

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

Miguel Vazquez,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
St. George Hotel, LLC, Pepper Construction Co.,	)	
Triangle Decorating Company, LLC, CED Ventures)	)	
Corp. d/b/a Designed Equipment Corp., and DEC	)	
Acquisition Corp. d/b/a Designed Equipment Corp.,	)	
	)	
<u>Defendants,</u>	)	No. 20 L 6769
Pepper Construction Company,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Southeast Personnel Leasing, Inc.,	)	
	)	
Third-Party Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

The *respondeat superior* doctrine provides that a loaning employer generally owes no duty to a loaned employee if the loaning employer did not control or direct the loaned employee's work at the time of the loaned employee's injury. Here, the third-party defendant never controlled or directed its loaned employee at a work site where his injury occurred. For that reason, the third-party-defendant's summary judgment motion is granted and the third-party defendant is dismissed with prejudice.

**Facts**

On April 17, 2014, Southeast Personnel Leasing, Inc. (SPLI) and Designed Equipment Acquisition Corporation (DEC)<sup>1</sup> executed a client leasing agreement. The agreement called for SPLI, subject to a service fee, to: pay their leased employees' wages; prepare, administer, compute, and file their payroll information and payroll distribution checks; and pay their

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<sup>1</sup> This court will use the acronym for the company's assumed name.

workers' compensation benefits. Among the agreement's many provisions, the following are important here:

SPLI reserves such right of direction and control over Leased Employees and retains such right to hire, fire, reassign, discipline and compensate Leased Employees only as is required by applicable law.

To the extent allowed by applicable law, [DEC] shall retain sufficient direction and control over the workplace and over Leased Employees as is necessary to supervise all day-to-day work activities of Leased Employees. In addition, [DEC] shall retain such sufficient direction and control over Leased Employees and over the workplace as is necessary to conduct [DEC's] business and without which [DEC] would be unable to conduct its business, discharge any fiduciary responsibility that it may have, or comply with any applicable licensure, regulatory, or statutory requirement of [DEC] or any Leased Employee. Such authority maintained by [DEC] shall include the right to accept or cancel the assignment of any Leased Employee. [DEC] will be responsible for verifying skills and qualification for employment. If a license or registration is necessary for the performance of [DEC's] work [DEC] shall verify the existence, maintenance and validity of such license or registration for itself and all Leased Employees.

To the extent allowed by applicable law, [DEC] shall be responsible for directing, supervising, training, and controlling the work of Leased Employees with respect to the business activities of [DEC]. [DEC] shall make any and all strategic, operational, and all other business-related decisions regarding [DEC's] business. Such decisions and related outcomes shall exclusively be the responsibility of [DEC] and SPLI shall bear no responsibility or liability for any actions or inactions by [DEC] or by any Leased Employee. Additionally, [DEC] shall have sole and exclusive control over the day-to-day job duties of all Leased Employees and SPLI shall have no responsibilities with regard to Leased Employees' performance of such day-to-day job duties. Furthermore, SPLI shall not have control over the job site at which, or from which, Leased Employees perform their services. Control over the day-to-day job duties of Leased Employees and over the job site at which, or from which, Leased Employees perform their services is solely and exclusively assigned to [DEC]. [DEC] expressly absolves SPLI of control over the day-to-day job duties of Leased Employees and over the job site at which, or from

which, Leased Employees perform their services. [DEC] shall be solely responsible for the quality, adequacy, and safety of the goods or services produced or sold in [DEC's] business and [DEC] and not SPLI shall be liable for the acts, errors, or omissions of [DEC] and those of any Leased Employee.

At its own expense, [DEC] shall provide a suitable place of employment for all Leased Employees, which shall comply with all applicable local, state and federal laws, ordinances, and regulations related to occupational health and safety, the environment, equipment, machinery, and all other matters affecting Leased Employee safety. [DEC] agrees to provide all facilities, supplies, equipment, training and all other necessary items that may be required by Leased Employees to perform the Leased Employee services. [DEC] represents that its working environment, equipment, machinery, supplies and training for existing employees currently meet all local state, and federal occupational safety and health standards and that they will be maintained in compliance with such standards during the duration of the Agreement. [DEC] is responsible for compliance with safe work practices and the use of protective equipment imposed by controlling federal, state and local government as well as any required by SPLI's workers' compensation carrier. [DEC] shall comply with any and all safety requirements and recommendations made by SPLI's workers' compensation carrier.

On December 4, 2017, HRHC Delaware, LLC, executed an agreement with Pepper Construction Company for it to serve as the general contractor for work at a building located at 230 North Michigan Avenue in Chicago. On February 6, 2018, Pepper executed a subcontract with Triangle Decorating Company, LLC, to provide certain installation work on the project. On June 8, 2018, Triangle entered into an agreement with DEC to perform certain work that required installing and dismantling scaffolding.

