

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2009-CA-00405

PAUL RAINES

APPELLANT

V.

PIERCE CABINETS, INC.

APPELLEE

ON APPEAL FROM THE CIRCUIT COURT OF LEE COUNTY

BRIEF OF APPELLEE

ORAL ARGUMENT NOT REQUESTED

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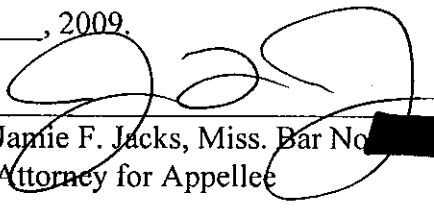
APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The Undersigned counsel of record certifies that the following listed persons may have an interest in the outcome of this case. These representatives are made so that the justices of the Court of Appeals/Supreme Court may evaluate possible qualifications of recusal.

1. The Honorable James Pounds, Circuit Court Judge of Lee County, Mississippi
2. Paul Raines, Appellant
3. Jeff's Electric
4. Pierce Cabinets, Inc., Appellee
5. M. Lee Dulaney, Esquire, Attorney for Appellant
6. Gerald H. Jacks, Esquire, Attorney for Appellee
7. Jamie F. Jacks, Esquire, Attorney for Appellee

This the 8th day of December, 2009.



Jamie F. Jacks, Miss. Bar No. [REDACTED]
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Statement Regarding Oral Argument

Appellee does not request oral argument as the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. Furthermore, oral argument is not necessary because the issues before the Court in this case have been authoritatively decided.

Statement of the Issues

1. Whether the circuit judge correctly found summary judgment appropriate for Pierce Cabinets when Paul Raines was an independent contractor who knew of the alleged “danger”.
2. Whether the circuit judge correctly found summary judgment appropriate for Pierce Cabinets when the alleged “danger” was connected with the breaker box Paul Raines was working on at the time of the incident.
3. Whether the circuit judge correctly found summary judgment appropriate for Pierce Cabinets when the alleged “danger” was one Paul Raines knew of and for which he assumed the risk.
4. Whether the circuit judge correctly found summary judgment appropriate for Pierce Cabinets when the alleged “danger” was inherent to the work Paul Raines was performing.
5. Whether the circuit judge correctly found summary judgment appropriate for Pierce Cabinets when Paul Raines was an independent contractor and Pierce Cabinets relinquished control of the premises and the nature of the work to Paul Raines.

Statement of the Case

Introduction

This case arises out of a March 1, 2007 incident where a skilled electrician, Appellant Paul Raines (“Raines”), decided to take a risk, performing electrical work on a breaker box at a time when it was “live” or energized. At the time of the incident, Raines was an employee of Jeff’s Electric. Appellee Pierce Cabinets, Inc. (“Pierce Cabinets”) hired Jeff’s Electric to perform electrical work at its cabinet making facility. While Raines was working on an energized breaker box, a bracket hit the “hot” ground bar. Raines says this strike caused an electrical arc and “flash” and he was burned in the incident. Raines later filed suit claiming that Pierce Cabinets breached its duty to provide a reasonably safe work environment or warn of the danger. The unsafe condition and/or danger alleged was that there was saw dust at Pierce Cabinets’ wooden cabinet making facility.

Hearing on Motion for Summary Judgment

Pierce Cabinets filed a motion for summary judgment as to all of Raines’ claims. (CP 27-28)(RE 1). Based on the briefs filed by the parties, together with the oral argument made by counsel at the hearing on the motion for summary judgment, the circuit judge entered an order granting Pierce Cabinet’s motion and dismissed Raines’ claims. (CP 171-173)(RE 2). The circuit judge made the ruling finding there was no genuine issue of material fact that Paul Raines was an independent contractor at the time of the incident. (CP 171)(RE 2). The lower court further found that there was no genuine issue of material fact that Raines was aware of the saw dust and the potential damage the saw dust posed as it related to working on a “hot” electrical

box in the presence of saw dust. (CP 172)(RE 2). The circuit judge additionally found that there was no genuine issue of material fact as to Pierce Cabinets' lack of control of the work Jeff's Electric and Raines was performing. (CP 173)(RE 2). The lower court further found Raines offered no proof that Pierce Cabinets dictated in any way to Jeff's Electric or Raines how to perform the work at Pierce Cabinets. (CP 171, 173)(RE 2). In fact, the circuit judge found that Raines' own deposition testimony shows Pierce Cabinets in no way directed his work on Pierce Cabinet's premises. (CP 171)(RE 2).

