

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE  
(July 3, 1996 Session)

**FILED**  
**November 5, 1996**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

CHARLES TOLAN,	)	BRADLEY CHANCERY
	)	
Plaintiff-Appellant,	)	Hon. Earl H. Henley,
	)	Chancellor.
v.	)	
	)	No. 03S01-9603-CH-00027
ED BROWN,	)	
	)	
Defendant-Appellee.	)	

For Appellant:

William J. Brown  
Brown & Miller  
Cleveland, Tennessee

For Appellee:

D. Mitchell Bryant  
Jenne, Scott & Bryant  
Cleveland, Tennessee

MEMORANDUM OPINION

Members of Panel:

Penny J. White, Associate Justice, Supreme Court  
Roger E. Thayer, Special Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

## MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The issue in this appeal is whether the defendant-appellee, Brown, is a statutory or principal employer of the plaintiff-appellant or claimant. The panel concludes that the judgment should be affirmed.

Brown is the owner of rental property, including the Guthrie Mini Warehouse in Cleveland. He is not a builder or general contractor. In the late spring of 1994, he contracted with Kevin Eason to replace the roof on the warehouse. Among those employed by or on behalf of Eason to do the work was Charles Tolan. By the terms of the contract, Brown paid Eason \$5,000.00 and furnished the material. There was no time limit on when the work was to be completed and Brown exercised no control over the work of Eason's employee's, including Tolan. Brown did not provide the tools for the work, except one ladder.

At one point, it became apparent that the work was not being done properly, which Brown pointed out to Eason. Eason corrected the problem.

On July 12, 1993, Tolan was injured when he fell from the roof of the warehouse. He has sued for workers' compensation benefits.

After a trial on the merits, the chancellor found that Eason and some other defendants, but not Brown, were liable to the claimant for workers'

compensation benefits. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315 (Tenn. 1987).

Principal - or general - contractors are liable for injuries to the employees of subcontractors if, at the time of the injury, the employee is engaged upon the subject matter of the general contract and the injury occurs on, in or about the premises under the control of the principal contractor. Tenn. Code Ann. section 50-6-113. A business which undertakes to act as its own general contractor and contracts directly with subcontractors for various phases of construction on its own premises is liable in workers' compensation benefits for injuries to employee of such contractors. Carpenter v. Hooker Chemical and Plastics Corp., 553 S.W.2d 356 (Tenn. 1977).

The undisputed fact of this case is that Brown is not a general contractor or a business undertaking to contract directly with subcontractors for various phases of construction on its own premises. Instead, Brown is an owner of property that needed a new roof, so he contracted with a roofer to do the work. That is not the type of situation contemplated by Tenn. Code Ann. section 50-6-113 and Brown is not liable to Tolan for workers' compensation benefits.

The judgment of the trial court is accordingly affirmed. Costs on appeal are taxed to the plaintiff-appellant.

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Joe C. Loser, Jr., Judge

CONCUR:

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Penny J. White, Associate Justice

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Roger E. Thayer, Judge



IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

CHARLES TOLAN,	)	BRADLEY CHANCERY
	)	
Plaintiff-Appellant,	)	No. 94-033
	)	
vs.	)	No. 03S01-9603-CH-00027
	)	
	)	Hon. Earl H. Henley
	)	Judge
	)	
ED BROWN,	)	
	)	
Defendant-Appellee.	)	AFFIRMED

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the plaintiff/appellant, Charles Tolan, for which execution may issue if necessary.

11/05/96

