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IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,897

JOSEPH E. RAMOS, LAURA RAMOS, his wife, and KATRINA RAMOS, a minor, by and through JOSEPH E. RAMOS, her parent and next friend,

Petitioners,

vs.

UNIVISION HOLDINGS, INC., CROWN CENTER REDEVELOPMENT CORPORATION, and HALLMARK CARDS, INCORPORATED,

Respondents.

Third District Court of Appeals, Case No. 93-2055

RESPONDENTS' ANSWER BRIEF ON THE MERITS

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INTRODUCTION

The case sub judice began as an appeal, pursuant to Rule 9.130(a)(3)(C)(vi), Florida Rules of Appellate Procedure, seeking review of an order denying the Respondents' Motion for Summary Judgment. That order determined as a matter of law that the Respondents were not entitled to the worker's compensation immunity provided by §440.11, Florida Statutes.

The District Court of Appeal, Third District of Florida, reversed the trial court's Order and remanded the matter with directions to enter summary judgment for the Respondents.

Petitioners, thereafter, appealed to this Court to review the District Court's decision.

Respondent, UNIVISION HOLDINGS, INC., shall be identified throughout this Brief as "UNIVISION". CROWN CENTER REDEVELOPMENT CORPORATION will be referred to as "CROWN CENTER". HALLMARK CARDS, INCORPORATED, the last Respondent, will be referred to as "HALLMARK". The parties will be identified as above or in the capacity that they occupied in the proceedings at the trial level.

References to the Record on Appeal will be identified by the symbol (R.).

All emphasis, throughout this Brief, will be supplied by the writer.

STATEMENT OF THE FACTS AND THE CASE

The Respondents cannot accept the Statement of the Facts and the Case as set out in the Petitioners' Brief. Many of the facts delineated there are simply not supported by the record. Accordingly, the following Statement of the Facts and Case supported by the record are presented.

On February 22, 1990, the Plaintiff, JOSEPH RAMOS, and a fellow steel worker were injured while erecting an addition to UNIVISION's television studios in Miami, Florida. At that time, RAMOS was employed by a firm known as Zion Steel Erectors, a subcontractor on the job.

UNIVISION was the owner of the property. It had executed a general contract with The Austin Company to perform a remodeling of an existing structure and the construction of new television studios. (R. 265-304). Because UNIVISION had little experience in the construction field (R. 171), it contracted with CROWN CENTER to serve as its consultant on the job site to act as the "owner's representative".

Essentially, CROWN CENTER was present to insure the quality of the construction, to interface with UNIVISION and the general contractor, and to act as the "eyes and ears" of the owner at the job site. (R. 171, 260-264).

During the construction phase of the new studios, Zion Steel Erectors was employed by The Austin Company to erect structural steel. (R. 45).

During this steel erection, JOSEPH RAMOS and a fellow ironworker were attempting to connect a truss to a column without having previously "tied in" the column to any existing portion of the construction. As a result, this free-standing column twisted and fell. RAMOS and his co-worker both jumped from the falling column. Upon impact with the ground, RAMOS was seriously injured.

RAMOS brought the instant suit against UNIVISION, CROWN CENTER, and HALLMARK, alleging negligence in failing to provide a safe work place. (R. 21-31). The three Defendants raised, inter alia, the defenses of no liability and immunity from suit by virtue of §440.11, Florida Statutes (1989). (R. 32-37).

Neither UNIVISION nor CROWN CENTER, as the owner's representative, directly influenced the manner in which The Austin Company performed its work as general contractor. CROWN CENTER, it was established, was present only for the purposes of assuring that the general contractor complied with the plans and specifications of the construction contract. Further, there is no evidence in the record of this case that UNIVISION, or CROWN CENTER, either created the

condition leading to the injuries sustained by JOSEPH RAMOS or approved the existence of that condition prior to the time that the injury occurred. (R. 159-160). These facts the District Court found, militated in favor of the entry of summary judgment for the Defendants.

