STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 1364

WALTER FEE

VERSUS

SOUTHERN PACKAGING, INC.

Consolidated With

2018 CA 1365

WALTER FEE

VERSUS

PINEVILLE FOREST PRODUCTS, INC.,
CAPITAL CITY INSURANCE CO.

Judgment Rendered: MAY 24 2019

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On Appeal from the
Office of Workers' Compensation, District 5
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Nos. 15-07015 c/w 15-07759

Honorable Pamela A. Moses-Laramore, Workers Compensation Judge Presiding

* * * * * *

Ted Williams Baton Rouge, Louisiana	Counsel for Plaintiff/Appellant and Appellee, Walter Willard Fee
Lindsay F. Louapre New Orleans, Louisiana	Counsel for Defendant/Appellant, Southern Packaging, Inc.
Jason E. Wilson Jessica P. Marsh Lafayette, Louisiana	Counsel for Defendants/Appellees, Pineville Forest Products, Inc. and Capital City Insurance Co.

* * * * * *

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

McCLENDON, J.

This matter is before us on consolidated appeals filed by plaintiff, Walter Fee, and defendant, Southern Packaging, Inc., from an April 25, 2018, judgment of the Office of Workers' Compensation ("OWC"). The workers' compensation judge ("WCJ") issued a judgment finding that defendant, Pineville Forest Products, Inc., was not Mr. Fee's statutory employer pursuant to LSA-R.S. 23:1061 A(2). Mr. Fee appeals this portion of the judgment. Conversely, the WCJ found that Southern Packaging, Inc., was Mr. Fee's statutory employer pursuant to LSA-R.S. 23:1061 A(2). Southern Packaging appeals this portion of the judgment. For the reasons set forth below, we affirm the portion of the judgment dismissing all claims against Pineville Forest and Capitol Insurance Co., reverse the portion of the judgment that held Southern Packaging was Mr. Fee's statutory employer at the time of the accident, and render judgment in favor of Southern Packaging and against Mr. Fee.

FACTS AND PROCEDURAL HISTORY

Mr. Fee was injured on May 2, 2007, while in the course and scope of employment with B & W Logging Company, LLC. Mr. Fee was struck in the head by a tree limb that allegedly resulted in permanent and disabling injuries to his head, brain, and neck. At the time of the accident, Mr. Fee was cutting and hauling timber to Southern Packaging's mill from a timber tract owed by the Pourciau family in New Roads, Louisiana.

Southern Packaging manufactures and sells wooden pallets and, in conjunction with these operations, buys timber or lumber from third parties. Southern Packaging entered into a timber deed with members of the Pourciau family in October 2006 wherein Southern Packaging purchased timber on the Pourciau tract for the sum of $50,000.00. Pursuant to the timber deed, Southern Packaging had the option to harvest the timber within two years; otherwise, the timber rights would revert back to the Pourciau family.

On the date of Mr. Fee's accident, B & W Logging had workers' compensation insurance through Timberman's Self Insurers' Fund. Timberman's accepted and paid medical and indemnity benefits arising from Mr. Fee's injuries from the date of the

accident until Timberman's "went bankrupt" on September 16, 2015. B & W Logging subsequently ceased doing business and was dissolved in December 2010.

In November 2015, Mr. Fee filed a Form 1008/Disputed Claim for Compensation with the OWC against Southern Packaging, asserting that Southern Packaging was his statutory employer at the time of the accident such that Southern Packaging was responsible for the payment of workers' compensation benefits. In December 2015, Mr. Fee filed a separate Form 1008/Disputed Claim for Compensation with the OWC, alleging that Pineville Forest was his statutory employer and, thus, responsible for the payment of his workers' compensation benefits.[1] Mr. Fee contends that Southern Packaging hired Pineville Forest, a timber dealer, to harvest the timber from the Pourciau tract and that Pineville Forest then subcontracted the work to B & W Logging.

