

CASE INFORMATION SHEET
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COUNTY AND COURT:

Polk County Circuit Court

NAME OF CASE:

JOSE GARCIA,

Plaintiff,

v.

MAURO BRANCO; SONIA SANTIAGO-
BRANCO; MICHAEL BRANCO; A & B
STUCCO, INC.; and BRANCO LATH &
STUCCO, INC,

Defendants.

CASE DOCKET NO.: 2013-CA-005157 **JUDGE:** Larry Helms

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

William Tonelli
Samuel P. King
Dellecker, Wilson, King, McKenna,
Ruffier & Sons, LLP
719 Vassar Street
Orlando, FL 32804

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

John P. Daly
Jennifer E. Hoge
Rissman, Barrett, Hurt,
Donahue, McLain & Mangan, P.A.
201 E. Pine Street
15th Floor
Orlando, FL 32801
For Michael Branco and Branco Lath & Stucco, Inc.

Rodney C. Lundy
Conroy, Simberg, Ganon, Krevans,
Abel, Lurvey, Morrow & Schefer, P.A.
2 South Orange Avenue
Suite 300
Orlando, FL 32801
For Mauro Branco and Sonia Santiago-Branco

David I. Wynne, Jr.
Law Offices of Scott L. Astrin
100 N. Tampa Street
Suite 2605
Tampa, FL 33602
For A&B Stucco, Inc.

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

38 / M / n/a

FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:

n/a

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

December 10, 2009/Polk County, Florida

CAUSE OF INJURY:

Workers' Compensation/Premises Liability for Fractured Leg.

On December 10, 2009, plaintiff Jose Garcia allegedly fell in a hole at a property owned by Mauro Branco and Sonia Santiago-Branco. As a result of the fall, Plaintiff sustained an open tibia/fibula fracture of the left leg.

Plaintiff was on the property installing concrete under a fence within the course and scope of his statutory employment with Branco Lath & Stucco, Inc. Plaintiff filed for workers' compensation benefits.

Whether Plaintiff was an employee was initially at issue in the workers' compensation case. However, Branco Lath & Stucco, Inc. eventually recognized Plaintiff qualified as a statutory employee, as he was employed by a subcontractor of Branco Lath &

Stucco, Inc. to perform work on the property and Plaintiff was provided workers' compensation benefits.

Plaintiff then brought suit against the Defendants in the instant case. Plaintiff alleges that as property owners, Mauro Branco and Sonia Santiago-Branco had a non-delegable duty to maintain the property in a safe manner. Plaintiff alleged that the property owners hired Michael Branco, Branco Lath & Stucco, Inc. and A & B Stucco, Inc. to manage and maintain the property, which Plaintiff alleges was done negligently.

NATURE OF INJURY:

Open tibia/fibula fracture of left leg.

PLAINTIFF'S EXPERT WITNESSES:

n/a

DEFENDANT'S EXPERT WITNESSES:

n/a

CHECK APPROPRIATE SPACE: X Summary Judgment

DATE OF SUMMARY JUDGMENT:

December 1, 2016

COMPARATIVE NEGLIGENCE:

n/a

SUMMARY JUDGMENT:

For Defendants on December 1, 2016 (granting summary judgment to Michael Branco and Branco Lath & Stucco, Inc.)

DATE OF FINAL SUMMARY JUDGMENT:

December 13, 2016

DEFENDANT'S OFFER:

Offered to waive workers' compensation liens

PLAINTIFF'S DEMAND:

None

ATTORNEY'S COMMENTS:

Prior to filing the civil action, Plaintiff pursued a workers' compensation action against Branco Lath & Stucco, Inc. and Prestige Construction Group. Plaintiff's employment status was heavily litigated, with his claim initially denied by Branco Lath & Stucco, Inc., since Plaintiff was not a direct employee of Branco Lath & Stucco, Inc.

However, during the course of the workers' compensation proceeding, Branco Lath & Stucco, Inc. changed its position based on representations from Plaintiff that he was employed either by Branco Lath & Stucco, Inc. or Branco Lath & Stucco, Inc.'s subcontractor, Prestige Construction Group. As such, Branco Lath & Stucco, Inc. accepted Plaintiff's claim as compensable and began paying benefits, which it continues to pay to date.

When Plaintiff filed the civil action, Branco Lath & Stucco, Inc., and its president Michael Branco, raised the issue of workers' compensation immunity and election of remedies as defenses. A motion for summary judgment was heard on the same defenses.

Plaintiff argued that the status of Plaintiff as an employee of Branco Lath & Stucco, Inc. was an issue of fact, as Michael Branco testified repeatedly that Plaintiff was employed by Prestige Construction Group. Plaintiff also argued that Michael Branco was not entitled to immunity individually, as his request that concrete be poured under the fence was not an action within his role of president of Branco Lath & Stucco, Inc.

Defendants argued that Plaintiff had repeatedly and consistently testified that he was employed by Branco Lath & Stucco, Inc., pursued the issue through the workers' compensation claim and had his claim accepted as compensable. The fact that there was testimony that Plaintiff was employed by the subcontractor rather than Branco Lath & Stucco, Inc. was not now an issue of fact that should be put before the jury.

Additionally, Michael Branco's decision to hire Prestige Construction Group to place concrete under the fence was within Michael Branco's role as president of Branco Lath & Stucco,

Inc., which had been hired by the property owners to manage the property.

The trial court granted summary judgment in favor of Michael Branco and Branco Lath & Stucco, Inc., ruling that Plaintiff had consistently asserted that he was an employee of Branco Lath & Stucco, Inc., actively pursued and subsequently received workers' compensation benefits from Branco Lath & Stucco, Inc. and Michael Branco, and having not pled any exception to workers' compensation exclusivity, was bound by the exclusive remedy.

Submitted By: Jennifer E. Hoge **Date:** January 3, 2017

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