The Petitioners, in page 6 and 7 of their Brief, imply that UNIVISION (and CROWN CENTER) reserved to itself the active responsibility to insure safety on the job site, thereby making it liable for lapses in safety procedures. Actually, the record demonstrates otherwise.

The competent testimony in the record below regarding the responsibility of the owner's representative as to safety procedures on the job site can be found in the depositions of Daniel Summa, Zion's foreman, (R. 334-426) and Robert Fortier, CROWN CENTER's on-site representative. (R. 164-253).

The deposition of Daniel Summa contains the following testimony on this subject:

> Q. By the way, at any time before Joe's accident, did you ever talk to Bob Fortier, the owner's representative?
> A. Just 'hi, hello,' you know, 'I don't like these two-bolt anchors'.
> Q. Did you say that to him?
> A. Yes, sir
> ...
> Q. What did he say when you said, 'I don't like the two-bolt connections'?

A. 'The engineer says its the way to go. That is the way it was designed'.

...

Q. Alright. Do you recall any other conversation with him, other than, 'hi' and 'bye' or whatever, you know, 'its a nice day,' anything like that, other than happening to mention to him about the two-bolt connectors? This is a long question. Do you recall any other conversations were you might have discussed anything about the project with him?

A. On the first accident?

Q. At any time up until the time that Joe fell?

A. Oh, we had different conversations on the men that was bolting up wouldn't tie off and we had insisted that they tie off...

Q. And you had a conversation with Fortier about it or he told you they should not do that?

A. They should be tied off.

Q. He told you that?

A. Yes, sir.

Q. And that was before Joe's fall?

A. Yes, sir.

Q. Do you recall any other times when you discussed the construction process with him?

A. The anchor-bolts, and he asked me how we were going to go about putting trusses up, and I said, 'basically, its the same way as we did the front part; put the columns up, tie the columns in with other horizontal steel, and put the trusses up'.

Q. Alright, so he asked you generally what you were going to be doing to erect these columns and beams and trusses?

A. Uh-huh.

Q. And you basically told him, 'we are going to do it just like we did with phase no. 1'?
A. Correct.
Q. Anything specific that you recall or just general conversation.
A. That is about it.

(R. 381-383).

* * * * *

Robert Fortier's testimony as to his responsibilities on-site was as follows:

Q. What does an owner's representative on site do?
A. I had three responsibilities. I will point out these were not formal, my title did not change, nor did I have a written job description. My main responsibility was to provide quality assurance.
We had a remote owner. Crown Center is obviously in Kansas City. Univision has no experience with construction. We needed a person there to insure that we were getting a quality product.
Another responsibility I had was to serve as interface for Univision. They had a lot of requests, a lot of---there basically wasn't a lot of knowledge on the part of the user, things that they wanted to have done needed to be conveyed to the general contractor. I would do that.
I also served as the eyes and ears of Tom Patterson and Crown Center Redevelopment.
Q. You said 'eyes and ears' for Crown Center and Tom Patterson. Is that to observe?

> A. That is to keep Tom Patterson informed of the progress of the work, the issues involved, money issues that may come up. Basically, he visited the job, I would say, on an average of once a month. But he was-he had to be informed of what the status of that project was, and that's what I did.

(R. 171-172).

With regard to safety procedures specifically, Mr. Fortier testified:

> Q. What about your review of the contractor's safety procedures? What did you do with respect to that?
> A. Well, I was aware of what the Austin Company's safety program was.
> Q. And how were you aware of that?
> A. Because Alan James' office was next to mine, and I saw him everyday. And I asked him what it was. He showed me what it was. I also was aware of what work was going on, and would try to convey to Alan specifically my concerns and what might be safety issues with whatever work happened to be going.
> Q. Did you, in fact, request and inspect Mr. James to make those safety changes, if needed?
> A. Not so much safety change, I certainly expected that Alan would hear my questions or concerns and respond to them.

(R. 184).