The lower court found that Pierce Cabinets, under Mississippi law, was required to provide the independent contractor with a reasonably safe working environment or give warning of any danger. (CP 171)(RE 2). However, citing *Irby v. Nofsinger*, 961 So.2d at 781, the lower court also found that the employer is relieved of this duty if the independent contractor knows of the danger. (CP 171-172)(RE 2). Furthermore, found the court, under *Nofsinger* the employer is absolved of its duty to protect the independent contractor, and the contractor's employees, from risks arising from or connected with machinery or appliances located on the premises which the contractor has undertaken to repair. (CP 172)(RE 2). Additionally, the court, citing *Nofsinger*, found an employer is not responsible for an injury to an independent contractor, or an employee of the contractor, caused by "dangers which the contractor, as an expert, has known, or as to which he and his employees assumed the risk.". (CP 172)(RE 2). Also, under the *Nofsinger* case, the lower court opined "when a danger exists, which is inherent to the work the independent contractor is employed to perform, or which arises from or is intimately connected with the work to be performed, the employer's duty to protect the contractor is absolved.". (CP 172)(RE 2). Finally, found the lower court, also citing *Nofsinger*, the employer's liability is

limited to the extent to which he relinquished control of the premises **and** nature of the work to the independent contractor. (CP 172)(RE 2).

Applying the law to the undisputed facts in the case at bar, the circuit judge granted summary judgment in favor of Pierce Cabinets finding there was no **genuine** issue of material fact as to Raines' claims that Pierce Cabinets failed to provide a **reasonably** safe work environment or warn of any danger when: (1) Raines admittedly knew **of** the danger, in this case, the saw dust. He was aware of the dust at the time of accident and was **also** aware that it was flammable; (2) the "risk" of the saw dust arose from or was connected **with** the machinery or appliances located on the premises which Paul Raines and Jeff's Electric had undertaken to repair, namely the breaker box which Raines chose to work "hot" or "**energized**" with electricity; (3) this was a danger which the contractor, as an expert, knew and he **assumed** the risk; (4) the danger was inherent to the work the independent contractor was **employed** to perform, or it arose from or was intimately connected with the work that was to be performed **and** (5) Pierce Cabinets relinquished control of the premises and nature of the work to the independent contractor. (CP 172-173)(RE 2). For these reasons the court found there was no **genuine** issue of material fact as to Raines' claims and Pierce Cabinets was entitled to summary judgment as a matter of law. (CP 173)(RE 2).

Facts

This case arises out of a March 1, 2007 incident on the premises of Pierce Cabinets. (CP 3-8)(RE 3). Pierce Cabinets manufactures custom cabinetry at its facility in Tupelo, Mississippi. At the time of the incident, Pierce Cabinets was adding an addition to **the** rear of its existing building. (CP 110-111)(RE 4). Pierce Cabinets contracted with Jeff's Electric to perform the

necessary electrical work on the new addition. (CP 110-111)(RE 4). Appellant Paul Raines was an employee of Jeff's Electric. (CP 110-111)(RE 4). At the time of the incident, Raines had almost twenty years of experience in the electrical industry. (CP 54-55)(RE 5). Raines was also very familiar with Pierce Cabinets' operation and its premises. (CP 61-62)(RE 5). While working for Jeff's Electric he performed numerous jobs at Pierce Cabinets. (CP 62)(RE 5). Raines was also aware that saw dust was present in the Pierce Cabinets' facility. (CP 85)(RE 5).

On March 1, 2007, Raines was working with a breaker box which he had worked on before. (CP 62)(RE 5). The breaker box Raines was working on had a warning label which read: "DANGER! High voltage. Will cause severe injury or death. Lock off power supplying this equipment before working inside." (CP 95)(RE 6). Despite the warning, at the time of the incident, Raines was working on the breaker box without disconnecting the incoming power to the box. (CP 61, 65-70)(RE 5). Raines also admits he knew there was a danger in working on a "live" breaker box. (CP 68-69)(RE 5).

