

February 2016
MPT-1 File:
In re Anderson

CALVETTI, LAWRENCE & MASTERSON

Attorneys at Law
84 Richmond Avenue, Suite 1300
Lafayette, Franklin 33526

MEMORANDUM

To: Examinee
From: David Lawrence
Date: February 23, 2016
Re: Workers' Compensation Claim

Our client Nicole Anderson seeks legal advice regarding a workers' compensation claim that is being filed against her by Rick Greer, a handyman hired by Anderson to perform general maintenance and repair work for her residential rental properties. Greer was injured while painting the exterior of one of Anderson's rental houses.

Under the Franklin Workers' Compensation Act, codified in the Franklin Labor Code § 200 *et seq.*, employers are required to maintain insurance coverage for employees who may sustain injuries arising out of and in the course of their employment. When employees are injured on the job, they can submit workers' compensation claims and be paid for their lost wages during the period in which their injuries prevent them from returning to work, as well as their medical costs.

Workers' compensation applies only to employees; it does not apply to independent contractors. Anderson did not maintain workers' compensation insurance coverage because she did not believe she was required to insure Greer against injury. If Greer is found to be Anderson's employee, Anderson could face substantial personal liability as well as penalties under the Workers' Compensation Act for failing to provide this coverage.

Please draft a memorandum to me in which you analyze whether Greer would be considered an employee of Anderson under the applicable statutory provisions and case law. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your analysis and conclusion.

**Transcript of client interview: Nicole Anderson
February 19, 2016**

Attorney Lawrence: Ms. Anderson, it's a pleasure to meet you. I understand that you're seeking our assistance with regard to a workers' compensation claim that is being asserted against you. Why don't you tell me a little more about your business and then we can talk about the claim.

Nicole Anderson: Well, about five years ago, I got involved in the rental property business when I couldn't sell the house that I owned and lived in. I couldn't afford two mortgages, so I ended up renting out my old house. I had such a positive experience as a first-time landlord that I decided to invest in additional rental properties. Over the past five years, my rental property business has steadily grown, and I now own 11 rental properties, all of them single-family houses, here in Lafayette.

Initially, when I had only a couple of rental properties, I personally handled most of the basic maintenance work like painting and replacing trim, basic plumbing problems, and the like. If a particular project was too complicated or time-consuming, I'd recruit family members to help me or hire out the work to various handymen as needed. About three years ago, I reached the point where I had too many rental properties to keep up with as far as basic maintenance and repair work, and I was tired of dealing with different handymen, some of whom were less reliable than others. So I decided to find someone who could perform all of the maintenance and repair work on my rental properties. That's when I found Rick Greer.

Atty: And is Mr. Greer the person who was injured and who is attempting to assert a workers' compensation claim against you?

Client: Yes, I just received this claim form. [Workers' compensation claim form attached.]

Atty: How did you come to find him?

Client: I saw an ad in the online Yellow Pages for "Greer's Fix-Its." After speaking with him and checking his references, I felt confident that he would do a good job at a reasonable price.

Atty: How long has Mr. Greer provided handyman services for you?

Client: Since June of 2013.

Atty: Did the two of you enter into any kind of written agreement?

Client: Not anything formal, but we did discuss the parameters of his work by email. I've brought a copy of the emails in which we discussed what he was going to do, how he was going to be paid, and what the general arrangement would be.

Atty: Great. Let me take a look at it The email says Mr. Greer was going to perform general maintenance and repair work. What specific kinds of services has he provided?

Client: He does a lot of stuff—everything from cleaning and repairing rental houses between occupancies to minor renovations and upgrades, in addition to basic maintenance and general upkeep such as painting, cleaning gutters, simple plumbing and electrical work, hauling debris to the dump, and other odds and ends. I also require him to inspect the exterior of each of the properties monthly, using a checklist that I've provided to him.

Atty: And how is he paid?