On page 6 of their Brief on the Merits, the Petitioners infer that "although normal procedure would have been for all to look to CROWN CENTER (the consultant) for changes,

corrections, <u>and matters of safety</u>, in this case the owner (UNIVISION/HALLMARK) desired (and retained) full control of all the changes". The inference here being that UNIVISION actively controlled changes in safety procedures. In fact, the record does not substantiate this. In discussing change, Tom Patterson (of CROWN CENTER) was actually discussing change orders (not safety) in the passage of his testimony referred to by the Petitioners:

> Q. So then you would have instructed Mr. Fortier as to what his obligations and duties were on this particular job?
> A. I, along with his direct supervisor, yes.
> Q. Dave Roesler?
> A. Right.
> Q. Do you remember any specific meetings that you had with Mr. Fortier before he was sent to the job site to discuss these particular obligations and duties?
> A. Yes.
> Q. First of all, who attended those meetings?
> A. Bob Fortier and myself.
> Q. And what occurred out of those meetings or what was said to Mr. Fortier by yourself?
> A. I reviewed my goals for his activities on site. And I did that principally because they differed somewhat from what he would normally anticipate his activities to include.
> Q. How did they differ from what his normal activities might include?
> A. Principally, in the area of change order authorizations.
> Q. And how was that different?

A. In this case, the client desired full control of the changes or the change order moneys, Mr. Andy Goldman [of UNIVISION] did. And Bob Fortier was not empowered to authorize additional funds.

Q. So if a change order came up, what was the chain of command to be followed?

A. Wherever the change originated, it would flow to myself and Pete Plath [the general contractor], and we would come to an understanding of what the change order entailed and present it to Mr. Andy Goldman [of UNIVISION].

(R.113-115).

On page 6 of their Brief on the Merits, the Petitioners, in their paragraph E.2, make allegations which, they claim, are supported by the record, pertaining to CROWN CENTER's obligation to look into safety issues as they arose on the job site. The inference they would draw is that CROWN CENTER took an active, supervisory role as to on-site safety procedures. Again, the record does not substantiate this inference. It is, in fact, not the case. Tom Patterson, of CROWN CENTER, in discussing a safety issue which arose before the subject accident, testified:

A. I communicated with Mr. Pete Plath [the general contractor].

Q. How?

A. Verbally.

Q. And what was the essence of that verbal communications?

A. I expressed concern regarding procedures on site that such an incident would occur, and asked him to investigate it personally and

assure the owner that all proper procedures were being followed, all safety procedures were being followed to hopefully avoid it in the future.

Q. Did you receive back any type of response from Mr. Plath [the general contractor]?

A. In that same conversation, he assured me that he would.

Q. Did you ever follow up to find out what was done?

A. I don't recall.

Q. Did you know whether Mr. Fortier was instructed to follow up on what was done?

A. I don't recall.

Q. Would one of Mr. Fortier's job duties on the site be to follow up on that particular problem?

A. Generally, yes.

Q. If Mr. Fortier found the problem was not being corrected, what was he instructed to do?

A. I would expect him -- I didn't instruct him, but I would expect him to continue to report the problem.

Q. Would you also expect him to assure that the problem was corrected?

A. He would not have control on site to direct change in activity. He would report changes or lack of through the chain of command.

Q. And your chain of command that you feel that was whom?

A. He would report them to me.

Q. And did you then have the authority to have Austin institute correction?

A. My obligation would be to request that proper safety or safety procedures be reviewed and managed by the Austin Company, bring it to their attention.

(R. 119-120).

