

The Concept of the Independent Contractor Revisited

In *Mendoza v. Jack DiPiazza & D&P Real Estate, LLC.*, the Court was faced with the question of whether the employee of a roofer who falls while performing roofing work for a business is an employee of that business. Jack DiPiazza started Royal Baking/Leonard Novelty Baking (LNB), a family owned and operated manufacturer of Italian baked goods in 1959. LNB has workers' compensation insurance. The Corporation currently operates out of a property located in Moonachie, NJ, which it rents from the respondent, D&P. D&P was formed in 1999 by DiPiazza for the sole purpose of purchasing the Moonachie property for use by LNB. DiPiazza, his wife and three children are the only members of the LLC. At no point since its creation has D&P conducted any business other than owning the Moonachie property and leasing it to LNB. D&P has no employees and does not maintain workers' compensation insurance.

There is a 10-year lease between D&P and LNB that provides that LNB maintains the interior and exterior of the building, however, D&P was responsible for maintaining the building itself including repairing any structural damage such as a leaky roof.

DiPiazza entered into a contract with Skippy Ely, owner of Conti Roofing, to repair leaks in the roof and apply an aluminum coating. A contract was prepared naming D&P as the recipient of the roofing services. Before commencement of the work, DiPiazza inquired of Ely as to whether Conti Roofing had workers' compensation coverage and was assured by Ely that there was full insurance coverage and he would provide proof of insurance, but he failed to do so prior to the institution of the work.

Conti hired a worker at \$100 per day and transported him to the worksite. After working for approximately five hours on October 9, 2012, the worker was seriously injured when he fell through a covered hole in the roof. Ely provided proof of workers' compensation insurance for Conti Roofing to DiPiazza, but it was discovered that the certificate was fraudulent and Conti Roofing had no coverage.

Since D&P carried no workers' compensation insurance, the injured worker was permitted to join the Unemployed Insurers' Fund.

The Workers' Compensation Judge rendered a decision finding D&P as general contractors and ordering the payment of workers' compensation benefits. The injured worker died during the litigation. The Judge found that D&P was solely responsible for maintaining the structure of the building and, as such, acted as a general contractor under Section 79 of the New Jersey Workers' Compensation Act.

The Appellate Division reversed the Judge's decision. While noting that Section 79 was implemented to protect employees to be responsible and uninsured sub-contractors, it was not put in place to impose liability on a property owner because the contractor failed to carry insurance. The Court relied upon several decisions noting that a property owning corporation is not a contractor under Section 79 in a case where an individual is injured on at a construction site on the corporation's property. The Court noted that owners in the business of renting their property do not enter into contractor/sub-contractor relationships with entities with whom they contract to perform maintenance work on their properties. Rather, such an entity is considered an independent contractor and the owner is not responsible for workers' compensation benefits for that independent contractor or their employees. Interestingly, the Court did not clearly enter an award against the Unemployed Insurers' Fund, however, this clearly must have been the ultimate implication of the decision.

Comment: Once again, the Court has been careful to relieve an alleged employer of the responsibility to provide workers' compensation benefits in the setting of an independent contractor relationship. While the Court is empowered to liberally construe the facts of a claim in order to provide benefits to individuals in

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need, it will not do so when it violates legal principles. Legal principles are fully reviewable by the Appellate Division and, in this case, it did so appropriately. Business owners and homeowners alike are free to retain contractors to perform services within their expertise without fear of being deemed to be a general contractor for the purposes of providing workers' compensation benefits to those who may be injured while performing those services.