While working on this energized box, Raines claims he was "severely burned by an explosion of fire caused by a hazardous condition at the premises." (CP 6 ¶ 5)(RE 3). Specifically, Raines recalls, "I was working with a bracket, which is mounted to a ground bar. When I took it loose it twisted and when it did it hit the hot bar. And when it shorted out I turned my head and then I saw the big flash. There was like an arc and then like a flame." (CP 65)(RE 5).

Raines alleges that Pierce Cabinets is responsible for his injury because it "subjected" him "to a highly flammable and explosive element without properly informing of such danger." (CP 106)(RE 7). Specifically, Raines claims Pierce Cabinets, a wooden cabinet manufacturer, is

responsible for his injury because it subjected him to saw dust. (CP 82)(RE 5). Raines alleges that saw dust on the premises created a secondary flame after the arc flash and that it was this secondary flame, rather than the arc flash, that caused his injuries. (CP 66-67)(RE 5). Raines' expert opines that Pierce Cabinets:

“allowed for a dangerous collection of dust...and...did not give warning of the danger...Mr. Raines being solely an electrician, is not expected to be aware of the combustible nature of sawdust”. (CP 145 ¶ 6-7)(RE 8).

Raines' expert further alleged that it was “common” for electricians to work on energized breaker boxes. (CP 144-145 ¶5)(RE 8). Raines' expert also says that it was “routine” and “expected” for electricity to arc. (CP 145 ¶5)(RE 8). Raines admits that Pierce Cabinets did not tell him how to perform his electrical work, nor did Pierce Cabinets tell Raines he could not turn the power off to the subject breaker box. (CP 62-63, 69-70)(RE 5).

Summary of the Argument

The circuit judge correctly granted summary judgment in favor of Pierce Cabinets. In the case at bar, there was no dangerous condition on Pierce Cabinets' premises; the only “danger” was one Raines brought on himself by failing to shut the power off before working on the breaker panel. However, the circuit judge below did not have to address the “reasonably safe premises” matter and nor should this Court when deciding whether summary judgment was properly entered against Raines. This is true because Raines was an independent contractor and Mississippi courts have carved out five exceptions to the general rule of providing a reasonably safe work environment. In this case, Raines produces no argument that all five exceptions should not apply, making the lower court's granting of summary judgment proper for Pierce Cabinets.

Specifically, Raines fails to address, with sufficient credible evidence, that he was not aware of the alleged “danger” at Pierce Cabinets. Likewise, Raines fails to offer any proof that the accident was not connected with the equipment he was hired to repair. Moreover, Raines has offered no credible proof that he was not aware of a risk of working on an energized electrical breaker box in an environment which contained saw dust. Nor can Raines offer any set of facts or proof that the alleged “danger” was not inherent to the work he was employed to perform, or did not arise from or was intimately connected with the work to be performed. Finally, Raines offers no argument to respond to the rule of law which states that the employer’s liability is limited to the extent to which he relinquished control of the premises and the nature of the work to the independent contractor.

Instead, Raines offers the bare assertion that Pierce Cabinets failed to provide a reasonably safe working environment because there was dust at Pierce Cabinets’ cabinet making facility. However, Raines fails to overcome the fact that he admits he knew saw dust was present and flammable, he chose to work on an energized breaker box in this environment and he was the professional charged with wiring the breaker box which was intimately connected with this accident.

