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COURT OF APPEALS

STATE OF NEW YORK

UTICA MUTUAL INSURANCE COMPANY,

Appellant,

-against-

No. 148

STYLE MANAGEMENT ASSOCIATES CORP,
et al.,

Respondents.

20 Eagle Street
Albany, New York 12207
September 13, 2016

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

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1 CHIEF JUDGE DIFIORE: The first matter on
2 our calendar is number 148, Utica Mutual Insurance
3 Company v. Style Management Associates.

4 MR. CHRISTOFIDES: Good afternoon. May it
5 please the court, Chris Christofides on behalf of
6 appellant. I request seven minutes argument time and
7 three for rebuttal.

8 CHIEF JUDGE DIFIORE: Yes, sir.

9 MR. CHRISTOFIDES: Thank you.

10 I believe the Appellate Division below
11 erred in reversing Judge Sher's learned decision on
12 this case. There are too many material issues of
13 fact and credibility problems based on the testimony
14 of the two defendants to grant defendants
15 Style/Sason, the respondent in this case, with
16 summary judgment.

17 The credibility issues aside, the court
18 considered Labor Law cases in trying to determine who
19 the general contractor was in the - - - in the case.

20 JUDGE STEIN: Why should there be a
21 different standard or a different definition of
22 general contractor when it comes to cases of property
23 damage versus personal injury?

24 MR. CHRISTOFIDES: Well, Judge - - - Judge
25 Stein, the cases where the general contractor

1 definition becomes crucial is usually in these Labor
2 Law cases where there's strict liability. It's a
3 scaffold case under 240 or 241(6) or one of those
4 sections where the court is now in a - - - in a
5 situation where they must decide who's strictly
6 liable. That's not this case. This is an ordinary
7 negligence case, based upon - - -

8 JUDGE STEIN: But do - - - do - - - Labor
9 Law also has Section 200, which is essentially the
10 com - - -

11 MR. CHRISTOFIDES: I understand that. But
12 the - - - but again there - - -

13 JUDGE STEIN: - - - common law, right?

14 MR. CHRISTOFIDES: - - - there a court
15 would have to decide who's strictly liable. This is
16 not a case where the definition of what Style and
17 Sason were is going to determine the outcome of the
18 case. In this case, he filed the permit. So what's
19 important here, as it was for Judge Maltese below, is
20 the representations to the municipalities.

21 JUDGE STEIN: Wait a minute. I thought the
22 homeowner filed the permit.

23 MR. CHRISTOFIDES: The homeowner did not
24 file it. If the - - - if the record is clear - - -

25 JUDGE STEIN: Well, the homeowner signed

1 it, right?

2 MR. CHRISTOFIDES: No - - -

3 JUDGE STEIN: No?

4 MR. CHRISTOFIDES: - - - what - - - what -

5 - - what happens in the process - - -

6 JUDGE STEIN: The application, I'm sorry.

7 I mean, is that what - - -

8 MR. CHRISTOFIDES: Correct. What happens
9 is the contractor fills out the information, their
10 license, their insurance information, their workers'
11 comp information, and then they present it to the
12 homeowner, who then attests to the fact that they are
13 the homeowner authorized to hire that particular
14 contractor. That becomes significant, because the
15 contractor may want to have a - - - a - - - a late -
16 - - a lien for work that's been performed and
17 materials placed in the job.

18 JUDGE ABDUS-SALAAM: Also isn't - - - you -
19 - -

20 MR. CHRISTOFIDES: So the applicant in this
21 case is Style/Sason, and he's the responsible
22 contractor, not the Berensons. They weren't - - -

23 JUDGE ABDUS-SALAAM: But, counsel - - -

24 MR. CHRISTOFIDES: - - - performing - - -

25 JUDGE ABDUS-SALAAM: - - - counsel, isn't

1 that - - - isn't that the key here, contractor as
2 opposed to a general contractor? Doesn't the Nassau
3 County Administrative Code and the General Business
4 Law have a definition of contractor in the context of
5 home improve - - - this is a home-improvement
6 contract - - -

