

SUPREME COURT OF GEORGIA

Tim's Crane & Rigging, Inc. v. Gibson, 278 Ga. 796

604 S.E.2d 763 (2004) · No. S04G1147 · Decided October 25, 2004

SUMMARY

The Supreme Court of Georgia held that a crane operator was a borrowed servant of the general contractor as a matter of law under the express crane-leasing contract. Because the contract established the requirements of the borrowed servant doctrine, the court reversed the Court of Appeals' reversal of summary judgment for Tim's Crane and affirmed the portion of the judgment concerning amendment of the pre-trial order.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Justice
JURISDICTION	Georgia
DECIDED	October 25, 2004
DOCKET	S04G1147
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Georgia granted certiorari to review the Court of Appeals' reversal of summary judgment for Tim's Crane in a negligence action involving an allegedly borrowed crane operator.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the record shows no genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law; the borrowed-servant issue was resolved as a matter of law based on the express contract.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	Tim's Crane & Rigging, Inc. v. Gibson

TOPICS

- vicarious liability
- construction law
- torts
- commercial litigation
- appellate procedure

PRACTICE AREAS

- construction law
- torts
- contracts
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QUESTIONS PRESENTED

1. Whether the express crane lease established that Fischer was Pinkerton's borrowed servant as a matter of law.
2. Whether Fischer's certification as a crane operator and his safety-related communications to Pinkerton employees created a factual issue concerning Pinkerton's complete control and direction of Fischer.
3. Whether the Court of Appeals correctly affirmed the trial court's permission for Tim's Crane to amend the pretrial order to assert the borrowed-servant defense.

HOLDINGS

1. The contract of hire between Tim's Crane and Pinkerton established that Fischer was Pinkerton's borrowed servant as a matter of law, so negligence by Fischer was chargeable to Pinkerton rather than Tim's Crane.
2. Fischer's certification and communications about safe crane operation did not create a material issue precluding summary judgment because the express contract controlled the allocation of responsibility and established the borrowed-servant relationship.
3. The Court of Appeals' ruling concerning Tim's Crane's amendment of the pretrial order to assert the borrowed-servant defense was affirmed.

KEY QUOTATIONS

"Because the contract of hire between Tim's Crane and Pinkerton established that Fischer was a borrowed servant as a matter of law, we hold that the Court of Appeals erred in reversing the grant of summary judgment in favor of Tim's Crane." (604 S.E.2d at 765)

"The requirements for the borrowed servant doctrine to apply are well settled in this state: [I]n order for an employee to be a borrowed employee, the evidence must show that "(1) the special master had complete control and direction of the servant for the occasion; (2) the general master had no such control, and (3) the special master had the exclusive right to discharge the servant."" (604 S.E.2d at 765)

"[T]he contract between the parties is controlling as to their responsibilities thereunder."" (604 S.E.2d at 765)

FACTUAL BACKGROUND

Pinkerton & Laws, Inc., the general contractor on a construction project, leased a crane from Tim's Crane & Rigging, Inc. Tim's Crane supplied David Fischer, a certified crane operator generally employed by Tim's Crane, to deliver and operate the crane. While Jeff Gibson, temporarily employed by Pinkerton, was guiding rebar to the ground, the crane passed near a power line and an electrical arc injured Gibson. Gibson alleged that Fischer's negligence caused his injuries.

PROCEDURAL HISTORY

The trial court granted summary judgment to Tim's Crane, concluding that the crane operator was a borrowed servant of the general contractor under the express crane lease. The Court of Appeals affirmed the allowance of

an amendment to the pretrial order but reversed the summary judgment ruling. The Supreme Court of Georgia held that the lease established the borrowed-servant relationship as a matter of law, affirmed the amendment ruling, and reversed the summary-judgment ruling.

DISPOSITION

other

CASES CITED

- Gibson v. Tim's Crane & Rigging, 266 Ga.App. 42, 44(1), 596 S.E.2d 215 (2004)
- Montgomery Trucking Co. v. Black, 231 Ga. 211, 213, 200 S.E.2d 882 (1973)
- Sims Crane Service v. Ideal Steel Products, 750 F.2d 884, 886(II)(A) (11th Cir. 1985)
- Six Flags Over Ga. v. Hill, 247 Ga. 375, 377(1), 276 S.E.2d 572 (1981)
- Coggin v. The Central R. Co., 62 Ga. 685, 691(2), 694(3) (1879)
- Bowman v. Fuller, 84 Ga.App. 421-422(3), 429(3), 66 S.E.2d 249 (1951)
- Allison v. Nat. Assn. for the Self-Employed, 187 Ga.App. 592(1), 370 S.E.2d 841 (1988)
- Ed Smith & Sons v. Mathis, 217 Ga. 354, 356(2), 122 S.E.2d 97 (1961)
- Brown v. Smith, 86 Ga. 274, 276-277, 12 S.E. 411 (1890)