

SUPREME COURT OF TEXAS

Dow Chemical Co. v. Bright

89 S.W.3d 602 (Tex. 2002) · No. 99-0929 · Decided October 17, 2002

SUMMARY

The Supreme Court of Texas held that Dow Chemical did not owe an injured independent contractor employee a duty based on either contractual or actual control over the contractor's work. The court concluded that Dow's safety rules, safe-work permit system, and general authority to stop or prevent work did not establish control over the means, methods, or details of the work or constitute specific approval of the dangerous conduct. The court reversed the court of appeals and rendered judgment that the plaintiff take nothing.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Rodriguez; Phillips; Hecht; Enoch; Owen; Jefferson
JURISDICTION	Texas
DECIDED	October 17, 2002
DOCKET	99-0929
DISPOSITION	reversed
PROCEDURAL POSTURE	Petition for review from the court of appeals' reversal of summary judgment.
STANDARD OF REVIEW	When both sides have moved for summary judgment and one motion is granted and one denied, the court determines all questions presented and renders the judgment the trial court should have rendered.
PRECEDENTIAL VALUE	Published
PARTIES	The Dow Chemical Company and the Dow Chemical Company d/b/a Engineering and Construction Services, A Division of Dow Chemical, USA v. Larry Bright, Jr.

TOPICS

[premises liability](#)[negligence](#)[duty of care](#)[construction law](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Dow owed Bright a duty based on contractual control over the independent contractor's work.
2. Whether Dow owed Bright a duty based on actual exercise of control over the independent contractor's work.

HOLDINGS

1. The court held that the Construction Contract did not impose a duty on Dow because it did not retain the right to control the means, methods, or details of Bright's work.
2. The court held that Dow did not actually exercise control sufficient to create a duty; mere promulgation of safety regulations, presence of safety representatives, and a safe work permit system did not establish actual control.

KEY QUOTATIONS

"The employer's role must be more than a general right to order the work to start or stop, to inspect progress or receive reports." (606)

"It is the [contractual] right of control, and not the actual exercise of control, which gives rise to a duty to see that an independent contractor performs work in a safe manner." (606)

"For a general contractor to be liable for its independent contractor's acts, it must have the right to control the means, methods, or details of the independent contractor's work. Further, the control must relate to the injury the negligence causes, and the contract must grant the contractor at least the power to direct the order in which work is to be done." (606)

"We do not believe that a general contractor or an employer is required to stand idly by while another is injured or killed in order to avoid liability." (608)

FACTUAL BACKGROUND

Bright was a carpenter employed by Gulf States, an independent contractor retained by Dow for construction work. While removing plywood forms from a concrete pier, an overhead pipe became unstable and fell on him, trapping his arm and causing injury. The pipe had been improperly secured by another Gulf States employee. Bright sued Dow, alleging negligence and premises liability, arguing Dow retained contractual and actual control over the work.

PROCEDURAL HISTORY

Bright sued Dow for negligence after being injured on a construction site. The trial court granted Dow's motion for summary judgment and rendered judgment that Bright take nothing. The court of appeals reversed and remanded, concluding that summary judgment evidence raised a fact issue about the extent of supervisory control retained by Dow. Dow petitioned for review.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None; the court rendered judgment that Bright take nothing.

CASES CITED

- Redinger v. Living, Inc., 689 S.W.2d 415 (Tex. 1985)
- City of Garland v. Dallas Morning News, 22 S.W.3d 351 (Tex. 2000)
- Koch Refining Co. v. Chapa, 11 S.W.3d 153 (Tex. 1999)
- Coastal Marine Serv. of Tex., Inc. v. Lawrence, 988 S.W.2d 223 (Tex. 1999)
- Elliott-Williams Co. v. Diaz, 9 S.W.3d 801 (Tex. 1999)
- Lee Lewis Constr., Inc. v. Harrison, 70 S.W.3d 778 (Tex. 2001)
- Hoechst-Celanese Corp. v. Mendez, 967 S.W.2d 354 (Tex. 1998)
- Traylor Bros., Inc. v. Garcia, 49 S.W.3d 430 (Tex.App.-San Antonio 2001, pet. denied)
- Welch v. McDougal, 876 S.W.2d 218 (Tex.App.-Amarillo 1994, writ denied)
- Good v. Dow Chem. Co., 945 S.W.2d 877 (Tex.App.-Houston [1st Dist.] 1997, no writ)