

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2008*

**TIMOTHY DUANE GAYER,**  
Appellant,

v.

**FINE LINE CONSTRUCTION & ELECTRIC, INC., LABOR FINDERS OF  
BROWARD COUNTY, INC., LABOR FINDERS INTERNATIONAL, INC.,  
and L.F.I. SAFETY MANAGEMENT SERVICES, INC.,**  
Appellees.

No. 4D06-3419

[March 5, 2008]

SHAHOOD, C.J.

Timothy Duane Gayer appeals from the trial court's grant of final summary judgment in favor of Labor Finders of Broward County, Inc., Labor Finders International, Inc., and L.F.I. Safety Management Services, Inc.<sup>1</sup> Appellees cross-appeal from the trial court's prior rulings on Gayer's motions in limine. We affirm on all issues, writing only to briefly address the issue raised by Gayer.

Gayer was employed by Labor Finders of Broward County, Inc., a help supply services company that leased temporary workers to construction companies, paid the workers an hourly wage, and provided workers' compensation benefits. Labor Finders sent Gayer to help Fine Line Construction & Electric, Inc. renovate a store. Gayer fell from the ladder he was using to do his work. He landed on his head and sustained severe injuries that required hospitalization. Neither Fine Line nor Labor Finders was later able to locate the ladder from which Gayer fell.

Gayer eventually brought a spoliation of evidence claim regarding the lost ladder against both Fine Line and the Labor Finders defendants. The trial court granted summary judgment in favor of Fine Line and later granted summary judgment in favor of Labor Finders. This court

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<sup>1</sup> Labor Finders of Broward was a franchisee of Labor Finders International. L.F.I. Safety Management provided various insurance-related and risk prevention services.

reversed the final summary judgment in favor of Fine Line, holding that “a special employer using a laborer from a help supply services company has a duty under section 440.39(7), Florida Statutes, to preserve evidence for the injured laborer’s claim against a third-party tortfeasor.” *Gayer v. Fine Line Constr. & Elec., Inc.*, 970 So. 2d 424, 425 (Fla. 4th DCA 2007).

As for Labor Finders, it was undisputed that it never obtained possession of the ladder despite multiple attempts to do so. We hold that Labor Finders had no duty under section 440.39(7) to acquire and preserve evidence that was never in its possession. See *Barbosa v. Liberty Mut. Ins. Co.*, 617 So. 2d 1129, 1129-30 (Fla. 3d DCA 1993).

We affirm as to all issues raised on cross-appeal.

*Affirmed.*

TAYLOR, J., and LEVIN, STEVEN J., Associate Judge, concur.

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Appeal and cross-appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; David Krathen, Judge; L.T. Case No. 01-2158 CACE 03.

Adam Lawrence of Lawrence & Daniels, and Stabinski & Funt, P.A., Miami, for appellant.

Nancy H. Henry and Cristina Alonso of Carlton Fields, P.A., Miami, for appellees Labor Finders of Broward County, Inc., Labor Finders International, Inc., and L.F.I. Management Services, Inc.

***Not final until disposition of timely filed motion for rehearing***