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WORKMEN'S COMPENSATION BENEFITS RECOVERABLE ON THE EXISTENCE OF A QUASI CONTRACT

Great Lakes Chemical Co. maintained its home office in Arkansas. Its truck, loaded with cylinders of methyl bromide, was involved in an accident in Florida as a result of which the deadly gas began to escape. Louis Tipper, an expert in the handling of deadly gases, was asked by the local police chief to help in the clean-up operation. After taking part in the operation, claimant noticed he had chemical burns on his feet. He was subsequently hospitalized for over three weeks and totally disabled for four months. Tipper instituted a claim for workmen's compensation against Great Lakes Chemical Co. The Judge of Industrial Claims ruled that the chief of police had the authority to engage Tipper on behalf of Great Lakes Chemical Co. and that an implied contract of employment existed between Tipper and Great Lakes Chemical Co. On review, the Industrial Relations Commission reversed. The Supreme Court of Florida, on certiorari review, *held*, reversed: There was an implied contract of employment between Tipper and the company for workmen's compensation purposes. *Tipper v. Great Lakes Chemical Co.*, 281 So. 2d 10 (Fla. 1973).

Workmen's compensation claims are governed by Florida Statutes, section 440 (1971). To qualify for benefits it is essential that one can be an employee under a contract, either express or implied.¹ *Tipper* is the first case in Florida to find an employer-employee relationship under a contract implied in law, a "quasi contract."²

The Supreme Court of Florida has usually applied a liberal construction to the workmen's compensation statute³ because "the workmen's compensation law was intended to provide a direct, informal and inexpensive method of relieving society of the burden of caring for injured workmen and to place the responsibility on the industry served."⁴ Indeed, the act itself provides for such a broad interpretation.⁵

1. "Employee" means every person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also including minors whether lawfully or unlawfully employed. FLA. STAT. § 440.02(2)(a) (1971).

2. A concise statement of the principle of quasi contracts is found in the Restatement of Restitution.

A person who without mistake, coercion or request has unconditionally conferred a benefit upon another is not entitled to restitution, except where the benefit was conferred under circumstances making such action necessary for the protection of the interest of the other person or of third persons.

RESTATEMENT OF THE LAW OF RESTITUTION § 112 (1937).

3. See *Thomas Smith Farms, Inc. v. Alday*, 182 So. 2d 405 (Fla. 1966); *City of Hialeah v. Warner*, 128 So. 2d 611 (Fla. 1961); *Cook v. Georgia Grocery, Inc.*, 125 So. 2d 837 (Fla. 1960); *Alexander v. Peoples Ice Co.*, 85 So. 2d 846 (Fla. 1955); *Townslley v. Miami Roofing and Sheet Metal Co.*, 79 So. 2d 785 (Fla. 1955).

4. *Port Everglades Terminal Co. v. Cauty*, 120 So. 2d 596, 602 (Fla. 1960).

5. In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary: (1) That the claim comes within the provisions of this chapter. (2) That sufficient

The court has generally held that the test of an employer-employee relationship should be the same as that which existed at common law for finding vicarious liability.⁶ At common law there were four basic elements which were considered in determining whether such a relationship existed; selection and engagement of the services, payment of wages, power of dismissal, and power of control.⁷ The cases have agreed that the most important of these elements is the right to control the conduct of the employee.⁸

The scope of the Florida workmen's compensation statute is, in one respect, narrower than the common law definition of an "employee." The statute requires the existence of an express or implied employment contract.⁹ This was emphasized in *Leon County v. Sauls*,¹⁰ which stated that if one is to recover under the workmen's compensation statute "there must exist a contractual relationship between employer and employee grounded on consideration passing from one to another."¹¹ In *Sauls* the claimant, whose husband was killed while assisting a police officer in the apprehension of a suspect, was denied recovery because the "deceased had no contractual relationship with the county."¹²

The first workmen's compensation case in Florida which found an implied contract for hire was *Stuyvesant Corp. v. Waterhouse*.¹³ Although the court held that such a contract existed, it was one implied in fact, not in law.¹⁴ The court stated:

There is no doubt that the compensation act contemplates that it would be necessary in many instances to determine the employer-employee relationship from facts and circumstances as distinguished from formal contract of employment because of the use of the word 'implied' in the act itself.¹⁵

notice of such claim has been given. (3) That the injury was not occasioned primarily by the intoxication of the injured employee. (4) That the injury was not occasioned by the wilful intention of the injured employee to injure or kill himself or another.

FLA. STAT. § 440.26 (1971).

6. *See, e.g.*, *Gentile Bros. Co. v. Florida Indus. Comm.*, 10 So. 2d 568 (Fla. 1942).

7. 53 AM. JUR. 2d *Master and Servant* § 2 (1970).

8. *See, e.g.*, *Goldstein v. Gray Decorators, Inc.*, 166 So. 2d 438 (Fla. 1964); *Patton Seafood Co. v. Glisson*, 38 So. 2d 839 (Fla. 1949).

9. FLA. STAT. § 440.02(2)(a) (1971).

10. 151 Fla. 171, 9 So. 2d 461 (1942) [hereinafter referred to as *Sauls*].

11. *Id.* at 463.

12. *Id.*

13. 74 So. 2d 554 (Fla. 1954).

14. Contracts implied in fact are inferred from the facts and circumstances of the case, and are not formally or explicitly stated in words. It is often said that the only difference between an express contract and a contract implied in fact is that in the former the parties arrive at their agreement by words, whether oral or written, while in the latter their agreement is arrived at by a consideration of their acts and conduct and that in both of these cases there is, in fact, a contract existing between the parties, the only difference being in the character of evidence necessary to establish it.

