

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA**

TERRY HILLMAN,

Plaintiff,

v.

CASE NO: 2020-CA-7830

WCI COMMUNITIES, LLC,

Defendant.

_____ /

**ORDER GRANTING DEFENDANT WCI COMMUNITIES, LLC'S
MOTION FOR FINAL SUMMARY JUDGMENT
AND
ENTERING FINAL SUMMARY JUDGMENT IN FAVOR OF
WCI COMMUNITIES, LLC**

THIS CAUSE having come before the Court for hearing on July 14, 2022, on Defendant WCI Communities, LLC's Motion for Final Summary Judgment, and the Court having heard argument of counsel, reviewed the material submitted by Defendant and being otherwise fully advised in the premises, it is ORDERED AND ADJUDGED as follows:

1. The parties have stipulated that there are no genuine issues as to any material fact applicable to the legal issues presented.
2. The parties have further stipulated that no further discovery is required by any party regarding the facts or issues set forth in Defendant WCI Communities, LLC's Motion for Final Summary Judgment.
3. A premises owner is generally not liable for injuries sustained by an independent contractor's employee suffered during work. *Strickland v. Timco*, 66 So. 3d 1002, 1005-1006 (Fla. 1st DCA 2011); *Armenteros v. Baptist Hosp. of Miami, Inc.*, 714 So. 2d 518, 520-21 (Fla. 3d DCA 1998); *Mozee v. Champion Int'l Corp.*, 554 So. 2d 596, 597-98 (Fla. 1st DCA 1990). An owner

may only be liable if: (1) the owner retains control of the work or (2) the owner negligently created or approved a dangerous condition which is unknown to the independent contractor and its employees. *Id.* To impose liability on the owner for retention of control over an independent contractor, there must be such right of supervision or direction that the contractor is not entirely free to do the work his own way. *Strickland*, 66 So. 3d at 1006. For this analysis, “control” is defined as interfering or meddling with the job to the extent the premises owner assumes the detailed direction of it. *Moze*, 554 So. 2d at 598.

4. Applying this standard to the instant case, WCI Communities, LLC (“WCI”) is not liable to Plaintiff for injuries he sustained during the performance of his work on WCI’s premises unless WCI interfered or meddled with security work by Securitas Security Services USA, Inc.’s employees to the extent WCI assumed the detailed direction of work and exhibited such right of supervision or direction that workers were not free to perform the work their own way.

5. The Court finds that WCI was a passive non-participant that exercised no control over the security services at the construction entrance at Pelican Preserve for the following reasons:

A. WCI hired Securitas Security Services USA, Inc. (“Securitas”) as an independent contractor to provide access control services at the construction gate for Pelican Preserve. The contract directed the open and close time for the construction gate.

B. Plaintiff, an employee of Securitas, was injured in the course and scope of his employment while performing this service.

C. WCI was a passive non-participant that exercised no control over the security services at the construction entrance at Pelican Preserve for the following reasons:

- i. Plaintiff did not receive any training from WCI.
- ii. Plaintiff did not report to WCI for any reason. Plaintiff received and turned in his timesheets to his Securitas supervisor.
- iii. Plaintiff presented any issues or requests regarding his work to his Securitas supervisor.
- iv. Upon discovery of a damaged gate, Plaintiff did not report the damaged gate to WCI.
- v. Plaintiff did not report the subject accident or his injury to WCI.
- vi. Plaintiff made a claim with Securitas' workers' compensation insurance carrier and received benefits as a result of that claim.
- vii. There is no genuine dispute as to any material fact set out above.

6. Where an injury is suffered in the course and scope of employment, workers' compensation is the exclusive remedy for recovery against the employer; the workers' compensation statute applies to all statutory employers, not just those that were a party to a workers' compensation case. *Vallejos v. Lan Cargo S.A.*, 116 So. 3d 545, 548, n.3, 550 (Fla. 3d DCA 2013). Likewise, a company that contracts with a subcontractor to perform work is a "contractor" for purposes of the statute and is immune from tort liability pursuant to Florida Statutes Section 440.10(1)(b), as long as the injured worker had workers' compensation benefits available to him.¹ *Yero v. Miami-Dade County*, 838 So. 2d 686, 687 (Fla. 3d DCA 2003).

7. This Court finds that WCI was Plaintiff's statutory employer for the following reasons:

- A. Pelican Preserve is a residential development in Lee County, Florida.

¹ There are two exceptions: where the contractor/owner is grossly negligent or commits an intentional tort. *See Vallejos*, 116 So. 3d at 545. Plaintiff has not made either of those allegations in this case.

B. WCI was in the process of building homes at Pelican Preserve at the time of the accident in February of 2018, taking WCI out of the role of strictly a premises owner and into the role of a general contractor.

C. Construction access at Pelican Preserve was secured with a gate.

D. Incidental to building homes for its customers, WCI was obligated to ensure that construction vehicles have access to this gated community.

E. Implied in every construction contract is the agreement that the contractors will be allowed access to the construction site.

F. WCI contracted its duty to Securitas by having Securitas control the construction site entrance, managing the point of access and monitoring the individuals and vehicles entering and exiting the construction site.

G. Plaintiff has not shown that WCI did not have the duty to perform this work.

H. Thus, WCI had a contractual duty that it sublet to Securitas, and Plaintiff was injured during the course and scope of that work.

I. Plaintiff made a claim with Securitas' workers' compensation insurance carrier and received benefits as a result of that claim, including a lump sum settlement.

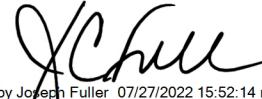
J. There is no genuine dispute as to any material fact set out above.

8. Because WCI was the statutory employer of Plaintiff, this Court finds that WCI is entitled to workers' compensation immunity under Section 440.10(1)(b), Florida Statutes.

9. For the above reasons, Defendant WCI Communities, LLC's Motion for Final Summary Judgment is hereby GRANTED. Final summary judgment is therefore entered in favor of Defendant WCI Communities, LLC and against Plaintiff Terry Hillman. Plaintiff shall take

nothing from Defendant. Defendant shall go hence without day. The Court reserves jurisdiction to address any ancillary matters.

DONE AND ORDERED in Chambers, at Lee County, Florida.



eSigned by Joseph Fuller 07/27/2022 15:52:14 m95V7mrh

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