Client: We negotiate the payment amount for each project. I always pay him by check when the work is done. Sometimes I pay him on an hourly basis at a rate of \$25 per hour, and other times I pay him a flat rate by the project. For instance, I pay him a flat fee of \$200 per room to paint standard interior rooms. If a room is large or the ceiling or trim needs to be painted in addition to the walls, then we negotiate a higher fee. For plumbing and electrical projects, I pay him by the hour. I also reimburse him for any materials that he may need to purchase in connection with each project, such as paint, wiring, and lumber. I've agreed to pay him a minimum of \$250 per month, even if he doesn't do 10 hours of work in that month, to be sure that he is always available to me.

Atty: Do you withhold any taxes from the money you pay him?

Client: No, I always thought he was responsible for paying his own taxes.

Atty: How often does he perform handyman services for your rental properties, and how many hours a week or a month would you say that it works out to?

Client: Typically, he handles around five projects a month, sometimes more, sometimes less. Each project is different, and some take more time than others, but I'd estimate that on average he spends about 10 hours a month working on projects at my rental properties. When a tenant moves out, which happens about once every 18 months or so, he can spend as little as 5 hours or as much as 15 to 20 hours getting the place ready to re-rent, depending on how well the tenant took care of the house. With 11 rental properties,

there's a pretty steady flow of necessary maintenance and repair work. When something comes up, I call him and then he works me into his schedule and gets the project done.

Atty: What was Mr. Greer doing on the day he was injured?

Client: He was painting the front exterior of my rental house on Clover Circle.

Atty: What happened that day?

Client: Well, on February 11, I was at the rental house on Clover, telling him what I wanted him to do. I told him to be sure to mask the windows, that I didn't want rollers but a narrow brush to paint the trim, and to apply three coats of paint.

Atty: Do you always give him detailed directions like that?

Client: Not always, but I'm pretty particular. I want my properties to look nice, so I want the job done right. This was an expensive rental, and I wanted it to look really nice.

Atty: Okay, what happened next?

Client: I walked around the corner of the house, and a few minutes later I heard Rick yell. I ran back and found that he had fallen off a ladder and was hurt. He had broken his right arm and was in a lot of pain. I got him into my car and drove him to the hospital. The hospital took him into the emergency room right away.

Atty: What happened next?

Client: I called his wife from the hospital, and when I knew she was coming, I went home. Later on I tried to reach Rick and his wife by phone. They never answered and didn't return the messages I left. The next day, I called Jim, a friend of mine who owns an eight-unit apartment complex and uses Rick on repair and maintenance projects for that complex. Jim told me that he had spoken with Rick, who had said that his arm would be in a cast for at least four weeks and that he probably wouldn't be able to work for another two to four weeks after the cast came off, while he underwent physical therapy.

Atty: Who owns the ladder?

Client: As far as I know, Rick does.

Atty: Do you ever provide him with any tools for the work he performs for your rental houses?

Client: Sometimes on paint jobs, when there's a particular color that I want Rick to use, I've bought the paint from the hardware store to make sure that it's the right color, instead of having Rick buy it and then reimbursing him. I've also picked out ceiling fans, faucets, and other fixtures for rental properties on occasion, but that's about it. Rick usually

provides everything else. He has one of those big built-in toolboxes on the bed of his pickup truck with all kinds of tools, everything from power drills and big saws to wrenches and screwdrivers. I think he keeps a lot of tools on hand for bigger projects that come up, like the remodel that he completed at Jim's apartment complex last year.

Atty: You mentioned that you sometimes select the paint color and fixtures such as ceiling fans and faucets on some of Mr. Greer's projects. Do you also get involved in other aspects of his work?

Client: It really depends. When it comes to paint color, the installation of a ceiling fan, or the way I want something to look when it's finished, I usually get involved in the process to make sure the project turns out the way I want it to, but I don't micromanage him or anything like that. He's very good at what he does and he knows what he's doing. If I tell him that a toilet is leaking, he figures out what the problem is and then fixes it. I work full-time as an accountant, and my job keeps me very busy, so most of the time I just swing by the property after Rick's done to make sure the work got done right before paying him for the work.

