SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4287-14T4

MAURICIO MENDOZA,

Petitioner-Respondent,

v.

JACK DIPIAZZA and D&P REAL ESTATE, L.L.C.,

Respondents-Appellants.

Submitted May 16, 2016 – Decided October 11, 2016

Before Judges Lihotz, Fasciale, and Higbee.

On appeal from the Department of Labor and Workforce Development, Division of Workers' Compensation, Claim Petition No. 2013-9429.

Dominic V. Caruso, attorney for appellants.

Law Offices of Douglas J. Fleisher, attorneys for respondent Mauricio Mendoza, join in the brief of appellants Jack DiPiazza and D&P Real Estate, LLC.

The opinion of the court was delivered by

HIGBEE, J.A.D.

Respondents, Jack DiPiazza and D&P Real Estate, L.L.C. ("D&P"), appeal from a May 5, 2015 order holding respondents responsible for reimbursement of workers' compensation payments paid on behalf of petitioner, Mauricio Mendoza, for disability and medical benefits for injuries sustained by him while working as a roofer on respondents' property. Respondents argue:

> THE WORKERS' COMPENSATION JUDGE ERRED AS A MATTER OF LAW IN CONCLUDING THAT AN LLC WHOSE SOLE PURPOSE WAS TO OWN A SINGLE PROPERTY CONSTITUTED A CONTRACTOR FOR THE PURPOSE OF BEING LIABLE FOR INJURIES SUSTAINED BY THE EMPLOYEE OF A CONTRACTOR HIRED BY THE LLC TO PERFORM REPAIR WORK ON THE PROPERTY.

We agree and reverse.

We discern the following history from the record. DiPiazza started Royal Baking/Leonard Novelty Baking ("LNB"), a family owned and operated manufacturer of Italian baked goods, in 1959. All three of DiPiazza's adult children and his wife participate in the day-to-day operations of LNB, along with approximately sixty-five to seventy other employees. LNB has workers' compensation insurance. The corporation currently operates out of a property located in Moonachie, which it rents from respondent D&P.

D&P was formed in 1999 by DiPiazza for the sole purpose of purchasing the Moonachie property for use by LNB. DiPiazza, his wife, and his three children are the only members of the LLC.

DiPiazza himself is the president of LNB and the managing member of D&P. At no point since its creation has D&P conducted any business other than owning the Moonachie property and leasing it to LNB. D&P has no employees and does not maintain workers' compensation insurance.

The ten-year lease between D&P and LNB provides that the tenant, LNB, has the responsibility to maintain the premises "in good repair" at all times during the term of the lease. As such, LNB maintains the interior and exterior of the building, including daily cleaning, regular maintenance of the equipment, and lawn care. According to the testimony of DiPiazza, however, D&P was responsible for maintaining the building itself, including repairing any structural damage, such as a leaky roof. As the chief officer of both corporations, DiPiazza signed the lease on behalf of both parties.

DiPiazza entered into a contract with Skippy Ely, owner of Conte Roofing, to repair leaks in the roof and apply an aluminum coating to it. Conte Roofing prepared the contract, naming "D&P Bakery" as the recipient of the roofing services. There is no entity known as "D&P Bakery." DiPiazza's daughter, LNB's primary administrator, wrote a check for $30,000 from D&P to Conte Roofing as a deposit.

Prior to the repairs, DiPiazza inquired of Ely as to Conte Roofing's workers' compensation coverage. Ely claimed he had full insurance coverage and that he would provide proof of insurance. He failed to do so prior to starting the repairs.

On October 9, 2012, the first scheduled day of repairs, a Conte Roofing van stopped in Union City looking for laborers to work on the roofing job. The company hired Mauricio Mendoza at $100 per day and transported him to the site in Moonachie. After working for approximately five hours, Mendoza was seriously injured when he fell through a covered hole in the roof, landing on a table and then the floor of the building.