On July 2, 2018, Miguel Vazquez was working for SPLI as a loaned employee to DEC. While erecting a scaffold, Vazquez slipped and fell off of it and sustained injuries. On October 29, 2020, Vazquez filed his first amended complaint against the defendants. On August 18, 2021, Pepper filed a third-party complaint for contribution against SPLI. Pepper alleged that SPLI owed Vazquez a duty of ordinary care for his own safety. Pepper claims that SPLI breached its duty by, among other things, failing to: (1) train Vazquez properly; (2) inspect the work site; (3) supervise and control his work; (4) provide him with a safe work

environment; (5) provide fall protection equipment; (6) warn Vazquez of the potential hazard of using a defective scaffold; and (7) follow its own safety policies, procedures, and rules.

The case proceeded to discovery. In his deposition, Vazquez testified that either DEC or Triangle directed his work at the 230 North Michigan Avenue project. Vazquez stated that he did not get work orders from SPLI and that he did not report to SPLI. Vazquez did not complain to anyone at SPLI about the working conditions at the building project. Vazquez also confirmed that DEC supplied and owned the equipment with which he worked.

During discovery, SPLI issued requests to admit to DEC. *See* Ill. S. Ct. R. 216. In its responses, DEC admitted that on July 2, 2018, DEC retained direction and control of the worksite and over SPLI's leased employees. DEC also admitted that at the time of Vazquez's injury, DEC was responsible for directing, supervising, training, and controlling the work of SPLI's leased employees. DEC further admitted that SPLI did not supervise, train, or control the work of SPLI's leased employees at the worksite. DEC admitted to owning the scaffolding used at the worksite and further admitted that SPLI did not provide any equipment. Finally, DEC admitted that SPLI did not supervise, direct, or control any scaffold assembly activity at the worksite.

SPLI filed a motion seeking summary judgment as to Pepper's third-party complaint for contribution. SPLI argued that it is not liable for contribution to Pepper for Vazquez' injuries under either a negligence or premises liability theory because SPLI did not retain control over any aspect of Vazquez' work, either by contract or in practice. SPLI also argues that it did not own or control 230 North Michigan Avenue. In support of its arguments, SPLI attached the affidavit of Heather Clark, SPLI's director of human resources and benefits. Clark averred that DEC had exclusive responsibility for training, certification, job and task assignments, supervision, worksite control, personnel at worksites, hiring and firing decisions, equipment, contracting and subcontracting with other businesses, and managing its business. She also averred that SPLI was not in the business of erecting scaffolding, construction, construction management, or general contracting, and does not hold itself out in any of those roles. Clark averred that SPLI does not provide any supervisory services on clients' worksites.

In a subsequent deposition, Clark admitted that the SPLI-DEC agreement gave SPLI the retained right to inspect worksites to ensure employment and safety practices. She also acknowledged that the

agreement reserved SPLI's right to direct and control leased employees as well as the right to hire, fire, reassign, discipline, and compensate leased employees.

Pepper filed a response brief to SPLI's summary judgment motion, and SPLI replied. The parties supplied various exhibits.

### Analysis

SPLI brings its summary judgment motion pursuant to the Code of Civil Procedure. The Code authorizes the issuance of summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002). A defendant moving for summary judgment may disprove a plaintiff's case by showing that the plaintiff lacks sufficient evidence to establish an element essential to a cause of action; this is the so-called "*Celotex* test." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *followed Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A court should grant summary judgment on a *Celotex*-style motion only if the record indicates the plaintiff had extensive opportunities to establish his or her case but failed in any way to demonstrate he or she could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spas, Inc.*, 2012 IL App (2d) 110624, ¶ 33.

If the defendant presents facts that, if not contradicted, are sufficient to support summary judgment as a matter of law, the nonmoving party cannot rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). Rather, a plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the

material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.*

SPLI argues that it owed Vazquez no duty and, therefore, absent a cognizable duty, Pepper has failed to establish an essential element of its third-party complaint for contribution. *See Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 215 (1988). In support of its argument, SPLI relies on the *respondeat superior* doctrine. One aspect of that doctrine provides that a loaning employer is not liable in tort for an injury suffered by a loaned employee, and that any vicarious liability is imposed on the borrowing employer. *Hastings v. Jefco Equip. Co.*, 2013 IL App (1st) 121568, ¶ 5; (citing *Behrens v. California Cartage Co.*, 373 Ill. App. 3d 860, 863-64 (1st Dist. 2007)). The borrowed-employee doctrine provides, in turn, that the right to control the manner in which work is done is an important, but not solely conclusive, factor. *Foster v. Englewood Hosp. Assoc.*, 19 Ill. App. 3d 1055, 1060 (1st Dist. 1974). Rather,

before a person may be considered a borrowed servant his services must be loaned with his acquiescence or consent; and he must become wholly subject to the control and direction of the second employer, and free during the temporary period from the control of the original employer. In order to create the relation, therefore, the original employer must resign full control of the employee for the time being, it not being sufficient that the employee is partially under the control of a third person.

*Id.* (internal citations omitted).