The matter proceeded to trial on the merits before the WCJ on April 4, 2018. Prior to trial, the parties stipulated that: (1) Mr. Fee was injured in an accident in the course and scope of his employment as a logger for B & W Logging on May 2, 2007, on land owned by the Pourciau family in New Roads, Louisiana; (2) Mr. Fee's average weekly wage at the time was $750.00, providing the maximum compensation rate of $478.00; (3) on the date of the accident, B & W Logging had workers' compensation insurance through Timberman's, which accepted the claim and paid medical and indemnity benefits to Mr. Fee until it "went bankrupt" on September 16, 2015; and (4) no indemnity or medical benefits have been paid to Mr. Fee since that date. The issues to be resolved at trial were: (1) whether Southern Packaging and/or Pineville Forest were Mr. Fee's statutory employers; (2) the nature (causation) and extent of Mr. Fee's disability; and (3) whether any penalties or attorney's fees were owed to Mr. Fee, along with interest and costs. The parties further agreed that, if either Southern Packaging or Pineville Forest were found to be Mr. Fee's statutory employer, it would get the benefit of all payments made by Timberman's through September 16, 2015.

No witnesses were called to testify at trial; instead, the matter was submitted to the WCJ via depositions and documentary evidence. Thereafter, the WCJ ruled that

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[1] The claims against Southern Packaging and Pineville Forest were consolidated into docket no. 15-07015.

Southern Packaging was Mr. Fee's statutory employer pursuant to LSA-R.S. 23:1061 A(2), the "two contract theory." The WCJ concluded that Southern Packaging contracted with the Pourciau family, via a timber deed, to harvest timber on the Pourciau land, then contracted with B & W Logging, Mr. Fee's employer, to perform the work, thus satisfying the two contract requirement of LSA-R.S. 23:1061 A(2). Conversely, the WCJ found that Pineville Forest was not Mr. Fee's statutory employer but, instead, functioned only as a "middle man" to facilitate the movement of funds between Southern Packaging and Mr. Fee.

The WCJ further found Mr. Fee to be permanently and totally disabled as a result of injuries sustained in the May 2, 2007, accident. Southern Packaging was ordered to pay permanent and total disability benefits to Mr. Fee from September 17, 2015, to the present and continuing at the maximum weekly compensation rate of $478.00 with four percent judicial interest. Southern Packaging was further ordered to reimburse Mr. Fee's out-of-pocket medical expenses and costs in the amount of $270.22. The WCJ denied Mr. Fee's request for attorney's fees but awarded costs in his favor and against Southern Packaging.

A final judgment in accordance with the WCJ's oral reasons for ruling was signed on April 25, 2018. Mr. Fee and Southern Packaging appeal from this judgment.[2] Mr. Fee asserts that the WCJ erred in finding that Pineville Forest was not his statutory employer at the time of the May 2, 2007, accident. In its appeal, Southern Packaging argues that the WCJ erred by going outside the "four corners" of a contract of sale, *i.e.*, the timber deed, to find that an obligation to harvest trees existed and in concluding that this made the timber deed a contract to perform work. According to Southern Packaging, this determination resulted in an erroneous finding that it was Mr. Fee's statutory employer under the two contract theory set forth in LSA-R.S. 23:1061 A(2). No appeal has been taken to challenge the WCJ's finding that Mr. Fee is totally and

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[2] This matter was originally before this court in 2017 on an appeal filed by Mr. Fee, wherein he sought reversal of the WCJ's judgment that granted Pineville Forest's motion for summary judgment. See **Fee v. Pineville Forest Products, Inc.**, 17-0501 (La.App. 1 Cir. 11/1/17), 233 So.3d 649. On appeal, this court reversed the judgment, finding that genuine issues of material fact concerning whether Pineville Forest was Mr. Fee's statutory employer per LSA-R.S. 23:1061 A(2) precluded summary judgment. **Fee**, 233 So.3d at 655-656. On May 25, 2017, this court denied a writ, with one judge dissenting, filed by Southern Packaging which sought review and reversal of a judgment denying its motion for summary judgment on the issue of its status as Mr. Fee's statutory employer. See **Fee v. Southern Packaging, Inc**. 17-0251, 17-502 (La.App. 1 Cir. 5/25/17), 2017 WL 2295029 (unpublished writ action).

permanently disabled, the award of benefits or costs, or the denial of Mr. Fee's request for attorney's fees.

