

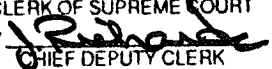
IN THE SUPREME COURT OF THE STATE OF NEVADA

DEWEY EDWARD SAMPSON, JR.,
Appellant,
vs.
THE ACCURATE COMPANIES, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND KENNETH M.
MERCURIO, AN INDIVIDUAL,
Respondents.

No. 41840

FILED

APR 21 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  RICHARD
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant Dewey Edward Sampson, Jr. contends that material issues of fact precluded summary judgment in favor of respondent, The Accurate Company, under the Nevada Industrial Insurance Act (NIIA).

Respondent Accurate was a licensed subcontractor working under Frehner Construction Company, Inc., the licensed principal contractor on the site of a highway construction project. Co-respondent Kenneth M. Mercurio was one of the principals of Accurate. Sampson worked for C.B. Concrete, which was a fictitious business name properly certified under NRS 602.020 by Granite Construction Company, a licensed contractor. Accurate contracted with C.B. Concrete to deliver concrete to the job site for fabrication of highway barrier rails. Sampson brought suit against Accurate and Mercurio for alleged injuries sustained in a job site accident.

The NIIA immunizes covered employers from common law liability to employees for workplace injuries.¹ In construction-related personal injury cases, this immunity extends to any person considered a statutory co-employee of the injured worker.² Statutory co-employees include the principal contractor, subcontractors, sub-subcontractors, independent contractors that are working under the principal contractor and their employees.³

This court has also held that,

if the defendant in a construction case is a principal contractor licensed pursuant to NRS chapter 624, or is a licensed contractor working pursuant to a construction agreement with a licensed principal contractor, and the defendant is performing part of the construction work for which it is licensed when the [statutory employee's] injury occurs, that contractor is immune from further suit [by the employee] as a matter of law.⁴

This court reviews an order granting summary judgment de novo, and without deference to the lower court's findings.⁵ Summary

¹NRS 616A.020.

²Stolte, Inc. v. District Court, 89 Nev. 257, 259, 510 P.2d 870, 871 (1973).

³Id.; see also NRS 616A.210(1) (“[S]ubcontractors, independent contractors and the employees of either shall be deemed to be employees of the principal contractor for the purposes of chapters 616A to 616D, inclusive, of NRS.”).

⁴Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1357, 951 P.2d 1027, 1032 (1997).

⁵Caughlin Homeowners Ass'n v. Caughlin Club, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993).

judgment will be upheld on appeal only when, after reviewing the record in a light most favorable to the appellant, there remain no issues of material fact and respondent is entitled to judgment as a matter of law.⁶

First, Sampson claims that there is a material issue of fact as to whether the contractor's license of Granite Construction Company covered the actions of C.B. Concrete, Sampson's employer.

This court has held that the purpose of fictitious name statutes is "to inform the public of the true identity of those with whom they conduct business."⁷ Accordingly, Granite's contractor's license also applies to C.B. Concrete. As a result, Sampson's employer, C.B. Concrete, was an NRS chapter 624-licensed contractor.

Next, Sampson argues that there is a material issue of fact as to the contractual relationship between C.B. Concrete and Accurate, since C.B. Concrete delivered cement pursuant to delivery orders rather than under a traditional subcontract agreement. More particularly, Sampson contends that there is a material issue of fact as to whether his employer was a subcontractor or a materialman on this project.

NRS 624.020(3) states that the definition of contractor includes "a subcontractor or specialty contractor, but does not include anyone who merely furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of a contractor."

⁶Butler v. Bogdanovich, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985).

⁷Brad Assocs. v. Nevada Fed. Financial, 109 Nev. 145, 148, 848 P.2d 1064, 1066 (1993).

In a construction case similar to the instant case, the Supreme Court of Kansas determined that a concrete delivery company was a subcontractor, not a materialman, and its driver was declared a statutory co-employee of the defendant contractor who ordered the concrete.⁸ The Kansas court was persuaded by the fact that the concrete delivery driver was working at the request of defendants and “under defendants exclusive direction and control” at the time of the injury.⁹ The court further explained that although paid by his own concrete company employer, the driver “was helping in the construction of the work to the same extent as if defendants themselves had been paying his wages.”¹⁰ The court therefore held that the construction company was the contractor and the concrete delivery company a subcontractor.¹¹

We agree with the Kansas approach. Sampson was an employee of C.B. Concrete, but was on the job site at the request and invitation of defendant Accurate. Accurate instructed Sampson where to deliver each load, and Sampson assisted Accurate in the fabrication of the concrete rails by pouring concrete into a fabrication machine.

We conclude that, for the purposes of NIIA immunity, C.B. Concrete was Accurate’s subcontractor and, thus, Sampson was a statutory co-employee of Accurate. Under Stolte and Tucker v. Action

⁸Whitaker v. Douglas, 292 P.2d 688, 691 (Kan. 1956) (Whitaker drove a concrete truck for a concrete company which had orally contracted with contractor Douglas to provide concrete to a building site).


⁹Id. at 690.

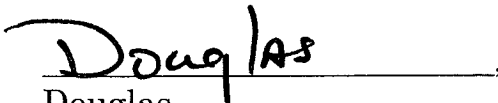
¹⁰Id. at 692.

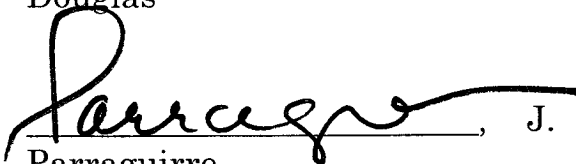
¹¹Id. at 693.

Equipment and Scaffold Co., since Accurate and C.B. Concrete were licensed contractors working pursuant to a construction agreement with a licensed principal contractor, defendant Accurate is immune from further suit as a matter of law. No issues of material fact exist here, and thus summary judgment was appropriate. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. Janet J. Berry, District Judge
Jack D. Campbell
Erickson Thorpe & Swainston, Ltd.
Washoe District Court Clerk