Atty: When did you find out that he was going to file a workers' comp claim against you?

Client: Not until yesterday, when he faxed over a workers' compensation claim form and asked me to fill out the "Employer" section. I was really shocked when I received the form because it never occurred to me that Rick might consider himself to be an employee of mine. I haven't withheld taxes or obtained any insurance coverage for Rick, and I don't even want to think about what it would cost to pay his medical bills or lost wages.

Atty: I understand your concerns. I think I have a pretty good idea of the professional arrangement between you and Mr. Greer. I'm going to need to research the legal issues surrounding his workers' compensation claim. I will give you a call next week to let you know what I think the next steps are.

Client: Okay. I look forward to hearing from you. And thanks so much for your help with this.

Email Correspondence Between Anderson and Greer

From: Nicole Anderson<nicorentals@cmail.com>

Date: 17 June 2013, 9:00 a.m.

To: Rick Greer <Rick@Greersfixits.com>

Subject: Handyman Work

Hi, Rick. Great talking with you earlier this week! I called your references, and they had nothing but good things to say about you. So I'd like to go ahead and have you help me with general repair and maintenance projects at my rental properties. I think I already told you this, but all are single-family houses with the usual ongoing maintenance and repair needs. I'm not sure how often I'll need your help, but I look forward to working with you.

Nicole

From: Rick Greer <Rick@Greersfixits.com>

Date: 17 June 2013, 11:15 a.m.

To: Nicole Anderson<nicorentals@cmail.com>

Subject: Handyman Work

Sounds good. Just let me know when you need my services, and I will make sure to get out to the property and get the problem handled. As I told you, I charge all my customers \$25/hour for electrical and plumbing work and routine maintenance and repairs. We can discuss the price of other projects as they come up.

Rick

From: Nicole Anderson<nicorentals@cmail.com>

Date: 18 June 2013 8:15 a.m.

To: Rick Greer <Rick@Greersfixits.com>

Subject: Handyman Work

Okay. If you need to do any work on the inside of a rental house, I'll need to coordinate with my tenant to make sure that someone is there to let you in and that it's a convenient time for the tenant and for you. Exterior projects like gutter work can be done basically at your convenience. If the tenant has a dog, I just need to give the tenant a heads-up so that we can make sure the dog is secured before you show up. Will call you as soon as I need your help. Thanks!

Nicole

**STATE OF FRANKLIN
DEPARTMENT OF LABOR
RELATIONS
DIVISION OF WORKERS' COMPENSATION**

WORKERS' COMPENSATION CLAIM FORM (DWC 1)

Employee: Complete the "Employee" section and give the form to your employer. Keep a copy and mark it "Employee's Temporary Receipt" until you receive the signed and dated copy from your employer.

Employee—complete this section and see note above.

1. Name Rick Greer Today's date February 18, 2016
2. Home address 13269 Cabot Road, Lafayette, Franklin 33527
3. Date of injury February 11, 2016 Time of injury 9:00 a.m. _____ p.m.
4. Address and description of where injury happened I fell from a ladder at 3025 Clover Circle, Lafayette, Franklin 33529, while painting a house for my employer, Nicole Anderson.
5. Describe injury and part of body affected broken right arm

6. Signature of employee 

Employer—complete this section and see note below.

7. Name and address of employer
8. Date employer first knew of injury
9. Date claim form was provided to employee
10. Date employer received claim form
11. Name and address of insurance carrier
12. Insurance policy number

13. Signature of employer representative

14. Title _____ 15. Telephone

Employer: You are required to date this form and provide copies to your insurer or claims administrator and to the employee, dependent, or representative who filed the claim within **five working days** of receipt of the form from the employee.

SIGNING THIS FORM IS NOT AN ADMISSION OF LIABILITY.

- Employer copy
- Employee copy
- Claims administrator
- Temporary receipt