After the accident, DiPiazza again asked Ely to provide proof of Conte Roofing's workers' compensation insurance. Ely did so, but when DiPiazza submitted the certificate to D&P's insurance company, it was discovered that the certificate was fraudulent and that Conte Roofing did not have any insurance coverage.

On April 9, 2013, Mendoza filed employee claim petitions with the Department of Labor Division of Workers' Compensation, one naming LNB as the employer and the other naming both D&P and DiPiazza.[1] As D&P carried no insurance, the workers' compensation

[1] A third claim named Conte Roofing and Skippy Ely. Those parties failed to answer the claim against them and a default judgment was entered on July 23, 2013.

judge granted Mendoza leave to join the Uninsured Employer's Fund ("UEF"), though it was not considered a party to the action against whom a judgment could attach. DiPiazza, along with D&P, and LNB answered the claim petitions by stating that the petitioner was employed by Conte Roofing, and, as such, they could not be liable to him as an employer. The parties further asserted that they were not general contractors under the law as set forth in N.J.S.A. 34:15-79(a); respondents maintained, therefore, they could not be held liable to pay for the medical bills of employees that work for uninsured subcontractors, pursuant to that statute.

The judge heard testimony on July 2 and 17, 2013. Before the judge rendered a decision, Mendoza died. His attorney did not seek a permanency award, leaving only the issue of who was liable for benefits already paid to Mendoza by the UEF. On April 28, 2015, the judge dismissed the claim against LNB with prejudice.

On May 5, 2015, the judge entered an order declaring DiPiazza and D&P general contractors:

> IT IS ORDERED based upon the findings placed on the record on Tuesday, April 28, 2015, the respondent, D & P Real Estate, LLC, is a general contractor as defined by N.J.S.A. 34:15-79. As D & P Real Estate, LLC, did not have worker's compensation insurance on 10/09/2012, pursuant to N.J.S.A. 34:15-79, Jack DiPiazza is personally liable for any benefits paid to the Petitioner. Thus, the Interim Order #1 signed by the Court on July 23, 2013, in the companion matter of Mauricio

> Mendoza vs. Skippy [Ely], Individually and Conte Roofing, C.P. No. 2012-28521, granting the Petitioner temporary disability benefits and medical benefits, as well as assessing attorney's fees, is hereby amended to include Jack DiPiazza, individually and D & P Real Estate LLC, as party respondents. All parties under C.P. No.: 2013-9429 and C.P. No.: 2012-28521 are jointly and severally liable.

In explaining her decision, the judge reasoned that because DiPiazza testified that D&P is solely responsible for maintaining the structure of the building and they alone managed the hiring of labor to do any necessary structural repairs, D&P acted as a general contractor. The judge held that when D&P entered into the contract with Conte Roofing, the roofing company became D&P's subcontractor; and in accordance with N.J.S.A. 34:15-79(a), when Conte Roofing did not maintain workers' compensation insurance, D&P became jointly and severally liable with Conte for the coverage. DiPiazza, as the managing member, was also held individually liable for the over half a million dollars that the UEF paid as a result of Mendoza's injuries.

The judge rejected respondents' argument that D&P's ownership of the property was not its business in-and-of itself, but only incidental to the family bakery business. She held that this argument creates a "slippery slope" in which the creation of a separate LLC "with all its legal obligations and implications is essentially illusory."

She acknowledged that an abundance of case law supports the respondents' proposition that mere ownership of a property does not make the owner a general contractor for purposes of workers' compensation. However, she reasoned those cases are distinguishable because they do not involve a real estate LLC whose sole business is to own, lease, and maintain a certain property. The judge further noted that while her ruling would have a negative impact on the DiPiazza family and their business, the statutory mandate is to liberally interpret the statute to provide injured workers access to compensation.

In reaching her decision, the judge mistakenly stated that a "general contractor" is defined as "[o]ne who has entered into a contract, express or implied, for the [purpose of performing] an act with [a] person who has already contracted for its performance," citing Mittan v. O'Rourke, 115 N.J.L. 177, 179 (N.J. 1935) (quoting Subcontractor, Bouvier's Law Dictionary (3d ed. 1856)). Actually, Mittan sets forth the above as the definition of a "subcontractor" rather than that of a "general contractor."