Argument

Standard of Review

In reviewing whether a motion for summary judgment was properly granted, an appellate court reviews the case *de novo*. *Richmond v. Benchmark Const. Corp.*, 692 So.2d 60, 61 (Miss. 1997). According to the *Mississippi Rules of Civil Procedure*, Rule 56, if there is no genuine issue of material fact as to the material elements of a Plaintiff’s claim, then summary judgment is

appropriate. Summary judgment is appropriate “if the evidentiary matters before the court—pleadings, depositions, answers to interrogatories, admissions on file, affidavits, etc. — demonstrate that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.” *Hutton v. American Gen. Life and Accident Ins. Co.*, 909 So.2d 87, 92-94 (Miss. App. 2005) (Quoting M.R.C.P. 56(c)). “The mere presence of contradictory evidence in the record does not preclude summary judgment.” *Id.* “For the case to proceed to trial, material facts must be in dispute.” *Id.* The burden of showing that no genuine issue of material fact exists lies with the moving party and the trial court must give every reasonable doubt to the non-moving party. *Moore v. Memorial Hospital of Gulfport*, 825 So.2d 658, 663 (Miss. 2002); *Tucker v. Hinds County*, 558 So.2d 869, 872 (Miss. 1990).

Raines claims in the Appellant’s brief that numerous factual issues exist. However, as noted in *Simmons vs. Thompson Machinery of Mississippi, Inc.*, 631 So. 2d 798, 802 (Miss. 1994):

Of importance here is the language of the rule authorizing summary judgment “where there is no genuine issue of *material* fact.” The presence of fact issues in the record does not per se entitle a party to avoid summary judgment. The court must be convinced that the factual issue is a material one, one that matters in an outcome determinative sense. . .we have kept ever before us that basic tenet of Rule 56 theology that the existence of a hundred contested issues of fact will not thwart summary judgment where there is no genuine dispute regarding the material issues of fact. *Id* at 308.

“A fact is material if it tends to resolve any of the issues properly raised by the parties.” *Bateman v. Gray*, 963 So.2d 1284, 1287 (Miss. App. 2007). Importantly, “a mere allegation by the non-moving party that a dispute over whether a material fact exists will not defeat a movant’s otherwise properly supported motion for summary judgment.” *Id.*

Issue 1:

Whether the circuit judge correctly found summary judgment appropriate for Pierce Cabinets when Paul Raines was an independent contractor who knew of the “danger” at issue.

The circuit judge correctly found that Raines was an independent contractor who was aware of the danger of working on a “live” electrical box around saw dust - saw dust which Raines admitted he knew was flammable. (CP 172 ¶ 3)(RE 2). The circuit judge correctly found when these factors exist, the employer is relieved of his duty to provide a reasonably safe work environment, because the alleged “danger” is known to the independent contractor. (CP 172 ¶¶ 1-3)(RE 2). The circuit court also correctly held that, in this case, Raines was an independent contractor, who knew of the “danger” absolving Pierce Cabinets of liability and creating a basis for which to grant summary judgment in favor of Pierce Cabinets. (CP 172 ¶¶ 1-3)(RE 2).

Mississippi courts define an independent contractor as “a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other’s right to control with respect to his physical conduct in the performance of the undertaking.” *Nofsinger v. Irby*, 961 So.2d 778, 781 (Miss.App. 2007) (citing *Texas Co. v. Mills*, 156 So. 866, 869 (Miss.1934)). The following factors should be considered to determine whether one is an independent contractor:

- (a) the extent of control which, by the agreement, the master may exercise over the details of the work;
- (b) whether or not the one employed is engaged in a distinct occupation or business;
- (c) the skill required in the particular occupation;
- (d) whether the employer or the workman supplies the instrumentalities, tools, and

- the place of work for the person doing the work;
- (e) the length of time for which the person is employed;
- (f) the method of payment, whether by the time or by the job; and
- (g) whether or not the work is a part of the regular business of the employer.

MESC v. Plumbing Wholesale Co., 69 So.2d 814, 818 (Miss.1954). Jeff's Electric admits it was an independent contractor. (CP 110 ¶ 3)(RE 4). Consequently, as an employee of Jeff's Electric, Raines was also an independent contractor. Raines presented no contrary argument either in his responsive brief to the motion for summary judgment or at oral argument on the motion for summary judgment objecting to his being classified as an independent contractor. Raines also does not question this designation on appeal. Accordingly, Raines has waived any argument that he was not an independent contractor at the time of the incident.