7 MR. CHRISTOFIDES: That's correct, Judge
8 Abdus-Salaam - - -

9 JUDGE ABDUS-SALAAM: - - - correct?

10 MR. CHRISTOFIDES: - - - and the fact of
11 the matter is that's what Judge Maltese is pointing
12 out. He's saying if you allow Style/Sason to do all
13 the prerequisites for being the responsible
14 contractor for this particular home improvement
15 project, and then simply, after a fire happens, you
16 could say, well, I - - - I didn't do anything. I - -
17 - I sold my lace - - - my license to Baruch, I only
18 put a nail in there, I really wasn't overseeing the
19 work. Well, there are no other independent
20 contractors on this project. Baruch is a stranger
21 completely to the records before the Building
22 Department. The flooring person was a day laborer.
23 He wasn't a contractor. This isn't the situation - -
24 -

25 JUDGE ABDUS-SALAAM: Did - - - did Utica

1 have to allege any violation of the Nassau County
2 Administrative Code or the General Business Law to
3 rely on that definition of contractor?

4 MR. CHRISTOFIDES: Absolutely not. That -
5 - - that would be the equivalent saying I'm ignorant
6 of the law, so I'm not responsible. No, the
7 complaint that was alleged in this case, said that
8 these individuals, Zak Baruch, Style/Sason, these
9 were individuals that were either in a joint venture
10 or a partnership or an employer-employee
11 relationship, whatever it was, sta - - - Style/Sason
12 handed the permit to Baruch, who then displays it in
13 the window of the home, which allows the work to
14 begin. Without that permit in the window, there
15 could be no inspections of any of the work by the
16 Building Department, so a C of O would never be
17 issued for any work done.

18 So the prerequisites of getting that
19 application and obtaining the permit is a very
20 significant fact in this case. And there are no
21 other contractors that filed anything for this job.
22 Once he takes it, the Administrative Code regulations
23 of the Village of Lake Success take over, and they
24 basically say, you filed all the lo - - - financial
25 responsibility documents, the ACORD forms for

1 liability, for workers' compensation, your license -
2 - -

3 JUDGE STEIN: There was no workers'
4 compensation coverage here, correct?

5 MR. CHRISTOFIDES: There's no injury of - -
6 - personal injury in this case whatsoever, Judge
7 Stein.

8 JUDGE STEIN: No, I know, but - - - but you
9 - - - you refer to the fact that they were relying on
10 Style for the workers' compensation, but I thought
11 Style filed something that said that they - - - they
12 were exempt from that - - -

13 MR. CHRISTOFIDES: Ah, no, I - - -

14 JUDGE STEIN: - - - obligation.

15 MR. CHRISTOFIDES: I tend to differ, Judge
16 Stein. If you read the deposition of Mr. Sason, he
17 actually points out, even though he's got the memory
18 of a goldfish for most of the deposition, with this
19 particular instance, he says he knew that the law in
20 the Village in Lake Success changed approximately 25
21 - - - 2005 or 2006, and he would not be allowed to
22 submit a waiver saying, I'm the sole employee of
23 Style, and therefore I don't need workers' comp. So
24 - - -

25 JUDGE STEIN: Did - - - did - - - do we

1 know - - -

2 MR. CHRISTOFIDES: - - - when he filed this
3 job - - -

4 JUDGE STEIN: Does the record indicate that
5 he in - - - that he demonstrated proof of workers'
6 compensation?

7 MR. CHRISTOFIDES: Yes, it's part of the
8 application in this case. He had an ACORD form for
9 liability, and also for workers' compensation.

