

*Michael J. Dunkling v. Lawrence Brunoli, Inc., Et Al. (AC 41634)*

The plaintiff initiated this case after suffering injuries during a work accident when he fell off a ladder while repairing a gutter. The defendant, Brunoli, entered into a contract with the state as a general contractor. Under the contract, the defendant was permitted to delegate work to two subcontractors, Connecticut Metal Structures (Ct. Metal) and Mid-State Metal Building Company (Mid-State). At the time the accident took place, the defendant had subcontracted to Mid-State the duty to repair a leaking gutter. Mid-State hired the plaintiff to perform the repair as an hourly worker.

The Commissioner of the Fifth District determined that the defendant was the principal employer of the plaintiff for purposes of worker's compensation claims and was therefore responsible for providing worker's compensation benefits to the plaintiff. The Court reasoned that although the defendant subcontracted with Mid-State, the injuries incurred by the plaintiff were still the result of the defendant delegating the job of recruiting a worker and repairing the gutters to Mid-State. The defendant filed a petition claiming the commissioner had improperly found the defendant to be the principal employer as at the time of the accident, the defendant had completed construction and was no longer in control of the worksite. The commissioner denied the motion. The Compensation Review Board affirmed the decision of the commissioner and additionally determined that more than one entity can be the principal employer. The defendant appealed to the Appellate Court.

The issue presented to the Court in the appeal is whether the commissioner properly determined that the defendant was the principal employer at the time the accident occurred. The Court affirmed the decision of the commissioner. The Court first noted in their reasoning that the decisions of the commissioner "must stand unless they result from an incorrect application of the

law to the subordinate facts or from an inference illegally or unreasonably drawn from them.”

However, the commissioner is not afforded such a high degree of deference when the question of law presented to them has never before been subject to judicial scrutiny.

The Court next looked to the purpose of §31-291, which is to provide protection and remedial options for injured workers to seek adequate compensation from their employers. The statute accomplishes this by “making the principal employer who has general control of the business in hand liable as if he had directly employed all who work upon any part of the business which he has undertaken to carry on.”

The Court next looked to the three primary elements of §31-291. These elements include: “(1) the relation of the principal employer and contractor must exist in work wholly or in part for the former; (2) the work must be in, on or about the premises controlled by the principal employer; and (3) the work must be a part or process in the trade or business of the principal employer.” The parties in this case face a disagreement arising from the second element and whether the defendant was in control of the worksite. To settle the disagreement, the Court looked to well established case law found in *Hebert v. RWA, Inc.* wherein the Connecticut Supreme Court determined that “as long as the subcontractor’s operations entered directly into the successful performance of the commercial function of the principal employer . . . those operations are a part of the process of the trade or business of the principal employer.”

Applying this precedent to the present case, the Court determined that the defendant, as the general contractor was required to fix the gutter and had complete control over who they delegated that job to. The Court further noted that as the general contractor, the defendant had full knowledge of potential risks and dangers involved in repairing the gutter at that particular worksite. Additionally, the defendant could have supervised the repair. The defendant alone was

in control of whom it ordered to repair the gutter and the plaintiff suffered injuries as a result of that order.

The Court ultimately found that the commissioner correctly determined that the defendant was the principal employer at the time of the accident and therefore was responsible for providing the plaintiff with worker's compensation benefits.