

Predel v. Fox Meadows Condominium Association (May 17, 1995)

VERMONT DEPARTMENT OF LABOR AND INDUSTRY

JOSEPH PREDEL) File No. D-5000
)
) By: Frank E. Talbott, Esq.
v.) Contract Hearing Officer
)
) For: Mary S. Hooper
FOX MEADOWS CONDOMINIUM) Commissioner
ASSOCIATION)
) Opinion No. 29-95WC

APPEARANCES

*Kerry G. Spradlin for the claimant
Richard J. Windish for the defendant*

ISSUES

Whether the defendant was the statutory employer of the claimant.

PRELIMINARY MATTERS

1. The parties have stipulated that this matter may heard on the following stipulated facts and the deposition of Louis Lerner, which has been marked as Exhibit A.

STIPULATED FACTS

- 1. Fox Meadows is a condominium association. It is comprised of the individual owners of the units in the Fox Meadows Condominiums. Membership in the association is automatic with the ownership of a unit. All of the condominium units are owned as second homes/ rental properties.*
- 2. Fox Meadows Condominium Association was formed for the purpose of*

administering the maintenance and repair of the common areas of the condominium building in the Fox Meadows Condominium complex.

3. If the condominium complex needs general repairs, the president will contact the owners of the unit needing repair and make a proposal regarding the repair. Upon a majority vote of the association members (which are the unit owners) the Association will contract to have the repairs made to the condominium complex.

4. In March, 1990, Fox Meadow Condominium Association contracted with Donald Loveland, a building contractor, to put siding on Unit 2 of the Condominium complex.

5. Donald Loveland had total control over the project and supplied all of the building materials, tools and labor for the project.

6. The claimant injured himself when he fell from staging being used by Loveland.

7. There was no direction by or on behalf of Fox Meadows regarding the method or approach to the completion of the project. Loveland received no direct instruction from Fox Meadows regarding how he should proceed towards the completion of the project.

8. No one from Fox Meadows inspected the work in progress.

CONCLUSIONS

1. 21 V.S.A. § 601(3) provides:

"Employer" includes any body or person, corporate or unincorporated, public or private, ... who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the worker there employed.

2. In King v. Snide, 144 Vt. 395 (1984), the Vermont Supreme Court held, "in order to find a person a statutory employer, the work being carried out by the

independent contractor on the owner's or proprietor's premises must be of the type that could have been carried out by employees of the owner or proprietor in the course of his usual trade or business."

3. The statutory employer provisions of the act are aimed at preventing evasion of the act by employers who subdivide their regular operations among subcontractors, escaping direct employment relations with the worker. Larson, Law of Workers' Compensation §49.11. Thus, the question to ask is whether the subcontracted work is part of the regular business of the statutory employer. Id. at §49.12.

4. The claimant argues that since the condominium units are held as rental property, the homeowners' association was formed for the purpose of maintaining and repairing the condominium units for pecuniary gain. This argument does not address whether the actual maintenance and repair work is within the scope of the associations' usual business practices. There is no evidence that the Association maintains any direct employees on a payroll to maintain the property.

5. Rather, the Fox Meadows Condominium Association is an association of the condominium owners whose function is to manage the decisions on when to enter into contracts for the maintenance and repair of the common areas of the condominium complex. There is no evidence that the Association employs persons to perform maintenance and repair work as part of its usual business practices. Indeed, even with companies which have employees whose duties are the maintenance and repair of the employer's facilities, major repairs which are not routinely conducted, and which the employer is not equipped to handle with its own work force are generally held to be outside the scope of the regular business of the employer. Larson, Law of Workers' Compensation, §49.13(c).

6. The defendant in this case is not within the class of the employers that the statutory employer provisions of the act intended to address.

ORDER

IT IS THEREFORE ORDERED that the claimant's claims are DENIED.

Dated in Montpelier, Vermont this ____ day of May, 1995.

*Mary S. Hooper
Commissioner*