10 JUDGE STEIN: Where is that - - -

11 MR. CHRISTOFIDES: So - - -

12 JUDGE STEIN: Where is that in the record
13 if you could put your finger on it quickly? I don't
14 want you to spend a lot of time - - -

15 MR. CHRISTOFIDES: I'm trying, Your Honor.

16 JUDGE STEIN: - - - doing it. Or never
17 mind, we can - - -

18 MR. CHRISTOFIDES: When you look at the
19 record, beginning at page 580 - - - actually, I think
20 even before that, beginning at 577 through the
21 certificates that he filed, and all the other
22 documents related thereto, that - - - that brings you
23 up to - - -

24 JUDGE PIGOTT: Well, before your time runs
25 out, I did want to ask you, in page 65 and 66 of her

1 brief, your - - - your opponent argues that your
2 opposition to the motion consisted of an attorney's
3 affirmation and nothing else.

4 MR. CHRISTOFIDES: That's interesting
5 because attached to my attorney's affirmation is a
6 sworn deposition testimony of Zak Baruch, Mr. Yosi
7 Sason, the - - - the Building Department records, the
8 application which all - - - to which, by the way, Mr.
9 Sason testified, he acknowledged all - - -

10 JUDGE PIGOTT: That there's no record - - -
11 "there's no record reference or affidavit of a person
12 with knowledge that supported the theory that Style
13 was the actual GC or the existence of an agency
14 agreement." You did that - - - you obviously - - -

15 MR. CHRISTOFIDES: Well, the - - - the
16 testimony of Barak - - - of a - - - Zak Baruch is
17 that - - - it's on page 202 of the record - - - he
18 says, he's the builder, and I did the work. And if
19 you read the previous pages of the record, it
20 actually walks you through the relationship that
21 Style/Sason had with Baruch's previous employer,
22 Rafael (ph.), before he left for Israel.

23 So there's numerous actual applications for
24 permits in the record here that establish the course
25 of dealing of Style/Sason filing these permits for

1 all these jobs in the Village of Lake Success in
2 Great Neck, and then allowing his agents, or other
3 unlicensed, unqualified people to do the work. And
4 this is the first time he has a problem. The first
5 time it's - - - he has the problem, Baruch says,
6 well, he came to me and said he wanted me to lie. He
7 told me, tell them I only did crown moldings and
8 that's it. And - - - and - - -

9 CHIEF JUDGE DIFIORE: Thank you, counsel.

10 MR. CHRISTOFIDES: Thank you.

11 CHIEF JUDGE DIFIORE: Thank you.

12 Counsel, I believe there is testimony that
13 Mr. Sason threatened to pull the work permit if he
14 wasn't paid an additional sum of money. If that is
15 the testimony, one could argue, that that's the
16 ultimate control over that job site, because he could
17 effectively shut the job site down. Why we wouldn't
18 we want a fact-finder to get to the bottom of that in
19 that relationship?

20 MS. FRANKEL: Good afternoon, Your Honors.

21 CHIEF JUDGE DIFIORE: Good afternoon to you
22 too.

23 MS. FRANKEL: What is controlling is who
24 the insureds hired to perform the function of the
25 general contractor, and in this case, every single

1 record and every single testimony, including Mr.
2 Baruch, is that he was hired as the general
3 contractor. He was hired to perform supervision and
4 control of the trades, hiring of the trades,
5 purchasing the materials, inspecting the work of the
6 trades. And so - - -

7 JUDGE ABDUS-SALAAM: Counsel, maybe I'm
8 confused. Is - - - is this - - - are they building a
9 building here or are they renovating a home?

10 MS. FRANKEL: They are renovating a home.

11 JUDGE ABDUS-SALAAM: Renovating a home, so,
12 you know, there are a lot of home improvement - - -
13 this is a home-improvement contractor, right? Not -
14 - - not some, you know, general contractor like
15 Turner Construction or a construction manager, right?
16 It's - - - it's - - - how - - - how big a home is
17 this?

18 MS. FRANKEL: In all home improvement
19 renovations that I've been a part of, there has
20 either been a general contractor retained to do the
21 work, or the plaintiffs undertake that role
22 themselves, or they hire a construction manager, if
23 the - - - if that is the case. And we can't escape
24 what's in the record here, which is that function and
25 that role was hired. Plaintiffs own experts - - -

1 JUDGE FAHEY: Well, the - - - the only
2 problem is - - - is the permit, and - - - and the
3 permit, it's more than just - - - it's not
4 dispositive, I think, you're totally right about that
5 - - - but it - - - it's certainly proof, and - - -
6 and it seems that the only purpose behind the permit
7 is allegedly to permeate - - - to perpetuate some
8 kind of a fraud that would allow coverage where Mr.
9 Baruch didn't have coverage and Mr. Sason did.