DISCUSSION

The ultimate determination of whether a principal is a statutory employer is a question of law for the court to decide. **Mitchell v. Southern Scrap Recycling, L.L.C.,** 11-2201 (La.App. 1 Cir. 6/8/12), 93 So.3d 754, 758, writ denied, 12-1502 (La. 10/12/12), 99 So.3d 47. When addressing legal issues, the appellate court gives no special weight to the findings of the WCJ, but exercises its constitutional duty to review questions of law *de novo,* after which it renders judgment on the record. **Louisiana Workers' Compensation Corp. v. Landry**, 11-1973 (La.App. 1 Cir. 5/2/12), 92 So.3d 1018, 1021, writ denied, 12-1179 (La. 9/14/12), 99 So.3d 34.

Conversely, the WCJ's factual findings are subject to the manifest error standard of review; therefore, in order for a reviewing court to reverse a WCJ's factual findings, it must find that a reasonable factual basis does not exist and the record establishes that the factual findings are clearly wrong. **Lafayette Bone & Joint Clinic v. Louisiana United Business SIF**, 15-2137, 15-2138 (La. 6/29/16), 194 So.3d 1112, 1123. In applying the manifest error-clearly wrong standard, the appellate court must determine whether the fact finder's conclusions are reasonable, not whether the trier of fact was right or wrong. **Guichard Operating Co., LLC v. Porche**, 15-1942, 15-1943 (La.App. 1 Cir. 1/5/17), 212 So.3d 701, 706. However, where one or more legal errors on the part of the WCJ interdicts the fact-finding process, and the record is otherwise complete, the reviewing court should make an independent *de novo* review of the evidence, giving no deference to the WCJ's factual findings, and render judgment. **Truitt v. Temp Staffers**, 04-0590 (La.App. 1 Cir. 4/6/05), 915 So.2d 786, 792-93, writ denied, 05-1162 (La. 6/24/05), 904 So.2d 742.

As the party asserting that a statutory employer relationship existed, Mr. Fee bore the burden of proof at trial.[3] See **Daigle v. McGee Backhoe & Dozer Service**, 08-1183 (La.App. 5 Cir. 4/28/09), 16 So.3d 4, 8, writ denied, 09-1372 (La. 10/2/09), 18

[3] Typically, the employer seeking to avail itself of tort immunity bears the burden of proving its entitlement to immunity. **Labranche v. Fatty's, LLC**, 10-0475 (La.App. 1 Cir. 10/29/10), 48 So.3d 1270, 1272.

So.3d 113, affirming the trial court's finding that the plaintiff failed to prove, by a preponderance of evidence, that the defendant was his statutory employer under the two contract theory.

The doctrine of "statutory employer" is codified in LSA-R.S. 23:1061. Specifically, LSA-R.S. 23:1061 A(1) provides that when a " 'principal'... undertakes to execute any work, which is a part of his trade, business, or occupation and contracts with any person, in this Section referred to as the 'contractor', for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal, as a statutory employer, ...shall be liable to pay to any employee employed in the execution of the work or to his dependent, any compensation under this Chapter which he would have been liable to pay if the employee had been immediately employed by him...." Under LSA-R.S. 23:1061 A(1), "work shall be considered part of the principal's trade, business, or occupation if it is an integral part of or essential to the ability of the principal to generate that individual principal's goods, products, or services." See also **Labranche v. Fatty's, LLC**, 10-0475 (La.App. 1 Cir. 10/29/10), 48 So.3d 1270, 1272-73.