Finally, on page 7 of the Petitioners' Brief on the Merits, in paragraph 7, the Petitioners imply that Mr. Fortier, acting on behalf of CROWN CENTER and the owner UNIVISION, took an active part in the construction of the project because he had the authority to stop the job for obvious safety violations. This broad statement is simply not supported by the record. Robert Fortier, the owner's representative, elucidated on his role:

> ...My function schedulewise was to convey to Tom Patterson what -- when I felt things were going to be finished. And to convey that schedule, that projected schedule, my projected schedule, to the user.
>
> Q. What about quality on that particular job for Univision, what was your responsibility as to quality?
>
> A. To ensure that the installation went according to industry procedures. For instance, that steel, reinforcing steel, was placed where it should be, in concrete. That concrete met the requirements of the specifications, that the method of forming concrete was in accordance with industry procedures.
>
> Q. If something was not in accordance with those procedures, as you understood them, what were you supposed to do?
>
> A. Well, I brought these to the attention of the field engineer for the Austin Company.
>
> Q. And was it your responsibility to make sure that he, then conformed?
>
> A. Well, it was certainly my intent to ensure conformance. That's not to say that I wasn't overridden. Now,

if I couldn't get satisfaction from Alan James on an issue, we would go back to Kansas City and get engineers on the phone to discuss it at a higher level. And in some cases, there was a change, and in some cases, there wasn't.

Q. But until that problem was resolved, that particular aspect of the job was either stopped or you had the authority to halt things until you got the problem resolved, is that correct?

A. Well, the authority to halt things, that is kind of dangerous ground there. In some cases, yes, and some cases, no. To simply halt things would require -- now, you are talking claims, you are talking money. I don't think you can draw the right --

Q. I may not have been that extensive, but before they poured the concrete, if you didn't think they put enough steel rods in, you had to make sure that --

A. Right.

Q. -- you got that problem resolved before it was a problem that couldn't be resolved?

A. That's a good example, yes. It had to be right before any work proceeded. Some problems remained problems until we resolved them. They didn't need any immediate fix.

Q. If you needed an immediate fix because it was going to delay something, you had to get the immediate fix, and you made sure that it was done?

A. Right.

(R. 175-177).

Q. Did you have the authority to stop an obvious violation of safety?

A. I can't make any -- I could physically make somebody stop doing something?
Q. No, I mean issue a directive.
A. If I went and stood on Guy Baker's desk and said, Guy Baker, I want you to stop this job because this guy is going to get hurt, would he have stopped that from happening? Probably yes.

(R. 224).

Q. As to other safety matters that you brought up, such as OSHA problems, what was your authority to enforce those, if any?
A. I don't believe I had authority to enforce.
Q. What was your authority with respect to having the general contractor enforce it?
A. I'm not sure where the means and methods exclusion starts or stops and the safety starts and stops. I can't affect his means or methods. We never want to.
I don't have clear -- as far as I know, I don't have clear authority that tells me when I can tell them to do something and when I can't.

(R. 225).

Q. Explain to me what you mean by effectuating the means and methods.
A. The method by which a contractor chooses to accomplish his project is up to him. Everyone will do it differently. That is not our expertise, Crown Center's. It's not my expertise. I am not a general contractor.
Q. Now, if that means and methods employed something that you find violates a safety standard, what were you supposed to do at that point?

A. Bring it to the attention of the general contractor, who is responsible for the safety of that project.

Q. And what authority do you have to ensure that a safe procedure is being used?

A. I think my authority is as a concerned person, if I wanted to directly confront the person who was doing something unsafe, to convey that it was unsafe. I have that authority, if you will, just as anybody on the job, I feel, could go up to another person on the job as a person and say, hey, this is really dangerous.

(R. 226-227).

It can be seen, then, that the record actually does not support the inferences set forth by the Petitioners. Indeed, the record supports only one view of UNIVISION and CROWN CENTER's role in the construction: that of a passive non-participant in the construction's progress.

