
CONTRACT BETWEEN GENERAL EMPLOYER AND SPECIAL EMPLOYER DOES NOT CONCLUSIVELY ESTABLISH CONTROL OVER BORROWED EMPLOYEE

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Tarron v. Bowen Machine & Fabricating, Inc.
Ariz. Supreme Court, August 3, 2010

Authored by the [JSH Appellate Team](#)

Plaintiff was injured as a result of the negligence of two borrowed employees working at the special employer's jobsite. Under the contract between the general employer and the special employer, the special employer was to "have no direction or control as to the method of performance of the [w]ork." Plaintiff moved for summary judgment arguing that under the contract, the general employer retained the right to control the borrowed employees and thus could be held vicariously liable. Relying solely on the contract, the trial court granted the motion, reasoning that although the special employer "exercised actual control" over the borrowed employees, the contractual provisions gave the general employer the legal right to control the employees.

The Arizona Supreme Court held that in determining whether a general employer has ceded the right to control, contract language does not always conclusively determine the employment relationship. Instead, that determination is made by looking at the objective nature of the relationship based on totality of the facts and circumstances of each case. Here, the record contained sufficient evidence to create a fact issue on whether, despite the contract, the general employer had ceded its right to control. The Court also held that under some circumstances, both the general employer and the special employer may be held vicariously liable.