10 So you - - - you got address the allegation
11 of fraud here, because I think that's at the heart of
12 this, and that's what creates a potential question of
13 fact.

14 MS. FRANKEL: Well, I'll address fraud in -
15 - - in - - - in two ways. First by saying that when
16 we look at the pleadings and the bill of particulars,
17 it is not at the heart of this case. It's not
18 remotely close to this case, because it was never
19 pled, never alleged.

20 JUDGE PIGOTT: I mean, that's not the
21 point, because you start - - - you start your lawsuit
22 and then you find out, oh, wait a minute; the person
23 who filed this is not person who's the GC. I - - -

24 MS. FRANKEL: The second is that the
25 allegations - - -

1 JUDGE PIGOTT: Wait a minute. Wait a
2 minute, wait, wait. I - - - I said that because I
3 expected you to respond to it. I didn't - - - I
4 apologize for interrupting you, but do you get the
5 point? That you want to say, well, they didn't plead
6 fraud. That's not - - - that's not - - - it's a
7 subrogation case, in which they're saying the
8 subrogee here, or the - - - the person whom we want
9 to proceed against, in turns out was party to a - - -
10 to a - - - a fraud.

11 MS. FRANKEL: The cla - - -

12 JUDGE PIGOTT: Do you want to address that?

13 MS. FRANKEL: Yes. The claim of fraud in
14 this particular appeal is that there was a fraud upon
15 a municipality. And the municipality isn't a party
16 here, and plaintiff doesn't represent the
17 municipality. In terms of what the plaintiff - - -

18 JUDGE FAHEY: You know, maybe it's a bad -
19 - -

20 MS. FRANKEL: - - - insured - - -

21 JUDGE FAHEY: Maybe it's a bad description
22 of - - - it's a fraud. We can just simply say he
23 lied, or it's alleged that you lied on the permit,
24 and that because of that, it's impossible to
25 determine on the record and - - - when you compare

1 the deposition testimony between Baruch and Sason,
2 who is actually in charge, because one party takes
3 legal responsibility and another one seems to have a
4 fair amount of managerial responsibility. And it's
5 that interplay between legal responsibility and
6 managerial responsibility that goes back to what
7 Judge DiFiore was talking about is, so why isn't then
8 a question of fact? How do we resolve that?

9 MS. FRANKEL: Well, I think then what we're
10 really talking about then is this agency theory that
11 the plaintiff has alleged where there needs to be
12 either a specific agreement or acts undertaken to
13 show that one party is the principal and one party is
14 the agent. But in this case, Style Management never
15 even heard of the plaintiffs or of this - - - this
16 renovation because they hired Baruch to do it, and
17 Baruch hired out contractors or Style to perform a
18 certain role.

19 So in this particular case, agency would
20 seem to be that the party who's the mastermind of the
21 operation, Baruch, who had all of the tools and
22 information and the money, would be, in fact, the
23 principal in that case. Don't forget that Baruch is
24 the one who asked Style for help, and not vice versa.
25 No where in this state, be it case law, rule,

1 regulation or statute, does there impute liability -
2 - - strict liability - - - to a contractor on a
3 permit. Those contractors cannot be project
4 guarantors.

5 JUDGE PIGOTT: Now is it - - - is it - - -
6 is it a strict liability case? Let's assume that - -
7 - that subrogation is established, does that end the
8 case?

