Monday, December 12, 2016

The Court’s decision in Khosh v. Staples Const. Co., Inc., Case No. 56-2014-00447304-CU-PO-VTA (Oct. 26, 2016) helps to further define the boundaries for whether a general contractor may be found responsible for worksite injuries suffered by an independent subcontractor’s employee.

In Khosh, the California Court of Appeal upheld the trial court’s decision that general contractor Staples Construction Company, Inc. (“Staples”) was not responsible for injuries sustained by an electrical subcontractor’s employee, who was severely electrocuted on the jobsite.

The accident occurred on a construction project owned by the California State University Channel Islands (“University”), which hired Staples to install a backup electrical system. The contract between the University and Staples specifically
required Staples to be “exclusively responsible” for the safety of the project and its subcontractors, with measures that required Staples to “exercise precaution at all times for the protection of persons and their property,” retain a “full-time, on site superintendent” to “direct the project at all times,” and provide “comprehensive” written plans for “all activities affecting University operations,” which the Court noted included “utility shutdowns.”

Staples subcontracted the work to Myers Power Products, Inc. (“Myers”). One of Myers’ employees, Al Khosh, was severely electrocuted, because he started working on an energized switchgear a couple hours earlier than the scheduled power shutdown.

The injured employee acknowledged the California rule that “an employee of an independent contractor generally may not recover tort damages for work-related injuries from the contractor’s hirer,” but argued that an exception to the rule applies. He argued that Staples retained control over his work, affirmatively contributed to the accident, and that Staples breached a non-delegable duty to keep the project safe. Specifically, the injured worker argued that Staples agreed to be responsible for worksite safety, failed to have an onsite qualified electrician to supervise his work, and failed to prepare a written procedure for the electrical shutdown, which together contributed to his injuries.

The Court disagreed. It found that because the injured worker was employed by Staples’s independent contractor, Staples could only be found responsible if it affirmatively contributed to the accident. The Court looked to the following factors to support its decision: (1) Staples “did not directly participate in the construction activities,” (2) did not “assist in building the electrical substation,” (3) was not even on site at the time of the accident, and (4) because the agreement with the University did not require Staples to undertake any “specific measures . . . in response to an identified safety concern,” without any affirmative conduct, Staples could not be found responsible for the injuries to the independent subcontractor’s employee.

The Opinion is helpful for the clear lines established on contractor liability and it provides a useful discussion of related cases and the specific contract language and facts that supported the Court’s findings. The Court’s decision became final on November 25, 2016 absent further action taken by the plaintiff.

Copyright 2020 K & L Gates