Regarding the duty owed to an independent contractor, Mississippi law requires the employer provide the independent contractor with a reasonably safe working environment or give warning of any danger. *Nofsinger*, 961 So.2d at 781 (citing *Mississippi Chemical Corp. v. Rogers*, 368 So.2d 220, 222 (Miss.1979)). However, the employer is relieved of this duty if the independent contractor knows of the danger. *Id.*

In this case, Raines claims that the presence of saw dust on the premises created a danger. (Appellant's Brief at p. 4 ¶ 3). Of course, saw dust alone is not dangerous and Raines has admitted his own actions while working on a live breaker box triggered the incident. Nevertheless, for purposes of this appeal, taking Raines' position as stated, his argument is that the "collection of dust" was flammable and therefore, dangerous. In an effort to avoid summary judgment, Raines' expert, electrician Bobby Hall, opines that Raines could not have know of the

danger because he was “solely” an electrician. (CP 144-145)(RE 8). However, this opinion is directly contrary to Raines’ own sworn testimony:

Mr. Jacks:. How do you know there was saw dust in the bottom of the panel?

Plaintiff: You can see saw dust all over the plant. It’s everywhere you go.

Mr. Jacks: And they make cabinets?

Plaintiff: Yes, sir.

Mr. Jacks: And they use wood?

Plaintiff: Yes, sir.

Mr. Jacks: So you would expect there to be saw dust around?

Plaintiff: Yes.

Mr. Jacks: So you saw - - you were aware that there was saw dust around?

Plaintiff: Yes. I was not aware it was flammable - - that flammable.

Mr. Jacks: You’re aware wood is flammable?

Plaintiff: Well everybody’s aware that - -

Mr. Jacks: Okay.

Plaintiff: - - wood will burn.

Mr. Jacks: Okay. And saw dust is a product of wood, right?

Plaintiff: Right.

(CP 85-86)(RE 5).

Raines’ own testimony demonstrates he knew that sawdust was flammable.

Citing the record at 82-86, Raines also argues on appeal that he was not “aware of the hazard created by Appellee”. (Appellant’s Brief at p. 4 ¶ 2). It is unclear if Raines is arguing

that he did not know dust was flammable (which his own testimony contradicts) or if he did not know saw dust was present. If the latter is true, this assertion is also contrary to the deposition testimony cited above and the portions of the record cited by Raines specifically for this argument. While Raines states in his deposition that there was no saw dust on the breaker he was putting in, "because it was a new breaker", in addition to the above cited testimony, Raines makes the following statements regarding his knowledge of saw dust in and around his work area:

"You can see dust all over the plant. It's everywhere you go"

"It (saw dust) was down toward in below where I was working"

"...It's (saw dust) all in the floor."

"Everywhere you walk at Pierce Cabinets it's (saw dust) on the floor"

"There was saw dust on the lips of this, this, all of these sides here, and all in here"

(indicating to picture of breaker box he was working on at time of accident)

"You can see saw dust on these wires"

"It's (saw dust) everywhere"

(CP 82-86)(RE 5).

Raines admits he could see saw dust at Pierce Cabinets' facility. Raines knows dust is flammable. As such, Raines cannot avoid the fact that he knew of the "danger". Moreover, Raines has admitted that he was aware that it was dangerous to work on an energized breaker panel. (CP 88)(RE 5). And, Raines admits that his own actions while working on this energized panel caused the incident. (CP 65)(RE 5). As such, Raines was cognizant of each and every "danger" complained of in the instant case. This fact, coupled with the independent contractor

status of Raines and Jeff's Electric, makes the first *Nofsinger* exception applicable and summary judgment appropriate for Pierce Cabinets.

Issue 2:

Whether the circuit judge correctly found summary judgment appropriate for Pierce Cabinets when the “danger” was connected with the breaker box Paul Raines was working on at the time of the incident.

The circuit judge also correctly found summary judgment appropriate in this case because the “risk” arose from the machinery Raines was working on at the time of the incident. An employer is absolved of its duty to protect the independent contractor, and the contractor's employees, from risks arising from or connected with machinery or appliances located on the premises which the contractor has undertaken to repair. *Nofsinger*, 961 So.2d at 781 (citing *Jackson Ready-Mix Concrete v. Sexton*, 235 So.2d 267, 271 (Miss. 1970)).