9 MS. FRANKEL: Strict liability wasn't
10 claimed, neither was fraud, Your Honor, but strict -
11 - -

12 JUDGE PIGOTT: No, my - - - my point is
13 you're - - - one of the - - - one of the discussions
14 here has to do with who's a GC and - - - and - - -
15 and 240, I think, is different from ordinary
16 negligence cases and contract cases - - -

17 MS. FRANKEL: Ah, I see.

18 JUDGE PIGOTT: - - - because it's a strict
19 liability statute, and if you're the GC, you're done.
20 In this case, it could happen that once - - - once
21 Utica Mutual pays the claim and then goes after the
22 GC, whoever that GC may be, that person may not be
23 responsible, or that GC may have a claim over against
24 some sub, but it - - - it's not - - - it's not strict
25 liability is my point.

1 MS. FRANKEL: In subrogation cases, the
2 insurer stands in the shoes of the insured and what
3 the insured is entitled to. They don't have separate
4 rights that the insured - - -

5 JUDGE PIGOTT: No, right, I'm not - - -

6 MS. FRANKEL: - - - doesn't have.

7 JUDGE PIGOTT: - - - I'm not on that side
8 of the equation. What I'm saying is, assume - - -
9 assume that, the - - - there's a fire and it's a
10 600,000-dollar payout to the - - - to the owner, the
11 - - - the right to go against somebody doesn't mean,
12 I have the right to go against you, the GC, I win,
13 because the GC may have some defenses, right?

14 MS. FRANKEL: Well, that's' correct, but -
15 - -

16 JUDGE PIGOTT: So it's not a strict
17 liability situation.

18 MS. FRANKEL: Well, what the plaintiff is
19 asking is strict liability, because what he's asking
20 you to do is to say by virtue of the fact that he is
21 on the permit - - - whether he filed for the permit
22 or didn't, he's on it - - - by virtue of that fact,
23 because there is nothing more, then he has to be
24 liable and financially - - -

25 JUDGE PIGOTT: No, if he - - - no, no, no,

1 no.

2 MS. FRANKEL: - - - responsibility for all
3 ill's.

4 JUDGE PIGOTT: It's - - - it's that he has
5 to - - - you know, he can be sued. Now he may not -
6 - - he may be as - - - as - - - as - - - as you know,
7 innocent as the driven snow. I mean, we don't know.
8 We - - - you know, but all - - - all that's being
9 said here is the GC, they can go after - - - after
10 them through subrogation.

11 MS. FRANKEL: When faced with a summary
12 judgment motion, Your Honor, and prima facie
13 entitlement to summary judgment, which was done here
14 by virtue of the fact that the actor who committed
15 the direct negligence was the flooring contractor,
16 and that's undisputed, and the person who supervised
17 and controlled is also in the lawsuit, and that is
18 undisputed, then it is up to the plaintiff to raise a
19 question of fact as to all four elements: duty,
20 proximate cause, breach and damage. And we can set
21 aside damage for now, but my adversary did not raise
22 a question of fact, because he could not point to any
23 act or any specific duty that Style had in connection
24 with the supervision and control. And under - - -

25 JUDGE PIGOTT: So you're - - - you're

1 saying, con - - - let's concede that Style's a GC,
2 there's still no liability.

3 MS. FRANKEL: Oh, I'm not conceding that at
4 all, because - - -

5 JUDGE PIGOTT: Oh - - -

6 MS. FRANKEL: - - - you are a GC by virtue
7 of the agreement that you make with the homeowner.

8 JUDGE PIGOTT: I'm saying there's still no
9 liability. I - - - I was agreeing with you. You
10 wanted to say it's somebody else.

11 MS. FRANKEL: Can you repeat that, please?

12 JUDGE PIGOTT: You want to say it's the
13 floor guy that caused the fire.

14 MS. FRANKEL: Well, the - - - the evidence
15 says it's the floor guy who committed the - - - the
16 act, okay. And with respect to who the GC is, that's
17 borne out by - - -

18 JUDGE FAHEY: Yeah, but this really - - -

19 MS. FRANKEL: - - - by contract.

20 JUDGE FAHEY: - - - comes down to, one, the
21 guy who signed the permit has coverage, that GC
22 allegedly, the other one doesn't, right?

