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

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such a policy may be detrimental to another in his business it is a
lawful harm as to the latter. The defendant was unjustifiably con-
demned 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 Con-
tractor 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, de-
fendant 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, where
a general contractor sublets an undertaking involving a hazardous
employment he is liable for injuries to employees of the sub-
contractor unless the subcontractor has procured compensation as
provided in Section 50. Section 56 also provides that when a gen-
eral 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.
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."

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 determina-
tion 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.
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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 insurance 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 authorized foreign carrier, there has been literal compliance with the statute 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.

8 Supra note 5.
9 Monello v. Klein, supra note 7.
10 Supra note 5.
11 N. Y. Workmen's Compensation Law §54, subd. 7, added by Laws of 1929, c. 305.
12 Instant case.
13 N. Y. Workmen's Compensation Law §54, subd. 7, added by Laws of 1929, c. 305.
14 N. Y. Workmen's Compensation Law §2, subd. 3.
15 N. Y. Workmen's Compensation Law (1914) §§2, subd. 3.
16 N. Y. Workmen's Compensation Law (1922) §§10, 11.
17 N. Y. Workmen's Compensation Law (1914) §3.
19 Instant case.
20 N. Y. Workmen's Compensation Law §54, subd. 7, added by Laws of 1929, c. 305.
21 N. Y. Workmen's Compensation Law §50, subd. 2.
22 The injured employee may recover the amount of his claim from the subcontractor (under §10) and also has a lien against the assets of the insurer (under §34).