It is uncontradicted that Jeff's Electric and Raines were independent contractors. (CP 110-111)(RE 4). It is also without question that Jeff's Electric and Raines were on the premises to repair/perform work on the wiring, breaker panels and any other electrical component requiring work. (CP 110-111)(RE 4). Raines was injured while engaged in a task he undertook to perform at Pierce Cabinets. (CP 6 ¶ 5)(RE 3). The “danger” Raines complains of is saw dust, ignited by an electrical arc which came from the breaker box Raines was hired to repair. (CP 65)(RE 5). As such, the “danger” or risk arose from or was connected with machinery or appliances located on the premises which the contractor has undertaken to repair - triggering the applicability of the second *Nofsinger* exception and the second basis upon which the granting of summary judgment was proper.

Issue 3:

Whether the circuit judge correctly found summary judgment appropriate for Pierce Cabinets when the “danger” was one Paul Raines knew of and for which he assumed the risk.

The circuit judge also correctly found that there was no genuine issue of material fact as to whether Raines appreciated or should have reasonably appreciated that working on the live panel around saw dust posed a danger. (CP 172-173)(RE 2). An employer is not responsible for an injury to an independent contractor, or an employee of the contractor, caused by “dangers which the contractor, as an expert, has known, or as to which he and his employees ‘assumed the risk.’” *Nofsinger*, 961 So.2d at 781(citing *Coho Resources Inc. v. McCarthy*, 829 So.2d 1, 10-11 (Miss.2002)).

Raines is claiming the presence of saw dust at Pierce Cabinets was the “danger”. (CP 144-145)(RE 8). Pierce Cabinets would argue that saw dust alone - without an electrical arc - is not dangerous. Nevertheless, taking Raines’ argument for what it is, Raines was aware that saw dust was present at Pierce Cabinets. (CP 85-86)(RE 5). Raines also admits saw dust is flammable. (CP 85-86)(RE 5). Because of these admissions, Raines cannot produce any credible evidence he was not aware of the “danger” or “risk” he has complained of.

Moreover, Raines was aware that working with the electrical box while it was “hot,” even without the added factor of saw dust, was dangerous. At the time of the accident, a clearly visible warning sign on the box read: “DANGER! High voltage. Will cause severe injury or death. Lock off power supplying this equipment before working inside.” (CP 95)(RE 6). Raines was aware of this danger yet chose to disregard it. (CP 58, 67-68, 88)(RE 5).

Raines was also independently aware of this risk: “There’s a risk working with any hot box. There’s always a risk yes. Even if you go work a 110 outlet over here there’s a risk. You know to be careful because things can happen.” (CP 88)(RE 5). Despite Raines’s knowledge of this warning and his own appreciation of the risk, he chose to perform electrical work on a box without turning off its power. (CP 68-69)(RE 5). In the case at bar, Raines’ appreciation of the risk and assumption of the risk was a proper basis for the circuit judge to grant summary judgment in favor of Pierce Cabinets.

Issue 4:

Whether the circuit judge correctly found summary judgment appropriate for Pierce Cabinets when the “danger” was inherent to the work Paul Raines was performing.

The lower court also correctly found summary judgment should be granted in favor of Pierce Cabinets when the alleged “danger” was inherent to the work Raines was performing as an independent contractor at Pierce Cabinets. (CP 172-173)(RE 2). “When a danger exists, which is inherent to the work the independent contractor is employed to perform, or which arises from or is intimately connected with the work to be performed, the employer’s duty to protect the contractor is absolved.” *Nofsinger*, 961 So.2d at 781(citing *Coho Resources Inc. v. McCarthy*, 829 So.2d 1, 10-11 (Miss.2002)).

In the case at bar, Raines argues the “danger” was the accumulation of saw dust at Pierce Cabinets. (CP 144-145)(RE 8). However, Raines offers no proof that saw dust itself is dangerous. To the contrary, Raines admits that his own actions caused the arc to occur which he alleges caused a secondary flame or “explosion”. (CP 66-67)(RE 5). In other words, but for the arc, which was undeniably caused by the Raines, there would have been no explosion. (CP 66-

67)(RE 5). Further, this arc flash was both inherent to the work Raines was hired to perform or was intimately connected to the work because the arc occurred while Raines was wiring the breaker box. (CP 144-145)(RE 8)(CP 66-67)(RE 5). As such, Raines can offer no proof that the alleged “danger” was not inherent to his work, or that it did not arise from or was intimately connected with his work. As such, Pierce Cabinets is absolved of liability, making summary judgment proper.