23 MS. FRANKEL: That's correct.

24 JUDGE FAHEY: And so the allegation is is
25 that he got somebody else to use his coverage and

1 therefore your theory is, is we don't have to pay,
2 even though we - - - we may or may not have
3 participated in - - - in the creation of this
4 situation. And - - - and that goes back to the basic
5 question of fact theory. It's not a strict liability
6 theory, it's a basic comparative negligence theory,
7 but - - - but the question of who is the GC is a fact
8 that supersedes any allocation of negligence.

9 MS. FRANKEL: Right, but they have to raise
10 a question of fact in terms of who the GC is and they
11 didn't do that here.

12 JUDGE FAHEY: I don't know. I read those
13 transcripts and those testimonies. They - - - they
14 don't - - - there doesn't seem to be a lot of
15 consistency between the two of them.

16 MS. FRANKEL: The only inconsistencies that
17 we have here is whether Style Management performed
18 some work or no work. There's no inconsistency with
19 respect to who's GC. Plaintiff's experts say Baruch
20 was the GC. Plaintiff's experts interviewed the
21 insureds. The plaintiff's adjuster says plaintiffs
22 hired Zak Baruch as GC. Zak Baruch says he was hired
23 as the GC. So there is no inconsistency by any
24 testimony in terms of who the GC was. The
25 inconsistency is whether my client did work or didn't

1 do work, and no one says that he did the work to
2 cause the incident.

3 JUDGE STEIN: So that's - - - that's - - -
4 you're talking about duty and - - - and acts, but - -
5 - but there's also a proximate cause question here.

6 MS. FRANKEL: That's correct, and under no
7 case have I seen where the filing of a permit causes
8 a fire. In this case, the cause of the fire was the
9 inappropriate disposal of certain materials by the
10 floor contractor. And - - - and - - - and accidents
11 happen, but in negligence, which is where we are,
12 even a general contractor with general supervisory
13 responsibilities is not held to be liable for
14 independent contractors' negligence.

15 So even if I did concede that we were the
16 general contractor, Style Management, unless we have
17 a specific contractual arrangement where they would
18 supervise or control the means and methods of the
19 individual independent contractors, there is no
20 liability. And with respect to the fact that the
21 permit set the wheels in motion, if you will, and
22 were it not for - - -

23 JUDGE GARCIA: Counsel, I'm sorry; I know
24 your time is up, but one quick thing, and I don't
25 mean to interrupt you, but your time is up - - - over

1 the limit. In filing this permit and getting
2 authorization to go forward with this work, can you
3 talk about Style's relationship with the homeowner
4 and is it a "general contractor"? Isn't Style saying
5 by getting this authorization to the homeowner - - -
6 isn't Style saying I have this insurance which covers
7 this project, which I just got authority for you to
8 do?

9 So maybe the homeowner doesn't think
10 "general contractor" in a legal definition, but are
11 they - - - aren't they looking to the permit to say
12 who's responsible if something happens here in terms
13 of insurance?

14 MS. FRANKEL: There's no indication on this
15 record that a communication - - -

16 JUDGE GARCIA: There's the permit.

17 MS. FRANKEL: - - - or a representation was
18 ever made between Style and the homeowners. The
19 homeowners requested that the builder be Mr. Baruch,
20 and Mr. Baruch made that arrangement.

21 JUDGE GARCIA: So there's no evidence in
22 the record that the homeowner ever saw this permit
23 application that says that Styles has insurance?

24 MS. FRANKEL: The application for insurance
25 is signed by the Berensons. There's nothing about

1 insurance in that application. So personally, I
2 don't know and I don't think anyone else can guess or
3 speculate - - -

4 JUDGE GARCIA: So I guess bottom-line, and
5 I'm asking, is - - -

6 MS. FRANKEL: Yes?

7 JUDGE GARCIA: - - - in this record,
8 there's no indication anywhere that the Berensons
9 were aware that Styles represented they had insurance
10 for this project in getting the ber - - - building
11 permit?