The doctrine of statutory employer was amended in 1997 by La. Acts 1997, No. 315, § 1 to provide two bases for finding statutory employment: first, when the principal is in the middle of two contracts, referred to as the "two contract theory," see LSA-R.S. 23:1061 A(2); and second, when there is a written contract recognizing the principal as the statutory employer, see LSA-R.S. 23:1061 A(3). See also **Labranche**, 48 So.3d at 1272-73. In the instant case, there were no written contracts by and between Southern Packaging, Pineville Forest, or B & W Logging, Mr. Fee's immediate employer. Therefore, Mr. Fee acknowledges that the only way for Pineville Forest or Southern Packaging to be his statutory employer was under the two contract theory set forth in LSA–R.S. 23:1061 A(2).

Louisiana Revised Statute 23:1061 A(2) provides that "[a] statutory employer relationship shall exist whenever the services or work provided by the immediate employer is contemplated by or included in a contract between the principal and any person or entity other than the employee's immediate employer." The two contract

theory applies when: (1) the principal enters into a contract with a third party; (2) pursuant to that contract, work must be performed; and (3) in order for the principal to fulfill its contractual obligation to perform the work, the principal enters into a subcontract for all or part of the work performed. **Fee**, 233 So.3d at 652, citing **Allen v. State ex rel. Ernest N. Morial–New Orleans Exhibition Hall Authority**, 02-1072 (La. 4/9/03), 842 So.2d 373, 379. See also **LFI Fort Pierce, Inc. v. Acme Steel Buildings, Inc.**, 16-71 (La.App. 3 Cir. 8/17/16), 200 So.3d 939, 945, writ denied, 16-1684 (La. 11/29/16), 210 So.3d 804; **Daigle**, 16 So.3d at 4, 7. The two contract statutory employer status contemplates relationships among at least three entities: a general contractor who has been hired by a third party to perform a specific task; a subcontractor hired by that general contractor; and an employee of the subcontractor. **Grant v. Sneed**, 49,511 (La.App. 2 Cir. 11/19/14), 155 So.3d 61, 69. However, the two contract theory applies to all principals who contracted to perform the work in which the injured party is engaged at the time of injury, regardless of how far removed the principal is from the injured worker's direct employer. **Louisiana Workers' Compensation Corp. v. Genie Industries**, 00-2034, 00-2035 (La.App. 4 Cir. 11/7/01), 801 So.2d 1161, 1165.

Concerning Southern Packaging, Mr. Fee identified the two contracts as: (1) the timber deed between Southern Packaging and the Pourciau family and (2) the oral contract to harvest timber on the Pourciau land between Southern Packaging and Pineville Forest. According to Mr. Fee, Pineville Forest then hired B & W Logging to perform the work; therefore, he identified the two contracts relevant to Pineville Forest's status as his statutory employer as (1) Southern Packaging's oral contract with Pineville Forest and (2) Pineville Forest's oral agreement with B & W Logging.

Pineville Forest

Mr. Fee testified that Pineville Forest, through its owner David Andrus,[4] served as the timber dealer on the Southern Packaging job. He testified that, as a logging company, B & W Logging was required to use a timber dealer to work with sawmills,

[4] During their depositions, Mr. and Ms. Fee identified David Andrus as "Dave Andrews." It is unclear whether the Fees incorrectly stated Mr. Andrus's last name or whether this was an error in the transcriptions; however, it is undisputed that Pineville Forest was owned/operated by David Andrus at the relevant time and that the Fees' testimony concerning "Dave Andrews" refers to David Andrus.

such as Southern Packaging. Mr. Fee explained that, although B & W Logging had its own workers' compensation and liability insurance, timber dealers also provided insurance coverage.

