
COURT OF APPEALS ADDRESSES LENT EMPLOYEE DOCTRINE

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Tarron v. Bowen Machine & Fabricating, Inc.
Ct. Appeals, Div. One, July 7, 2009

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Two Bowen employees were working as temporary employees for Phelps Dodge at a smelter in Miami, Arizona. Phelps assigned them to remove access ramps between a converter and a platform. In so doing, they created a gap between the converter and the platform. In violation of Phelps' safety procedures, they put up only yellow warning tape rather than a stable barricade. Tarron, a Phelps employee, leaned on the tape thinking it was a handrail and fell through the gap resulting in injury. Tarron sued Bowen.

Bowen moved for summary judgment, arguing that as a general employer it could not be held liable for the actions of employees it lent to Phelps (special employer). Tarron cross-moved for partial summary judgment, arguing Bowen was vicariously liable for its employees' conduct based on language in the Bowen/Phelps contract. The trial court granted Tarron's motion, finding Bowen had "an apparent unexercised right to control the work of its employees" pursuant to the contract. The matter went to trial and Bowen was found partially responsible. This appeal followed.

The court of appeals reversed. The issue of control over the lent employees was a fact question for the jury, rather than an issue of law for the Court. The focus of the inquiry is whether the general employer had "control of the details of the particular work being done at the time of the injury-causing incident" and "which employer had the right to control the specific injury-causing accident." Here, there was a genuine fact issue as to whether under the contract between Bowen and Phelps, Bowen surrendered to Phelps the exclusive right to control all the Bowen employees' work activities related to installing a barrier. The court also found a fact issue on whether both Bowen and Phelps had control of the employees.