Issue 5:

Whether the circuit judge correctly found summary judgment appropriate for Pierce Cabinets when Paul Raines was an independent contractor and Pierce Cabinets relinquished control of the premises and the nature of the work to Paul Raines.

The circuit judge also correctly found there was no genuine issue of material fact as to whether Pierce Cabinets relinquished control of the premises and work to Raines. . (CP 172-173)(RE 2). Because there was no evidence Pierce Cabinets controlled Raines’ work in any way, Pierce Cabinets is absolved of liability and summary judgment in favor of Pierce Cabinets is appropriate. An employer’s liability is limited to the extent to which he relinquished control of the premises and nature of the work to the independent contractor. *Nofsinger*, 961 So.2d at 781 (citing *Magee v. Transcontinental Gas Pipe Line Corp.*, 551 So.2d 182, 185 (Miss.1989)).

In this case, Jeff’s Electric was contracted to do all of the electrical work necessary for the Pierce Cabinets’ addition. (CP 110-111)(RE 4). No employee or representative of Pierce Cabinets had anything to do with the electrical work. (CP 89)(RE 5). Like any consumer, Pierce Cabinets contracted and relied upon Jeff’s Electric to perform the needed work. In fact, Raines testified that no one from Pierce Cabinets was around while he was working or told him how to perform any of this work. (CP 69-70)(RE 5). Accordingly, the circuit judge got it right when he

found Pierce Cabinets owed no duty to Jeff's Electric's employees because Pierce Cabinets had relinquished control of the work and the premises to Raines and Jeff's Electric.

Conclusion

For the foregoing reasons, Defendant Pierce Cabinets respectfully requests this Court uphold the lower court's finding that summary judgment should be entered in this case in favor of Pierce Cabinets.

Respectfully submitted,
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Attorneys for Defendant Pierce Cabinets, Inc.

By: _____

JAMIE F. JACKS, MSB # [REDACTED]

GERALD H. JACKS, MSB # [REDACTED]

Post Office Box 1209

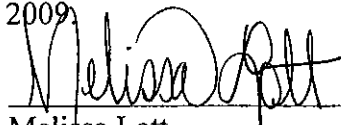
Cleveland, Mississippi 38732

Telephone: 662-843-6171

CERTIFICATE OF FILING

I, Melissa Lott, secretary for Jamie F. Jacks, do hereby certify that I have filed the foregoing Appellee's Brief, 3 copies of said Appellee's Brief, along with a CD-R with the proper label containing said Brief by depositing on this day said documents/disc in the U.S. Mail (first class and postage prepaid) addressed to the clerk of the Mississippi Supreme Court.

THIS the 8th day of December, 2009.



Melissa Lott

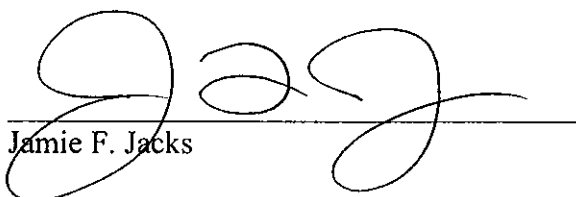
CERTIFICATE OF SERVICE

I, Jamie F. Jacks, attorney for Appellee, Pierce Cabinets, Inc., do hereby certify that I have this day filed an original and 3 copies of its *Memorandum Brief in Support of its Motion for Summary Judgment*, with the clerk of this Court, and have served a copy of same via United States Mail, postage prepaid, on the following persons at the addresses shown:

M. Lee Dulaney, Esquire
Post Office Box 7357
Tupelo, Mississippi 38802
Attorneys for Defendants / Appellant

The Honorable James S. Pounds
P.O. Drawer 1100
Tupelo, MS 38802-1100
Circuit Court Judge of Lee County, Mississippi

This the 8th day of December, 2009.



Jamie F. Jacks