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Chapter 40- Third Parties, Exclusivity and Miscellaneous

Steven Wood v. Southern Crane Service, Inc., 38 Fla. L. Weekly D1332 (Fla. 1st DCA June 18, 2013)

In this personal injury case, Plaintiff Wood appealed a final summary judgment entered in favor of Defendant, Southern Crane, finding as a matter of law that Southern Crane was entitled to workers' compensation immunity. The 1st DCA disagreed and reversed summary judgment, remanding the case back to the trial court for further proceedings.

The pertinent stipulated facts were as follows: Harry Futch, a residential home owner, contracted with Arbor Pro and its owner and sole employee, Keith McCammon to have a 75-feet tall tree removed from his property. Due to the size of the tree, Arbor Pro subcontracted with Southern Crane for a crane and crane operator to assist with the removal process. Plaintiff

Wood was subcontractor that Arbor Pro would call when they needed a tree climber for a job and he was hired to assist in this project. Wood provided all of his own safety equipment, climbing equipment and tools. Arbor Pro did not direct Wood on how to take down the tree. All subcontractors on the project were paid by Arbor Pro on a daily basis. At all time material, Arbor Pro did not secure workers' compensation coverage. However, Southern Crane did provide worker's compensation coverage for it crane operator, Michael Negron who was their only employee assigned to this job.

Southern Crane argued at the summary final hearing that Section 440.10(1)(b) applied and that Arbor Pro was the contractor on the project and sublet a part of its work to Southern Crane which meant that Arbor Pro had the responsibility to secure workers' compensation coverage for all employees working on the project, except for Mr. Negron, for whom Southern Crane had already secured coverage.

The trial court determined that, as a matter of law, the tree removal project involving a crane fell within the construction industry and pursuant to Section 440.02(17)(b)2 and 440.02(15)(c)3, Plaintiff Wood would be considered Arbor Pro's statutory employee, where "employee" is defined as an independent contractor working or performing services in the construction industry.

Accordingly, the trial court found that Southern Crane would then be entitled to workers' compensation immunity from suit under Section 440.10 (1) (e), which provides that a subcontractor providing services in conjunction with a contractor on the same project or contract work is protected by the exclusiveness of liability provisions of Section 440.11 from any action at law on account of injury to an employee.

On Appeal, the first DCA held that the presence of the crane did not, as a matter of law, cause the tree removal project to fall within the construction industry under the definitions published by NCCI and SCOPES of Basic Manual Classifications, which have been adopted by the Division of Workers' Compensation by administrative rule and which sets forth definitions indentifying workplace operations that satisfy criteria of the term "construction industry". As addressed in the SCOPES manual and adopted by the workers' compensation law,

tree pruning and removal are non-construction activities. And because the record evidence did not establish that the use of cranes was normal and incidental part of contractor's tree pruning and removal services at the time of the accident, SCOPES manual dictates that non-construction code must be assigned to the tree pruning and removal operations, while construction code would be assigned solely to Southern Crane's subcontracting operations.

Accordingly, Arbor Pro was deemed to not be acting as a construction contractor and had no obligation to secure workers' compensation coverage for Plaintiff Wood. Therefore, Defendant/subcontractor Southern Crane could not claim workers' compensation immunity conferred by Section 440.10 (1)(e). Order on Summary Judgment REVERESED and case REMANDED for further proceedings.

Chapter 19- Practice and Procedure

American Woodmark Co. d/b/a Timberlake Cabinet Co. and Broadspire v. Harold Sipe, 38 Fla. L. Weekly D1334

In this Per Curium decision, the 1st DCA held that the JCC erred by not applying the "two dismissal rule" as set forth in Rule 60Q-6116(2) after claimant's attorney filed twice and then voluntarily dismissed twice a Petition for Benefits seeking permanent total disability benefits. E/C argued that by not applying the two dismissal rule, the claim for PTD would be barred by res judicata.

The 1st DCA agreed and REVERSED the JCC's Order in part and AFFIRMED in part, to the extent it awards such benefits.

JCB/kad