Eventually, at the trial court level, UNIVISION, CROWN CENTER, and HALLMARK moved for summary judgment based upon the immunity provided under §440.11, Florida Statutes (1989). (R. 274-277). That motion was denied. Upon appeal to the District Court of Appeal, Third District of Florida, that Court reversed the trial court and remanded the case with instructions that the trial court enter judgment for the Defendants. The crux of the District Court's opinion is set forth in the following paragraph:

> The trial court erred in finding that defendants are not entitled to workers' compensation immunity, as a property owner who hires a general contractor is considered a statutory employer and is generally entitled to workers' compensation immunity pursuant to section 440.11. See, Croon v. Quayside Assocs., Ltd., 464 So.2d 178, 180 (Fla. 3d DCA), rev. denied, 476 So.2d 673 (Fla. 1985). There are two exceptions to this general rule. First, 'an owner may be held liable if he interferes or meddles with the job to the extent of assuming the detailed direction of it, and thus becomes the master of the independent contractor's employee'. City of Miami v. Perez, 509 So.2d 343 (Fla. 3d DCA) (citing Conklin v. Cohen, 287 So.2d 56 (Fla. 1973), rev. denied, 519 So.2d 987 (Fla. 1987). 'Secondly, if the owner has been a passive nonparticipant, in order to impose liability one or more specific identifiable acts, i.e., acts either negligently creating or negligently approving the dangerous condition resulting in the injury or death to the contractor's employee, must be established.' City of Miami, 509 So.2d at 346; Conklin, 287 So.2d at 60. As Ramos has not established either of these two exceptions, Univision is immune from suit as a matter of law.
>
> Univision Holdings, Inc. v. Ramos, 638 So.2d 130, 131-132 (Fla. 3rd DCA 1994).

In short, the District Court found that the property owner who hires a general contractor is considered a "statutory employer" and generally entitled to immunity from suit under the worker's compensation statute. The District

Court, however, also recognized the "two exceptions" to the general rule of a property owner's non-liability in cases of this nature and went on to determine that neither of the two exceptions applied to the case sub judice.

The Petitioners have now asked this Court to review the District Court's decision.

POINT ON APPEAL

(As Restated by the Respondents)

WHETHER THE DISTRICT COURT WAS CORRECT IN DETERMINING THAT THE RESPONDENTS WERE ENTITLED TO SUMMARY JUDGMENT IN A SITUATION WHERE IT WAS UNCONTROVERTED THAT NEITHER THE OWNER OF A CONSTRUCTION PROJECT, NOR THE OWNER'S REPRESENTATIVE AT THE JOB SITE, INTERFERED OR MEDDLED WITH THE JOB TO THE EXTENT OF ASSUMING A DETAILED DIRECTION OF IT NOR NEGLIGENTLY CREATED NOR APPROVED A DANGEROUS CONDITION RESULTING IN AN INJURY TO A SUBCONTRACTOR'S EMPLOYEE?

SUMMARY OF ARGUMENT

The District Court in its opinion below relied upon earlier cases out of that district for the proposition that an owner hiring a general contractor is considered a "statutory employer" under the worker's compensation immunity

statute. Those earlier cases stated this proposition and cited, as authority, this Court's decisions in Conklin v. Cohen, 287 So.2d 56 (Fla. 1993), Smith v. Ussery, 261 So.2d 164 (Fla. 1972), and Jones v. Florida Power Corp., 72 So.2d 285 (Fla. 1954).

A close reading of those cases out of this Court, however, indicates that they do not stand for the proposition indicated by the district court. It is the liability to secure compensation which gives a party immunity from suit as a third-party tortfeasor under the worker's compensation law. UNIVISION, the owner here, was not obligated to provide worker's compensation benefits to the employees of the contractors on the job site and, hence, under the cited precedents, would not be entitled to tort immunity under the statute.

This, however, is not dispositive of the matter sub judice because the court below went on to determine, beyond the issue of the application of the worker's compensation immunity statute to this case, that under general premises liability law the Defendants would not be liable for the injuries alleged by the Petitioners.

In its Conklin decision, this Court recognized that an owner of property is not liable for injuries sustained by a contractor's employers unless one of two conditions exist:

the owner may be held liable if it has actively participated in the construction project to the extent of directly influencing the manner in which the work has been performed; or, the owner has either negligently created or negligently approved a dangerous condition resulting in an injury or death to an employee.