According to Mr. Fee, sometime shortly before his May 2007 accident, Mr. Andrus advised him to call Southern Packaging because it may have logging work to be done. Mr. Fee contacted Southern Packaging who confirmed that it had work because it had "just bought a tract." Mr. Fee testified that he had to get the "okay" from Pineville Forest to begin work for Southern Packaging and that the "deal" was made between Southern Packaging and Pineville Forest. According to Mr. Fee, this was "Pineville Forest Products' job" and he was "moving the timber for" Pineville Forest. Similarly, Ms. Barbara Fee, Mr. Fee's wife and the owner of B & W Logging, testified that Mr. Andrus contacted Mr. Fee concerning the job with Southern Packaging. According to Ms. Fee, B & W Logging had worked with Pineville Forest on numerous prior occasions and, as customary, B & W Logging was paid by Pineville Forest, the company that retrained B & W Logging to do the work.

Conversely, Southern Packaging and Pineville Forest maintain that Southern Packaging contracted directly with B & W Logging to harvest the timber on the Pourciau tract and that Pineville Forest was involved solely for the purpose of paying Mr. Fee on a more expedited basis than was Southern Packaging's standard practice. Mr. Kenneth Tuminello co-owned Southern Packaging in 2007 and testified that, once Southern Packaging decided to harvest the timber on the Pourciau tract, it needed to hire a logger. Mr. Tuminello could not recall specifically how B & W Logging became involved, but he testified that either the logger, Mr. Fee, called him, asking if Southern had a job, or he called Mr. Fee. Mr. Tuminello entered a verbal agreement with B & W Logging for Mr. Fee to cut and haul the timber on the Pourciau tract at a certain price per ton.

Pursuant to Southern Packaging's usual procedure, all wood deliveries made by Friday were paid the following Friday. Prior to beginning the Pourciau job, Mr. Fee asked Mr. Tuminello if he would agree to pay B & W Logging through Pineville Forest. Mr. Tuminello confirmed that, to the best of his knowledge, Mr. Fee's interest in being paid on an expedited basis, *i.e.*, the same week as the deliveries, was the motivation

behind his arrangement with Pineville Forest. Southern Packaging verbally confirmed the arrangement with Pineville Forest; no written agreements were perfected, and Southern Packaging was not involved in the specifics of the payment arrangement between Pineville Forest and Mr. Fee.

Per their agreement, Mr. Fee submitted load reports to Pineville Forest showing the daily volume of timber delivered to Southern Packaging. B & W Logging was paid by Pineville Forest based on the tonnage reflected on Southern Packaging's delivery tickets and pursuant to the terms of their agreement. Pineville Forest was then paid by Southern Packaging.

Mr. Andrus testified that Mr. Fee/B & W Logging arranged the job with Southern Packaging. He disagreed with the Fees' testimony that Pineville Forest had any involvement in the job other than facilitating expedited payment to B & W Logging. According to Mr. Andrus, Mr. Fee performed logging work for Pineville Forest in early 2007. Shortly after the job was complete, Mr. Fee told Mr. Andrus that he had arranged a job with Southern Packaging but, due to cash flow issues, he needed to be paid on the Friday of the week the work was performed. Mr. Fee asked Mr. Andrus if Pineville Forest would agree to pay him directly and on a weekly basis and, in turn, Southern Packaging would pay Pineville Forest. In exchange, Mr. Fee offered to allow Pineville Forest to earn a small margin of profit, $0.75 per ton, on the job. Because Pineville Forest had no obligation to monitor the work and did not have to commit time and resources to the job, Mr. Andrus agreed to Mr. Fee's proposal, earning only a minimal profit.

Both Mr. Andrus and Mr. Tuminello disagreed with Mr. Fee's testimony that Southern Packaging required B & W Logging to work through a timber dealer. Mr. Tuminello testified that Southern Packaging required either the dealer or the logger to have liability and workers' compensation insurance coverage but did not otherwise require a dealer's involvement. Mr. Tuminello could not recall whether Pineville Forest or B & W Logging provided a certificate of insurance for the Pourciau job, but Mr. Andrus testified that Pineville Forest did not supply insurance coverage to B & W Logging.