12 MS. FRANKEL: That's correct. Nor does the
13 actual ACORD form in the record indicate that that
14 insurance covers anyone other than Style's work.

15 CHIEF JUDGE DIFIORE: Thank you, Ms.
16 Frankel.

17 MS. FRANKEL: Thank you.

18 CHIEF JUDGE DIFIORE: Mr. Christofides?

19 JUDGE GARCIA: Counsel, do you agree with
20 that?

21 MR. CHRISTOFIDES: No, not at all, Judge
22 Garcia, absolutely not. Actually two questions, one
23 asked by Judge DiFiore and one by yourself, really
24 establish what's going on here.

25 Judge DiFiore asked the question that was

1 never answered by respondent here and that was, what
2 about the 4,000 dollars that Baruch paid? That is so
3 telling, because it means that this guy controlled
4 the job. Baruch paid him the additional 4,000
5 dollars, because if he didn't, Style would have went
6 back to the Building Department, and said, you know,
7 that job at 21 Briarfield, I'm done with it; I'm
8 pulling my permit. And then Baruch really would be
9 stuck, because he'd be in the middle of the job and
10 who's going to come and finish the job?

11 JUDGE STEIN: But what kind of control are
12 we talking about? I thought we were talking about
13 who - - -

14 MR. CHRISTOFIDES: Complete control of the
15 job.

16 JUDGE RIVERA: - - - hold on. Well, wait a
17 minute. Complete control over whether the job goes
18 on or not, but how about over who performs the work,
19 how the work is performed and all of those things,
20 which as far as I can tell, the record undisputedly
21 shows was Baruch.

22 MR. CHRISTOFIDES: I'll answer your
23 question very simply. I'm a partner in a firm. I
24 have associates that work for me. If one of my
25 partners says, Chris, I need you to handle this case,

1 can you do what needs to be done, and I handle it by
2 giving it to an associate, that associate's working
3 for the firm. And that's what happened here.

4 The permit is placed in the hands of Baruch
5 by Sason and Style. No one else in this case,
6 neither the flooring contractor or Baruch, could get
7 a permit by themselves. They're not licensed, they
8 don't have insurance, and they don't have workers'
9 comp insurance, and they're not qualified. As a
10 matter of fact, Baruch doesn't even read or write
11 English by his own testimony.

12 Now Sergei is even worse. He's a day
13 laborer, and the way they found him is, there was a
14 business card thrown into a bowl in the lumberyard
15 where they bought the flooring and they picked the
16 card out of it.

17 So when the respondent represents to this
18 court that there's evidence that talks about Baruch
19 being contractor and Sergei being the independent
20 contractor, these are - - - a fire marshal who comes
21 to a scene of a fire and he's asking somebody in
22 charge some questions and he writes it in a report.
23 This is a company adjuster who's there to look at
24 damages to the building and he asks somebody who's in
25 charge, and somebody says I am, and it happens to be

1 Baruch. That's not sworn testimony.

2 JUDGE STEIN: Can I go back to your
3 analogy, though, for a second? In your law firm, you
4 pay that associate, right?

5 MR. CHRISTOFIDES: Right.

6 JUDGE STEIN: That associate works for you.
7 Here, the payment was going the other way. That
8 seems to be totally contrary to everything - - -

9 MR. CHRISTOFIDES: The payment wasn't - - -

10 JUDGE STEIN: - - - that we generally talk
11 about in terms of agency relationships, employment
12 relationships. How - - - how do you - - -

13 MR. CHRISTOFIDES: Absolutely not, Judge
14 Stein. The money all came from the Berensons. The
15 fact that Baruch is the front man, what difference
16 does that make? It all came from the Berensons.
17 What happens is - - -

18 JUDGE STEIN: But if the Berensons thought
19 that Style was in control, wouldn't they be paying
20 Style or Sason?

21 MR. CHRISTOFIDES: If Baruch walks up to
22 Mrs. Berenson and says, I can do this job for you;
23 I'm a contractor in the Village of Lake Success, and
24 she says, fine, how much are you going to charge for
25 the work? And he tells her a price, and then he goes

1 over to Yosi Sason and says, I got another job for us
2 in the Village of Lake Success, so you need to file a
3 permit; how much do you want from that?