The evidentiary record in this case provides ample support for application of the borrowed-employee doctrine. First, the SPLI-DEC agreement makes plain through extensive provisions that SPLI's role was purely an administrative one and confined exclusively to paying employee's salaries, providing tax information, and paying workers' compensation benefits to injured employees. Second, Vazquez testified that either DEC or Triangle directed his work, not SPLI. He did not receive work orders from SPLI and did not report to SPLI. Vazquez confirmed that DEC supplied and owned the equipment with which he worked. Third, Clark averred that DEC had exclusive responsibility for employee training, certification, job and task assignments, and supervision. She also indicated that DEC controlled the work site, the personnel at the work site, made hiring and firing decisions, supplied equipment, entered into contracts and subcontracts with other

businesses, and managed its own business. Clark averred that SPLI is not in the business of erecting scaffolding, construction, construction management, or general contracting, and does not hold itself out in any of those roles. Finally, Clark averred that SPLI does not provide supervisory services at client's worksites. Fourth, DEC admitted that on July 2, 2018, DEC retained direction and control of the workplace and over SPLI leased employees. DEC also admitted that at the time of Vazquez's injury, DEC was responsible for directing, supervising, training, and controlling the work of SPLI's leased employees. DEC further admitted that SPLI did not supervise, train, or control the work of SPLI's leased employees at the 230 North Michigan Avenue worksite. DEC also admitted that it owned the scaffolding used at the work site and that SPLI did not provide any equipment. DEC admitted that SPLI did not supervise, direct, or control any scaffold assembly activities at the work site.

In the face of that evidence, Pepper relies on the SPLI-DEC contract. This reliance is problematic for various reasons. First, except for one provision, all of the other provisions on which Pepper relies have nothing to do with Vazquez' work or SPLI's control over his work. Rather, those provisions reserve SPLI's right to obtain employment information for processing payroll, tax, and workers' compensation payments. Those provisions are hardly surprising given the services SPLI provides. Second, the sole contractual provision that lends some credence to Pepper's argument provides that SPLI reserves the right of direction and control over leased employees and retains such the right to hire, fire, reassign, discipline and compensate them. Although these retained rights are plain, Pepper fails to identify any instance in which SPLI exercised its contractual rights in its dealings with DEC or Vazquez. In short, SPLI never acted on its retained contractual rights.

Pepper also argues that Clark's deposition testimony raises questions of fact. It is true that Clark admitted that the SPLI-DEC agreement gave SPLI the retained right to inspect work sites to ensure employment and safety practices. It is equally true that she acknowledged that the agreement reserved SPLI's right to direct and control leased employees as well as the right to hire, fire, reassign, discipline, and compensate them. Despite Clark's admissions, Pepper, once again, fails to point to any evidence in the record that SPLI acted on any of its retained contractual rights.

Pepper's omission is all the more obvious because Pepper fails to address in any way DEC's answers to SPLI's requests to admit. In those answers, DEC admits that it retained direction and control of the

workplace and SPLI leased employees. DEC also admits that it was responsible for directing, supervising, training, and controlling the work of SPLI's leased employees. DEC further admits that SPLI did not supervise, train, or control the work of its leased employees. DEC also admits that it owned and provided the scaffolding used at the worksite and that SPLI provided no equipment. Importantly, DEC admits that SPLI did not supervise, direct, or control any scaffold assembly activities at the worksite.

The cases Pepper relies on do not suggest a different conclusion based on the facts of this case. *Shoemaker v. Elmhurst-Chicago Stone Co.* is plainly off point because the court there concluded that the defendant truck driver was an independent contractor and, therefore, could never have been a leased employee to another employer. 273 Ill. Ap. 3d 916, 922 (1st Dist. 1994). In *Casey v. E.J. Cattani & Son Gravel*, the court noted that the evidentiary record made clear that the defendant-company hired its truck driver and controlled his use of the company's truck involved in the accident that injured the plaintiff. 133 Ill. App. 3d 18, 23 (3d Dist. 1985).


Pepper is, however, correct to cite *Chaney v. Yetter Mfg. Co.*, for the proposition that the issue of borrowed employment is normally a question of fact. 315 Ill. App. 3d 823, 827 (4th Dist. 2000). *Chaney* also provides that there is no question of fact if the unrebutted evidence is capable of only one interpretation. *Id.* Here, DEC's answers to requests to admit that it, not SPLI, retained control, supervision, training, and management of Vazquez remain unrebutted; thus, there remains no question of material fact. That SPLI owed no duty to Vazquez also means that, as a matter of law, Pepper has failed to establish an essential element to its third-party complaint for contribution. Summary judgment, is therefore, appropriate.

### Conclusion

For the reasons presented above, it is ordered that:

1. The summary judgment motion of third-party defendant SPLI is granted;
2. SPLI is dismissed with prejudice; and
3. The case continues as to the remaining parties.

Judge John H. Ehrlich



John H. Ehrlich, Circuit Court Judge

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