Although the district court may have misapprehended the application of the worker's compensation immunity statute to the facts and circumstances of the case at bar, its decision went beyond the application of this principle and determined that under general premises liability law, the Defendants were entitled to summary judgment.

It appears clear in Florida that an owner who reserves the right to inspect the work of contractors on a job site to determine if the work conforms to the contract, and has reserved the right to reject unsatisfactory work, may do so without fear of the imposition of tort liability. Further, the fact that an owner reserves the right to stop a project because of violation of safety regulations does not amount to a usurpation of the general contractor's duties so as to impose liability for injuries sustained by a contractor's employee.

Accordingly, the district court's decision in this case was eminently correct. The Respondents do concede that there

was a misapplication of the worker's compensation immunity statute in the court's opinion below, but would urge that the decision of the district court in finding that summary judgment was appropriate for the Respondents in this matter was correct. Accordingly, the district court should be affirmed in its decision.

ARGUMENT

This Court has for some time recognized that it is the liability to secure compensation which gives a party immunity from suit as a third-party tortfeasor under the worker's compensation law. Conklin v. Cohen, 287 So.2d 56 (Fla. 1993).

In Conklin, this Court reaffirmed its holding in Jones v. Florida Power Corp., 72 So.2d 285 (Fla. 1954), that an owner who had no liability under the law to secure compensation for a contractor's employee did not qualify as either a "contractor" or "statutory employer".

In Conklin, however, this Court also recognized that an owner is not liable for injuries sustained by a contractor's employees, under general premises liability law, unless one of two conditions exist:

> ...The owner may be held liable if he has been actively participating in the

> construction to the extent that he directly influences the manner in which the work is performed. Conversely, if the owner is a passive non-participant, exercising no direct control over the project, he cannot be held liable. To impose liability upon an owner who is not an employer as defined by the statute, one or more specific identifiable acts of negligence, i.e., acts either negligently creating or negligently approving the dangerous condition resulting in the injury or death to the employee, must be established.
>
> Conklin, at page 60.

In its opinion below, the District Court of Appeal, relied upon its earlier case in Croon v. Quayside Assoc., Ltd., 464 So.2d 178 (Fla. 3rd DCA 1985), for the proposition that an owner hiring a general contractor is considered a "statutory employer" under the immunity statute. For this proposition, the Croon opinion cited to this Court's decisions in Conklin; Smith v. Ussery, 261 So.2d 164 (Fla. 1972); and Jones.

It does appear, however, upon close reading of those decisions, that they do not stand for the proposition indicated in Croon. Under this Court's precedents, an owner is only entitled to immunity if it obligated to provide worker's compensation benefits. This was not the case here. UNIVISION was not obliged to secure compensation for the

employees of its contractors on the job site, this was an obligation of the general contractor, the Austin Company.

It does appear, then, that the District Court here may have misapprehended the earlier decisions of this Court in its statement of the principle that a property owner becomes a "statutory employer" upon the execution of a general contract. This misapprehension, however, is not dispositive of the matter sub judice because the District Court went on to determine, beyond the issue of the application of the immunity statute, that under general premises liability law, neither of the two exceptions to an owner's non-liability applied to this case. Accordingly, its decision that summary judgment ought to be entered for the Defendants on this basis was correct.

The district court determined that there was no showing that either UNIVISION or CROWN CENTER "actively participated" in the construction project to the point of directly influencing the manner in which the work was performed, or negligently created or approved a dangerous condition on the job site. Its analysis of the case on this issue was therefore eminently correct and its remand to enter summary judgment for the Defendants should be affirmed.

