

IN THE MISSISSIPPI SUPREME COURT

PAUL RAINES

APPELLANT

VS.

CASE NO. 2009-CA-00405

PIERCE CABINETS, INC.

APPELLEE

BRIEF OF APPELLANT

ON APPEAL FROM THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI

ORAL ARGUMENT IS NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judge of the Court may evaluate possible disqualification or recusal.

1. Honorable James Pounds
Circuit Judge
P. O. Box 316
Booneville, MS 38829
2. Thomas G. Jacks, Esq.
Jacks, Adams & Norquist, P.A.
P.O. Box 1209
Cleveland, MS 38732
3. M. Lee Dulaney
347 North Spring Street
Post Office Box 7357
Tupelo, Ms 38802-7357
4. Paul Raines, Appellant
5. Pierce Cabinets, Inc., Appellee


M. LEE DULANEY, MSB

STATEMENT REGARDING ORAL ARGUMENT

Oral argument would not be helpful in this case, as it would not aid in offering additional facts, law or argument in support of these issues. The issues before the Court are straightforward issues of law applied to the facts summarily presented in this case. As such, oral argument would not be of benefit and is not requested.

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STATEMENT OF THE ISSUES

1. Whether the Circuit Judge erred in granting Summary Judgment.

STATEMENT OF THE CASE

On June 29, 2007, Appellant, Paul Raines, filed his Amended Complaint against Appellee, Pierce Cabinets, Inc., alleging a premises liability theory of general negligence in connection with work performed by Appellant at Appellee's business. (R. 5-7).

On November 24, 2008, Appellee filed its Motion for Summary Judgment. (R. 27-28). After a hearing on the matter, the Circuit Judge issued his Final Judgment in Favor of Pierce Cabinets on March 2, 2009, dismissing all herein. (R. 175-176).

Appellant appeals the granting of summary judgment by the lower court by notice of March 13, 2009. (R. 176).

FACTS

The instant litigation concerns injuries (severe burns) to Appellant while he was engaged to perform work at Appellee's place of business. (R. 3-4). Specifically, Appellant's Complaint states the following as relates to the Appellee:

On or about March 1, 2007, Plaintiff was engaged to perform certain electrical work at Defendant's place of business. During such work, Plaintiff was severely burned by an explosion of fire caused by an unknown and hazardous condition at the premises.

Defendant was under the obligation to disclose such condition, but failed to do so. Further, Defendant was bound to provide a reasonably safe working area for Defendant, but failed to do so. Both actions constitute negligence.

As a result of such negligence, Plaintiff has sustained sever and painful injuries and disfigurement to his person, and has been compelled to become liable for expenses and treatment of said injuries.

Id.

At the time of the accident, Appellant was employed by Jeff's Electric as an electrician. (R. 4) On March 1, 2007, Appellant was in such employment at the premises of Appellee. *Id.* While working on a breaker box, Appellant was suddenly and severely burned when a spark ignited the air. (R. 64-66, 144-148) The spark created a secondary flame and explosion that was due to Appellee's negligence in providing proper air ventilation. (R. 157) Appellant was airlifted to the Augusta, Georgia burn center and received treatment for these burns, incurring approximately \$546,000 in medical bills. (R. 72-80, 86-88).

Appellant retained an expert, Mr. Bobby Hall, who is a Certified Master Electrician with 40 years experience as such. (R. 144) Mr. Hall reviewed the facts and circumstances surrounding the incident in question and provided his opinion that the accident in dispute was the result of inadequate ventilation of dust within the Appellee's facility. *Id.* Appellee has made allegations that the injuries were the result of Appellant's own negligence in working on a "hot" or, "on," box. However, Mr. Hall states that this was a common, acceptable and routine procedures and that Mr. Raines was not negligent, in any aspect, with regard to this incident. *Id.* Appellant's own testimony was that he was not aware of the hazard created by Appellee. (R. 82-86)

