

1976

Gilbert Capson and Linda Capson, his wife v. A.J. Dean Ready Mix Concrete Company, Arctic Circle, Inc. : Reply Brief

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

14524ARB

COURT

OF THE

STATE OF UTAH

GILBERT CAPSON and LINDA)
CAPSON, his wife,

Plaintiffs and)
Appellants,

vs.

A. J. DEAN READY MIX CONCRETE)
COMPANY,

Case No. 14524

Defendant,

ARCTIC CIRCLE, INC.,)

Defendant and)
Respondent.

APPELLANTS' REPLY BRIEF

Appeal from the Judgment of the Third District Court
for Salt Lake County, Honorable James S. Sawaya, Judge.

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IN THE
SUPREME COURT
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GILBERT CAPSON and LINDA)
CAPSON, his wife,

Plaintiffs and)
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A. J. DEAN READY MIX CONCRETE)
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APPELLANTS' REPLY BRIEF

RESPONSE TO NEW MATTER AND ADDITIONAL CASES SET
FORTH IN RESPONDENT'S BRIEF

While the Defendant cites a line of cases from which he urges his Court to uphold the Lower Court's decision, he has overlooked the case which is most in point law relying on cases which are not analagous to the one before the Court. The cases cited by the Defendant in support of the Plaintiff's being found to be an employee of the Defendant are clearly distinguishable and inapplicable. Those cases all deal with liability relationships other than between the general contractor and the sub-contractor, and they all involve factual situations in which the employer

exercised much more control than did the general contractor in this case.

The case most analagous to this one is the case of Angel v. Industrial Commission, 64 U 105, 228 P 509 . In this case Angel, the general contractor hired Skoubye to mix and pour cement furnished by Angel for 5 cents per cubic yard. Skoubye hired his own employees, who were paid by Angel and from which the amount was deducted from the 5 cents per cubic yard due Skoubye. Angel supervised the pouring of the cement to see that it was properly done and made suggestions where he thought they were needed. This Court held Skoubye to be an independent contractor of Angel and not an employee. In the case now before this Court, the same basic facts exist.

(1) The sub-contractor was paid for the job rather than an hourly wage. (2) The sub-contractor was offered suggestions by the owner as to how to do the job. (3) The owner supervised the pouring to see that it was done in a workmanlike manner.

A difference does exist however. This difference is that the forms were provided by the general contractor in the Angel v. Industrial Commission case, (supra), whereas the forms were provided by the sub-contractor in this case. This element of difference brings this case even more toward the line of independent contractor and away from that of employee.

A case which gives further light to this situation is Gallegos v. Stringham, 21 Ut 2d 139, 442 P2d 31 . This case distinguishes Angel v. Industrial Commission (supra) and others in finding that a particular sub-contractor was an employee rather than an independent contractor. In that case

the employer supervised every process and detail of the work. Our case is very much like the cases cited by Gallegos v. Stringham, (supra), which are distinguished therein, and as such the case adds further support to finding that the Trial Court was in error to summarily grant the Defendant's Motion for Dismissal and in so doing finding that the Plaintiff was an employee of the Defendant.

Respectfully Submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that I mailed 2 copies of the foregoing Appellants' Reply Brief to Ray R. Christensen, Christensen, Gardiner, Jensen & Evans, Attorneys for Respondent, 900 Kearns Building, Salt Lake City, Utah 84104 on this 17th day of August, 1976 postage prepaid.


