

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

JERMAINE FRANCIS

NO. 2018 CW 1077
(PAGE 1 OF 2)

VERSUS

WHITE-SPUNNER CONSTRUCTION,
INC., PATRIOT CONSTRUCTION
AND EQUIPMENT, LLC, SAVARD
LABOR & MARINE, INC., DEXTER
ANDRE, JOHN DOE, CONTINENTAL
CASUALTY COMPANY, ABC
INSURANCE COMPANY

DECEMBER 14, 2018

In Re: Patriot Construction and Equipment, LLC, White-Spunner Construction, Inc., and Continental Casualty Company, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 656848.

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

WRIT GRANTED. Under our *de novo* review, we find that there are no material facts genuinely in dispute and that relators, White-Spunner Construction, Inc., Patriot Construction and Equipment, LLC, and Continental Casualty Company, are entitled to judgment as a matter of law. La. Code Civ. P. art. 966(A)(3). Relators established that both White-Spunner Construction, Inc. and Patriot Construction and Equipment, LLC entered into a contract with a third party; pursuant to their contracts, work was to be performed; and White-Spunner Construction, Inc. and Patriot Construction and Equipment, LLC entered into subcontracts for all or part of the work in order to fulfill their respective contractual obligations. Accordingly, relators carried their initial burden of proof and established that the "two-contract" theory set forth in La. R.S. 23:1061(A)(2) is applicable to this case and relators are entitled to be shielded from tort liability as statutory employers of plaintiff. **Allen v. State ex rel. Ernest N. Morial-New Orleans Exhibition Hall Auth.**, 2002-1072 (La. 4/9/03), 842 So.2d 373, 379, citing **Berry v. Holston Well Service, Inc.**, 488 So.2d 934, 936 n. 3 (La. 1986); **Beddingfield v. Standard Const. Co., Inc.**, 560 So.2d 490, 491-92 (La. App. 1st Cir. 1990); **Aetna Cas. & Sur. Co. v. Schwegmann Westside Expressway, Inc.**, 516 So.2d 412, 413 (La. App. 1st Cir. 1987). Plaintiff's opposition to relators' motion for summary judgment was not filed in conformity with La. Code Civ. P. art. 966(B)(2); however, the late-filed opposition did not establish that there were material facts in dispute or that relators were not entitled to judgment as a matter of law. Accordingly, the ruling of the trial court is reversed, and the Motion for Summary Judgment filed by White-Spunner Construction, Inc., Patriot Construction and Equipment, LLC, and Continental Casualty Company, which sought to dismiss plaintiff's claims against them, with prejudice, is granted. Therefore, all claims

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

NO. 2018 CW 1077
(PAGE 2 OF 2)

asserted by plaintiff in the Petition for Damages against White-Spunner Construction, Inc., Patriot Construction and Equipment, LLC, and Continental Casualty Company are hereby dismissed, with prejudice.

WRC
JTP

Welch, J., concurs in the result.

COURT OF APPEAL, FIRST CIRCUIT



DEPUTY CLERK OF COURT
FOR THE COURT