



Common Sense Prevails: A Victory for Texas General Contractors

The Texas Supreme Court recently held that a general contractor ("GC") who had no control over the work of an injured subcontractor could not be sued for the subcontractor's work related injuries. The Texas Supreme Court ruled that the GC owed the injured worker no duty as a matter of law and ordered that he take nothing on his claims.

In making this ruling, the Texas Supreme Court explained that in Texas, a party who employs an independent contractor owes no duty to ensure that the independent contractor safely performs the work. The Court did note that an exception to this rule exists if the employer retains "some control over the manner in which the contractor performs the work that causes the damage."

The GC in this case argued that it had no control over the "means, methods or details" of the injured subcontractor's work and the GC had no contractual authority to control the subcontractor's work. In this case, the GC pointed to testimony from the subcontractor's superintendent, who was on site to demonstrate that the GC's employees did not tell him how to instruct the subcontractor's employees to do the work. This was in addition to testimony from the injured subcontractor himself, stating that no individual from the GC told him how to do the work that caused his injury.

The injured subcontractor argued that because the GC's supervisors were on location constantly, had daily safety inspections and could direct the subcontractor to alter any work practices that the GC believed were unsafe, there was a dispute as to whether the GC had control over his work.

Texas Supreme Court held that managing and directing the scheduling and order of work demonstrates only the GC was "performing the duties of a general contractor." The Court also held that for a duty to arise the GC must direct a specific independent contractor's work, such as directing an individual employee to do a clear task at an explicit time.

Importantly, the Court specifically stated "[t]his type of general supervisory authority with respect to subcontractor scheduling is precisely what does not constitute the kind of control over the means, methods, and details of a subcontractor's work that gives rise to a duty of care."

So what does this mean for Texas GCs? Texas GCs can now control their projects with respect to subcontractor scheduling, even going as far as daily inspections and alteration of unsafe subcontractor work practices, without creating a duty to which liability could be attached. In

essence, the Texas Supreme Court solidified the line of what does not constitute the kind of control over the means, methods, and details of a subcontractor's work that gives rise to a duty of care. This decision allows Texas GCs to rest easier in regards to workplace injuries when directing the order of work that arises in a construction project, especially when dealing with subcontractors who are behind schedule.

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