

Workmen's Compensation--Liability of General Contractor to Employee of Subcontractor (*Sciachitano v. Spencer-Forbes, Inc.*, 264 N.Y. 324 (1934))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1934) "Workmen's Compensation--Liability of General Contractor to Employee of Subcontractor (*Sciachitano v. Spencer-Forbes, Inc.*, 264 N.Y. 324 (1934))," *St. John's Law Review*: Vol. 9 : No. 1 , Article 33.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol9/iss1/33>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

such a policy may be detrimental to another in his business it is a lawful harm as to the latter.⁶ The defendant was unjustly condemned by the lower court as conspiring to limit competition and destroy the plaintiff's business; there was no wrong committed and no action will lie.

A. S.

WORKMEN'S COMPENSATION—LIABILITY OF GENERAL CONTRACTOR TO EMPLOYEE OF SUBCONTRACTOR.—Claimant, employee of subcontractor under defendant general contractor, was injured in the course of employment. The subcontractor had insured for benefit of employees with a foreign carrier authorized by the State Industrial Commission. The insurer became insolvent subsequent to date of claimant's injuries and claimant seeks to hold defendant. *Held*, defendant is not liable for unpaid compensation, as the subcontractor had duly provided for compensation. *Sciachitano v. Spencer-Forbes, Inc.*, 264 N. Y. 324, 190 N. E. 656 (1934).

Under Section 56 of the Workmen's Compensation Law,¹ where a general contractor sublets an undertaking involving a hazardous employment² he is liable for injuries³ to employees⁴ of the subcontractor unless the subcontractor has procured compensation as provided in Section 50.⁵ Section 56 also provides that when a general contractor has paid compensation to an employee of an uninsured

the ground that the defendant's criticism was wrong but that it was clearly so wrong that only malevolence or something close akin thereto could have supplied the motive power); *Union Car Advertising Co. v. Collier*, 232 App. Div. 591, 594, 251 N. Y. Supp. 153, 157 (1st Dept. 1931): "For a business man wantonly or maliciously, without provocation, to interfere with another person's business by preventing the third party from entering into a contract with such other persons constitutes unfair competition where there is reasonable certainty that the contract would otherwise have been made."

⁶ *Appalachian Coal Co., Inc. v. United States*, *supra* note 5; *cf. Bossert v. Dhuy*, *supra* note 2, 221 N. Y. at 359, 117 N. E. at 585: "If the determination is reached in good faith for the purpose of bettering the condition of its members and not through malice or otherwise attempting to injure an employer, the fact that such action may result in incidental injury to the employer does not constitute a justification for issuing an injunction against enforcing such action."

¹ Laws of 1922, c. 615.

² N. Y. WORKMEN'S COMPENSATION LAW (1922) §3.

³ N. Y. WORKMEN'S COMPENSATION LAW (1914) §2, subd. 7.

⁴ N. Y. WORKMEN'S COMPENSATION LAW (1922) §2, subd. 4.

⁵ N. Y. WORKMEN'S COMPENSATION LAW as amended by Laws of 1922, c. 615.

subcontractor, he may recover such sums from the contractor primarily liable.⁶ Section 56 has been declared constitutional.⁷

In an action by an employee under the statute against the general contractor, the burden of proof is on defendant to show that the subcontractor carried proper insurance⁸ covering claimant.⁹ In an action for negligence against the general contractor as a third party, the burden is on defendant to show that the employee was *not* covered by the subcontractor, thus relieving defendant of common law liability and making plaintiff's remedy solely statutory.¹⁰ In the absence of such proof he is liable as a third party.¹¹ If neither contractor has insured, plaintiff may elect to sue either contractor under the statute or at common law.¹²

Does the failure of the subcontractor's carrier subsequent to plaintiff's injury give the plaintiff the rights against defendant general contractor which an employee has against an employer¹³ under the statute?¹⁴ The purpose of the statute is to give equal rights to all employees.¹⁵ Upon default of the carrier, to allow recourse to the general contractor would be to give the employee of the subcontractor an advantage over other employees.¹⁶ The decision of the court that when the subcontractor has insured with a duly authorized¹⁷ foreign carrier, there has been literal compliance with the statute¹⁸ and defendant is protected, notwithstanding failure of the carrier subsequent to the date of plaintiff's injury, maintains the equality between employees which the legislature seeks.¹⁹

J. T. B., JR.

⁶ N. Y. WORKMEN'S COMPENSATION LAW §56 as amended by Laws of 1929, c. 302.

⁷ It does not intend to take away the right of an employee to maintain an action at law for negligence.—Clark v. Monarch Engineering Co., 129 Misc. 145, 221 N. Y. Supp. 93 (1927), *aff'd*, 222 App. Div. 713, 224 N. Y. Supp. 793 (4th Dept. 1928); see also Monello v. Klein, 216 App. Div. 105, 214 N. Y. Supp. 486 (3d Dept. 1926); Anttonen v. Laakso Builders, Inc., 236 App. Div. 771, 258 N. Y. Supp. 1020 (3d Dept. 1932), *aff'd*, 261 N. Y. 545, 185 N. E. 731 (1933).

⁸ *Supra* note 5.

⁹ Monello v. Klein, *supra* note 7.

¹⁰ Casey v. Shane, 248 N. Y. 625, 162 N. E. 551 (1928), *rev'g*, 221 App. Div. 660, 225 N. Y. Supp. 126 (3d Dept. 1927) and citing Clark v. Monarch Engineering Co., 248 N. Y. 107, 161 N. E. 436 (1928) as controlling.

¹¹ Clark v. Monarch Engineering Co., *supra* note 10.

¹² N. Y. WORKMEN'S COMPENSATION LAW (1916) §11.

¹³ N. Y. WORKMEN'S COMPENSATION LAW (1914) §2, subd. 3.

¹⁴ N. Y. WORKMEN'S COMPENSATION LAW (1922) §§10, 11.

¹⁵ Clark v. Monarch Engineering Co., *supra* note 10.

¹⁶ Instant case.

¹⁷ N. Y. WORKMEN'S COMPENSATION LAW §54, subd. 7, added by Laws of 1929, c. 305.

¹⁸ N. Y. WORKMEN'S COMPENSATION LAW §50, subd. 2.

¹⁹ The injured employee may recover the amount of his claim from the sub-contractor (under §10) and also has a lien against the assets of the insurer (under §34).