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TORTS- WORKERS' COMPENSATION IMMUNITY

Suarez v. Transmontaigne Services, Inc., 38 Fla. L. Weekly
D2546 (Fla. 1st DCA Dec. 4, 2013)

Plaintiff appealed the trial court's Order granting the employer's Motion for Summary Final Judgment. The First DCA reversed the lower court's Order by finding that there were genuine issues of material fact as to the relationship of the plaintiff and the employer which was improper for a Summary Judgment Order.

The plaintiff worked for Gonzalez & Sons who provides contract workers for Port Everglades. The plaintiff was injured while working at Port Everglades when a TSI employee negligently operated a boom. The plaintiff collected workers compensation benefits from Gonzalez & Sons and subsequently filed a tort claim against TSI. However, TSI argued they were entitled to workers compensation immunity as a "special employer." Specifically, TSI tried to establish that the plaintiff was

acting as their "borrowed servant" at the time of the accident. Pursuant to Sagarino v. Marriott Corp., 644 So.2d 162, 165 (Fla. 4th DCA 1994), the presumption is that the employee is not a borrowed servant. In order to overcome the presumption, TSI must establish that there was a contract for hire, either express or implied, between the employer and the employee. TSI also has to show the work being done at the time of the injury was essentially that of the special employer and the power to control the details of the work resided with the special employer.

Because the facts were convoluted in this case and TSI needed to show more than just the plaintiff's inferred acceptance of TSI's direction and control over his work, the First DCA noted that a factual dispute existed that was improper for a Summary Final Judgment. It was not clear which entity contracted for the plaintiff's labor or who had control over the plaintiff's work. Therefore, the case was reversed and remanded.

WORKERS' COMPENSATION - LIMITATIONS OF ACTIONS

Childers v. Clay County Board of County Commissioners/Scibal Associates, 38 Fla. L. Weekly D2584 (Fla. 1st DCA Dec. 10, 2013)

The Claimant appealed the JCC's Order denying her two petitions for benefits as barred by the statute of limitations. The First DCA affirmed the JCC's order with respect to the initial petition for benefits since the Employer/Carrier asserted their statute of limitations defense in their first responsive pleading and the claimant failed to establish that the Employer/Carrier should be estopped from raising the defense.

However, the First DCA reversed the JCC's Order with regards to the second petition for benefits since the Court determined that the Employer/Carrier waived the statute of limitations defense to the second petition seeking impairment benefits by not asserting this defense in its response to the petition. The First DCA found no merit to the Employer/Carrier's argument that it did not need to assert the defense when initially answering the second petition because it had already perfected the defense by raising it in response to the initial petition.

WORKERS' COMPENSATION - PERMANENT TOTAL DISABILITY ORDER

Savard v. Rio Vista Management Group D/B/A McDonald's/USIS,
38 Fla. L. Weekly D2591 (Fla. 1st DCA Dec. 10, 2013)

The First DCA granted the Appellees' Motion for Rehearing and withdrew their original opinion dated August 22, 2013. The Claimant challenged the JCC's Order denying him entitlement to PTD benefits. In light of Westphal v. City of St. Petersburg, 122 So.3d 440 (Fla. 1st DCA 2013), the First DCA reversed the Order and remanded the case for further proceedings in which the JCC may receive additional evidence.