4 JUDGE PIGOTT: You're saying this is a
5 scam?

6 MR. CHRISTOFIDES: Of course, Your Honor.
7 This is - - - this is - - -

8 JUDGE PIGOTT: Hate to state the obvious.
9 I just thought I - - -

10 MR. CHRISTOFIDES: This is the way that - -
11 - that Yosi Sason figured out how to do all these
12 projects in the Village of Lake Success, and I have
13 at least eight of them in the record on appeal,
14 without doing any work. So the fact - - -

15 CHIEF JUDGE DIFIORE: Getting back to a
16 point you made before, sir, if you take Style out of
17 the picture, who's the legal GC on that job?

18 MR. CHRISTOFIDES: There is nobody but
19 Style. Style's it. Style is all of it.

20 CHIEF JUDGE DIFIORE: But - - -

21 MR. CHRISTOFIDES: And the fact that Judge
22 Maltese points out very, very intricately that he
23 doesn't care whether it's an employer-employee, joint
24 venture, an agency agreement, he's saying Sason is
25 the guy who's responsible because he's the one that

1 represented to the Village that he is responsible.

2 And when the application was placed in
3 front of Mrs. Berenson, all those other records that
4 go with this application on - - - on - - - in - - -
5 the respondent's attorney incorrectly pointed out
6 that Mrs. Berenson signed an insurance application.
7 No, she signed the application to get the building
8 permit. Sason himself had to go down to the Village
9 of Lake Success and speak with Robert Bonnie, who's
10 in charge of the Building Department and get the
11 application filed by submitting his license which is
12 here in the record at 579, and submitting all the
13 other documents.

14 So who did that but Sason? So how could he
15 be a stranger to this project? The fact that he
16 decides he doesn't want to supervise, he had to be
17 supervising at some point, because he found out the
18 work was greater than originally thought and he said,
19 hey, Zak, I need another 4,000.

20 CHIEF JUDGE DIFIORE: Thank you, counsel.

21 JUDGE GARCIA: Counsel? I'm sorry, the
22 last point - - -

23 CHIEF JUDGE DIFIORE: Yes.

24 JUDGE GARCIA: - - - that you were going to
25 address - - -

1 MR. CHRISTOFIDES: Yes, Judge Garcia?

2 JUDGE GARCIA: - - - was - - - is the
3 homeowner aware on this application that Style's
4 saying that he has insurance? That this - - -

5 MR. CHRISTOFIDES: Sure. I mean the
6 application - - - she - - - if - - - first of all,
7 both Mr. and Mrs. Berenson are attorneys, okay. So
8 the fact that she's signing a verification that says
9 I'm the homeowner so that he can get a permit - - -

10 JUDGE STEIN: But they may be trust and
11 estates attorneys. That doesn't mean - - -

12 JUDGE GARCIA: Right, but - - -

13 MR. CHRISTOFIDES: That's probably correct,
14 I agree - - -

15 JUDGE GARCIA: So on the face of the - - -

16 MR. CHRISTOFIDES: - - - but the point is -
17 - -

18 JUDGE GARCIA: On the face of the permit
19 application or the documents that we have in the
20 record that they saw, do the Berensons know that this
21 person represented that I have insurance for this
22 project, the building?

23 MR. CHRISTOFIDES: You would have to under
24 the Village of Lake Success Administrative Code, or
25 you couldn't get a permit.

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JUDGE GARCIA: So they had to - - -

MR. CHRISTOFIDES: So they had a permit and they brought it to the house, they got to have insurance.

JUDGE GARCIA: All right.

CHIEF JUDGE DIFIORE: Thank you, sir.

MR. CHRISTOFIDES: Thank you.

(Court is adjourned)

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C E R T I F I C A T I O N

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of Utica Mutual Insurance Company v. Style Management Associates, Corp., No. 148, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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