On May 26, 2015, DiPiazza and D&P filed this appeal, asking this court to resolve the legal question of whether D&P is a general contractor within the intended meaning of N.J.S.A. 34:15-79(a). This is a legal determination subject to our de novo review.

To ensure injured workers have some source of recovery, and as an incentive for general contractors to hire insured subcontractors, "a general contractor may be called on to provide workers' compensation to the employee of a subcontractor that has violated its statutory obligation to provide workers' compensation coverage." Eger v. E.I. Du Pont DeNemours Co., 110 N.J. 133, 137 (1988). Specifically, N.J.S.A. 34:15-79(a) provides: "Any contractor placing work with a subcontractor shall, in the event of the subcontractor's failing to carry workers' compensation insurance as required by this article, become liable for any compensation which may be due an employee or the dependents of a deceased employee of a subcontractor."

We have previously concluded that "the purpose of [N.J.S.A. 34:15-79(a)] is to protect employees of irresponsible and uninsured subcontractors by imposing liability on the more generally responsible principal contractor, . . . not to impose liability on a property owner because his contractor failed to carry insurance." Brygidyr v. Rieman, 31 N.J. Super. 450, 453 (App. Div. 1954). Moreover, "[a] contractor within the intendment of the statute is one who contracts directly with the owner of a property for construction, or improvement, or repair, or work to be performed. Ibid. We noted that "[t]o hold otherwise would mean that any property owner who contracted for services would be

liable for injuries sustained by the contractor's employees," id. at 453-54, a precedent certainly unintended by the Legislature.

In Lesniewski v. W.B. Furze Corp., 308 N.J. Super. 270 (App. Div. 1998), this court rejected the argument that a property-owning corporation was a contractor under N.J.S.A. 34:15-79(a) in the case of an individual injured at a construction site where the corporation was erecting a restaurant. We held that "[w]hen an owner of property has a building constructed for the owner's use, the owner does not ipso facto become a contractor by letting out the masonry, plumbing, carpentry and electrical work to different people by separate contracts." Id. at 283.

Similarly, in Martin v. Pollard, 271 N.J. Super. 551, 554-55 (App. Div. 1994), we determined that owners "in the business of renting [their] properties" do not enter into a contractor-subcontractor relationship with the entity with whom they contract to do irregular maintenance work on their properties, such as painting or repairing the exterior. Rather, such an entity is considered an independent contractor, and the owner is not responsible for workers' compensation benefits under N.J.S.A. 34:15-79(a). Id. at 557. We held that when one is "in the business of being [a landlord], it cannot be said that having one of [his] houses painted is any more 'integral' to [his] business than it would be to have a pipe fixed by calling a plumber." Ibid.

Against this legal framework, we analyze respondents' assertion that the workers' compensation judge erred in concluding that an LLC created with the sole purpose of owning and renting a piece of property to its own members' business constitutes a general contractor under N.J.S.A. 34:15-79(a).

While the workers' compensation judge's concern for the injured worker and recognition of the complexities of her decision are commendable, there is no legal precedent in which to ground her decision. It has been made clear that a property-owning business is not the equivalent of a general contractor pursuant to N.J.S.A. 34:15-79(a). Bryqidyr, supra, 31 N.J. Super. at 453. Moreover, when a property-owning company engages in a contractual relationship with a contractor for irregular maintenance, such as fixing a leaky roof, that company does not ipso facto become a general contractor. Lesniewski, supra, 308 N.J. Super. at 283; Martin, supra, 271 N.J. Super. at 557. This includes companies in the business of being a landlord in a contractual relationship with its tenants. Martin, supra, 271 N.J. Super. at 557. We conclude this case is analogous to the above and is controlled by well-established precedent. D&P did not act as a general contractor as a matter of law.

Reversed.