of the record, taken in a light most favorable to Dumola, fails to establish that Labrum was acting outside the scope of its C-10 landscaping license.

We further conclude that Dumola's other claims lack merit. Accordingly we,

ORDER the judgment of the district court AFFIRMED.

_____, J.
Rose

_____, J.
Gibbons

_____, J.
Hardesty

cc: Hon. Kathy A. Hardcastle, District Judge
Jones Vargas/Las Vegas
Bennion & Clayson
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Clark County Clerk

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[11]NRS 624.220(4).