Mr. Hall's affidavit was attached in response to Appellee's instant motion and provided, among other things, his opinion that Appellee allowed for a dangerous collection of dust within the premises (which should have been more properly vented considering the flammable nature of sawdust, especially when same is left unattended) and that Appellee failed to provide a reasonably safe working environment for Appellant in failing to warn of such dangerous conditions. (R. 144-145) Mr. Hall's opinions are based on the facts and circumstances of this incident and upon his own education, experience and training in these particular matters. *Id.*

SUMMARY OF THE ARGUMENT

The lower Court's granting of summary judgment was improper, as there exists numerous material issues of fact that warrant resolution by a trier-of-fact in this matter. Specifically, the facts outlined above clearly indicate that the Appellee breached the standard of care owed to Appellant in failing to warn of dangers and subjected Appellant to a hazardous environment. Thus, this Court must reverse the trial court's granting of the instant motion.

ARGUMENT AND AUTHORITIES

THE LOWER COURT'S GRANTING OF SUMMARY JUDGMENT WAS ERRONEOUS.

STANDARD OF REVIEW

This Court's standard for reviewing the granting of summary judgment is best defined as follows:

The standard for reviewing the granting or the denying of summary judgment is the same standard as is employed by the trial court under Rule 56(c). This Court conducts *de novo* review of orders granting or denying summary judgment and looks at all the evidentiary matters before it - admissions in pleadings, answers to interrogatories, depositions, affidavits, etc. The evidence must be viewed in the light most favorable to the party against whom the motion has been made. The burden of showing that no genuine issue of material fact exists lies with the moving party, and we give the benefit of every reasonable doubt to the party against whom summary judgment is sought. We do not try issues. Rather, we only determine whether there are issues to be tried. Furthermore, it is well-settled that motions for summary judgment are to be view with a skeptical eye, and if a trial court should err, it is better to err on the side of denying the motion. The focal point of our *de novo* review is on material facts. In defining a material fact in the context of summary judgments, the Mississippi Supreme Court has stated that A[t]he 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. *Roebuck v McDade*, 760 So.2d 12 (Miss. Ct. App. 1999).

Evans v. Jackson Coca-Cola Bottling Company, 771 So.2d 1006, 1008 (Miss. Ct. App. 2000).

ARGUMENT

The lower Court improperly granted summary judgment. The affidavit of Bobby Hall, a Master Electrician and the only expert opinion offered to date, provides a sufficient basis to survive the instant motion. Viewing the evidence in a light most favorable to Plaintiff, it is abundantly clear that there exists, at a minimum, material issues of fact in dispute.

Mississippi law requires that an employer (Appellee) provide an independent contractor (Appellant) with a reasonably safe working environment or to give warning of any danger. *Nofsinger v. Irby*, 961 So.2d 778, 781 (Miss.App. 2007) (citing *Mississippi Chemical Corp. v. Rogers*, 368 So.2d 220, 222 (Miss. 1979)). In this instance, the facts are clear and, actually, uncontradicted with regard to establishing liability. The sole expert testimony is that Appellee **did not** provide a reasonably safe working environment and **did not** warn of the danger present at the premises. (R. 144-145) Mr. Pierce, the owner, has testified that he was aware of the danger and took some level of precaution to prevent same. (R. 152) However, Appellant was not aware of and did not undertake this risk/hazard. (R, 82-86, 144-145)

CONCLUSION

Consistent with the facts and argument outlined above, there exists, at a minimum, material issues of fact concerning whether the Appellee, among other things, was negligent in providing a safe working environment and/or premises for Appellant. These are issues to be resolved by a trier-of-fact in this instance. Thus, summary judgment was improper. The lower Court's granting of same should be reversed.

Respectfully submitted, this the 15th day of September, 2009.

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CERTIFICATE OF SERVICE

This will certify that the undersigned attorney has this date delivered a true and correct copy of the above and foregoing *Brief of Appellant* to all counsel of record by placing a true and correct copy thereof in the United States Mail, postage prepaid, addressed as follows:

**Honorable James Pounds
Circuit Judge
P. O. Box 316
Booneville, MS 38829**

**Thomas G. Jacks, Esq.
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THIS, the 15th day of September, 2009.


M. LEE DULANEY