* * * * *

The first exception to the general rule mentioned above allows the imposition of liability upon an owner who interferes or meddles with a job to the extent of assuming detailed direction of it. As noted in the case of City of Miami v. Perez, 509 So.2d 343 (Fla. 3rd DCA), rev. denied, 519 So.2d 987 (Fla. 1987), an owner has the right to inspect the work of contractors on a job site to determine if the work conforms to the contract and has the right to reject unsatisfactory work and demand that it be made satisfactory without fear of the imposition of tort liability. City of Miami, at page 346. See also, Cadillac Fairview of Florida, Inc. v. Cespedes, 468 So.2d 417 (Fla. 3rd DCA 1985).

The fact that an owner reserves the right to inspect work and to reject unsatisfactory work does not act as a usurpation of control sufficient to change an owner from a passive non-participant to an active participant in the construction. City of Miami, at page 346.

This principle is not altered either by the fact that an owner may stop work which is not being properly performed, City of Miami, at page 346; 41 Am.Jur.2d, Independent Contractors §10 (1968); or, that the owner has reserved a contractual right to require its general contractor to comply with safety regulations. City of Miami, at page 347;

Vorndran v. Wright, 367 So.2d 1070 (Fla. 3rd DCA), cert. denied, 378 So.2d 350 (Fla. 1979).

In the case sub judice, UNIVISION, as owner, did reserve the right to inspect the work being performed by The Austin Company and to reject any work not properly performed. Further, it reserved the right to stop the project if it deemed necessary. As seen above, these contractual reservations by UNIVISION do not act to impose liability upon it under the facts and circumstances involved in this case.

While it is true that one of CROWN CENTER's contractual responsibilities to UNIVISION was to "review contractor's safety procedures" (R. 261), this reservation is an owner's right, and will not act to impose tort liability upon it.

The applicability of the second exception to the general rule was addressed in the case of Skow v. Department of Transportation, 468 So.2d 422 (Fla. 1st DCA 1985), where arguments similar to those of the Plaintiffs here were made:

> Appellants argued that DOT owed Timmy Skow a legal duty to eliminate unsafe working conditions that it knew or should have known would expose workers to a substantial risk of harm. Notwithstanding the general rule that one who hires an independent contractor is not liable for any injuries sustained by that contractor's employees in their work, Van Ness v. Independent Construction Co., 392 So.2d 1017 (Fla. 5th DCA 1981), Appellants argued that a legal duty arose because DOT assumed such detailed control over the work that

> the independent-contractor relationship between DOT and Capelletti ceased to exist. Additionally, Appellants assert that Timmy Skow's work was inherently dangerous, that he was allowed to work without a safety belt, and that DOT breached its duties to enforce the requirements of the Capelletti-DOT contract and federal safety regulations by failing to require Capelletti to provide bridge workers with safety belts.
>
> Skow, at pps. 423, 424.

The Skow court found that the contract between the DOT and Capelletti required the contractor to comply with all applicable state and federal laws governing safety and to provide safeguards and safe equipment for its employees. The contract was further found to provide that the DOT had the authority to shut down the job site for any breach of these safety requirements, as UNIVISION did here. The contract, however, did not impose an explicit duty on the owner (DOT) to monitor, inspect, and correct violations by the contractor. As such, the court determined that even though the DOT exercised general supervision of the project, there was no exercise of control over the work itself which was sufficient to take the case out of the general rule ("one who hires an independent contractor is not liable for injuries sustained by that contractor's employees in their work"). The summary judgment for the DOT was, thus, affirmed.

In accord with Skow is the case of Mozee v. Champion International Corporation, 554 So.2d 596 (Fla. 1st DCA 1989). That Court held an owner is not responsible for a contractor's safety violations in situations where an owner's representative was present at the construction site for the purposes of assuring quality control and compliance with the plans and specifications for the construction.

In the case of Vorndran v. Wright, 367 So.2d 1070 (Fla. 3rd DCA 1979), the Court noted that, in Florida, it is the prime responsibility of the contractor to comply with safety regulations. There, an architect was found not to be liable for the failure of the contractor to comply with safety regulations where the architect's contract for supervision failed to impose upon him a duty to supervise and control the actual method of construction utilized by the contractor.