17 AM. JUR. 2d *Contract* § 3 (1964).

15. *Stuyvesant Corp. v. Waterhouse*, 74 So. 2d 554, 559 (Fla. 1954).

The difference between a contract implied in fact and one implied in law is that the former requires a manifested intent to enter into an agreement while the latter is an obligation imposed by law on grounds of justice and equity.

The court in *Tipper* was forced to look to other jurisdictions for supporting case law dealing with quasi contractual employment in the area of workmen's compensation.¹⁶ The case relied on by the court in *Tipper* was *Conveyor's Corp. of America v. Industrial Commission*,¹⁷ in which an employee of a certain corporation who went to the rescue of an employee of a second corporation on neighboring premises, and was himself killed, was held to be the implied employee of the second corporation. Becker, an employee of the second corporation, and the only agent of the corporation present, had secured the assistance of the deceased. The court, by first finding a duty of an employer to aid an employee in an emergency,¹⁸ found that Becker "was by necessary implication authorized to procure assistance."¹⁹

The facts in *Tipper*, made it impossible for the court to squarely rest its decision on any of the two premises found in *Conveyor's*. The well-being of an employee was not involved, and claimant's assistance was not secured by an employee of Great Lakes Chemical Co. The Judge of Industrial Claims, in finding for the claimant, based his opinion on the following grounds:

(1) As a police officer, in a public emergency, [the chief of police] had the authority to engage the claimant on behalf of the employer; (2) from the facts, an implied contract of employment was established, which was confirmed the following morning when Mr. Joe Ford of Great Lakes Chemical Co. was advised of services rendered by the claimant and told Mr. Tipper to see a doctor;²⁰ (3) the services rendered by the claimant were beneficial to the employer and advanced his interests.²¹

This reasoning was in line with the *Conveyor's* case. In both decisions a third party's implied authority to hire was found. Though not dealing with an employer's duty to rescue his employee, the Judge of Industrial Claims may have based his conclusion on the common law duty to refrain from creating an unreasonable risk of harm to others.²²

16. See A. LARSON, LARSON'S WORKMAN'S COMPENSATION LAW, § 47.42(c) (1973) for somewhat similar cases arising in other jurisdictions.

17. 200 Wis. 512, 228 N.W. 118 (1929) [hereinafter referred to as *Conveyor's*].

18. *Id.* at 514, 228 N.W. at 120.

19. For this kind of implied hiring authority to arise there must, of course, be a genuine emergency, ruling out normal procedure for hiring or for obtaining permission to engage assistance. A. LARSON, LARSON'S WORKMAN'S COMPENSATION LAW § 47.42(c) (1973).

20. Mr. Ford, employed as a saftney man with Great Lakes Chemical Co. expressed concern over Tipper's exposure to the toxic gas and suggested that he "see a doctor." 281 So. 2d at 12 (explanation added).

21. *Id.*

22. *Banfield v. Addington*, 104 Fla. 661, 140 So. 893 (1932).

Upon review, the Industrial Relations Commission "conceded that an implied contract of employment was a 'possibility' under certain circumstances, but that the events . . . involving the claimant would not support such a conclusion as a matter of law."²³ The Commission believed that the chief of police had no authority to hire the claimant for Great Lakes Chemical Company.²⁴ The Commission also stated "that even if there were an implied contract of hire, there was no finding that the claimant was an 'employee' as distinguished from an 'independent contractor'."²⁵

The Supreme Court of Florida totally disregarded the Commission's contention that the claimant was an independent contractor. The court felt it was also unnecessary to decide "whether the chief of police . . . had legal authority to 'hire' the claimant on behalf of Great Lakes."²⁶ The court stated that "the important facts of this case concern the claimant's performance of services for Great Lakes, and not how he was called to action."²⁷ The court simply found that the facts of the case gave rise to a contract of hire implied in law. The court stated:

The claimant was serving the respondent when he risked his life and health in order to protect the lives and health of others and to restrict the liability of the respondent from further damages from the accident. A contract of employment, implied in law, arose out of this performance and the claimant is now entitled to workmen's compensation.²⁸

The supreme court further stated that "the result which we reach is dictated by the emergency nature of the events."²⁹ The holding in *Tipper* may, therefore, be limited to emergency situations.

The court in *Tipper* by this decision has reasserted the proposition that the workmen's compensation statute should be liberally construed. The only weakness in the decision is that the court totally disregarded the Commission's contention that claimant was an independent contractor. Recovery in past cases has often been denied on this basis.³⁰ Whether recovery in situations similar to the present case might be denied if the court finds a claimant to be an independent contractor must be answered by future decisions of the Supreme Court of Florida. In the future the court might not concern itself with distinctions of this type by letting the burden for compensation rest where it should, on the industry served.

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23. 281 So. 2d at 12.

24. The Commission seems to have arrived at this decision simply because there was no decisional, statutory or textual authority to support such a conclusion. *Id.*

25. *Id.* See RESTATEMENT (SECOND) OF AGENCY § 220(2) (1958).

26. 281 So. 2d at 14.

27. *Id.*

28. *Id.* at 15.

29. *Id.* at 14.

30. See, e.g., *Strickland v. Al Landers Dump Trucks, Inc.*, 170 So. 2d 445 (Fla. 1964); *Baya's Bar & Grill v. Alcorn*, 40 So. 2d 468 (1949).