In Vorndran, the court found that the architect had no control over the method of construction utilized and that there was no showing that he attempted to exercise any such control. Based on those undisputed facts, summary judgment in his favor was affirmed.

For the same reasons outlined in the court decisions discussed above, here there is no showing by competent evidence in the record that either UNIVISION or CROWN CENTER in any way attempted to exercise control over the "means and

methods" utilized by the general contractor for the construction of the project or safety.

The Plaintiffs filed in the trial court an affidavit of Daniel Summa, which was contrary to his deposition testimony, and which contained the following statement:

> "That Robert Fortier participated directly with the undersigned and influenced the manner in which the work was performed and in particular, reviewed all work as it was being performed, made comments upon the procedure of the work performance, directed and reviewed the procedures that were used by the erection crews and otherwise acted in the same capacity and with the same control as if he were employed by the general contractor, Austin Company".

It should be noted that a Court, on summary judgment, should not entertain affidavits which merely contain conclusions which are not factual. As such, Summa's affidavit, being nothing more than a summary of conclusions, should not have been considered by the trial court. _See, e.g._, _Seinfeld v. Commercial Bank and Trust Company_, 405 So.2d 1039 (Fla. 3rd DCA 1981); and, _Falls Poultry Distributing Co. v. Canner_, 372 So.2d 129 (Fla. 3rd DCA 1979).

The District Court noted in its decision that there is no showing in this case that either UNIVISION or CROWN CENTER meddled with, or influenced, the manner and methods

undertaken by the contractor to construct the project involved. Accordingly, its decision reversing the trial court with instructions to enter judgment for UNIVISION and CROWN CENTER is a correct one.

It is factually indisputable that HALLMARK's involvement in this case is only as the parent corporation of UNIVISION. There are no facts in this record which would obviate the general proposition of law that ownership by one corporation of stock in another corporation does not destroy the identity of the latter as a distinct legal entity. St. Petersburg Sheraton Corporation v. Stuart, 242 So.2d 185 (Fla. 2nd DCA 1970). As such, in light of the absence of any evidence that would make HALLMARK CARDS liable for any of the actions of its subsidiaries, then as to this Defendant too, the District Court, was correct in ordering summary judgment in its favor

CONCLUSION

While the District Court of Appeal in the case sub judice may have misapprehended earlier decisions from this Court as to the appropriateness of extending worker's compensation immunity to an owner who has hired a general contractor, the Court was correct in its application of general premises liability law to the facts at bar and in

determining that summary judgment was appropriate in favor of the Defendants. While this Court may wish to correct the misapprehended statement of law on the application of the worker's compensation immunity in the District Court's opinion, it is urged that the decision of the District Court is correct and should be affirmed. See, Bould v. Touchette, 349 So.2d 1181 (Fla. 1977); In Re Estate of Yohn, 238 So.2d 290 (Fla. 1970); Traveler's Indemnity Co. v. Johnson, 201 So.2d 705 (Fla. 1967); Direct Oil Corp. v. Brown, 178 So.2d 13 (Fla. 1965); Pinkerton-Hays Lumber Co. v. Pope, 127 So.2d 441 (Fla. 1961): and, 13 Fla.Jur.2d, Courts and Judges §54.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed this 17th day of January, 1995, to: PHILIP S. VOVA, ESQUIRE, Attorney for Plaintiffs, Goldberg and Vova, P.A., 1101 Brickell Avenue, Suite 900, BIV Tower, Miami, Florida 33131. Telephone: (305) 374-4200; CAROL FOWLER, ESQUIRE, P.O. Box 419126, #339, Kansas City, Missouri 64141-6126. Telephone: (816) 274-5540; BRIAN S. KIEF, ESQUIRE, Attorney for Univision, 30 West Mashta Drive, Suite 500, Key Biscayne, Florida 33149. Telephone: (305) 361-0825; ARNOLD R. GINSBERG, ESQUIRE, 410 Concord Building, 66 West Flagler

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