The WCJ relied on the testimony of Mr. Andrus and Mr. Tuminello, finding it clear and unambiguous, to conclude that "Pineville Forest Products was simply a middle man for purposes of supplying Mr. Fee with the ability to pay his crew and himself on a weekly basis." Citing their testimony, the WCJ found that Pineville Forest's sole duty was to serve as a financier or banker to facilitate the movement of funds between Southern Packaging and B & W Logging. The WCJ declined to accept Mr. and Ms. Fee's testimony, noting that Ms. Fee did not know details regarding "who talked to who about what."[5] We also note that the WCJ found that Mr. Fee sustained a traumatic brain injury in the subject work accident. Shortly thereafter, Mr. Fee began showing signs of dementia, and his condition and cognitive function have steadily declined since May 2007. During Mr. Fee's deposition, it was evident that he had difficulty remembering details, and he expressed frustration with his inability to recall historical events.

On appeal, Mr. Fee argues that the WCJ erred by relying on the testimony of Mr. Andrus and Mr. Tuminello in light of, not only the Fees' testimony, but also the documentary evidence which establishes that Southern Packaging contracted with Pineville Forest to harvest the timber on the Pourciau tract.

To support this argument, Mr. Fee cites Mr. Tuminello's affidavit dated March 10, 2016, wherein he attested that Southern Packaging had a verbal agreement with Pineville Forest to harvest timber, that Southern Packaging paid Pineville Forest directly "for the harvest of these logs," and did not contract with or employ Mr. Fee or B & W Logging for the logging job on the Pourciau tract. To the extent Mr. Tuminello's testimony provided during his September 2016 deposition contradicted his affidavit, the WCJ was required to evaluate Mr. Tuminello's credibility and to weigh evidence. We cannot say that the WCJ's choice to credit Mr. Tuminello's deposition testimony, which

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[5] In response to Mr. Fee's appeal, Pineville Forest argues that Mr. Fee failed to prove the existence of an oral contract between Pineville Forest and Southern Packaging, because neither Mr. Fee nor Ms. Fee had personal knowledge of the alleged agreement between Pineville Forest and Southern Packaging. We agree. Louisiana Civil Code art. 1846 provides,

> When a writing is not required by law, a contract not reduced to writing, for a price or, in the absence of a price, for a value not in excess of five hundred dollars may be proved by competent evidence.
>
> If the price or value is in excess of five hundred dollars, the contract must be proved by at least one witness and other corroborating circumstances.

Therefore, for this additional reason, we affirm the judgment as it relates to Pineville Forest and Capital City Insurance Co.

was supported by Mr. Andrus's testimony, was manifestly erroneous or clearly wrong. Where there are two permissible views of the evidence, a fact finder's choice between them can never be manifestly erroneous or clearly wrong. **Guichard**, 212 So.3d at 706.

Mr. Fee further notes that Southern Packaging provided B & W Logging's drivers with delivery tickets for each timber delivery made to its mill and those tickets identify Pineville Forest as the supplier of the timber. Southern Packaging's transaction and vendor reports for the Pourciau job reflect only payments made to Pineville Forest. Pineville Forest's check register indicates that it paid B & W Logging and issued an IRS form 1099 to B & W Logging for the wages paid on this job. Conversely, no such forms were issued to B & W Logging by Southern Packaging. Mr. Fee argues that this evidence contradicts the WCJ's finding that no contractual relationship existed between Southern Packaging and Pineville Forest. We disagree. This evidence merely confirms the testimony from all witnesses that Southern Packaging paid Pineville Forest for the work performed by Mr. Fee. The *reason* Southern Packaging paid Pineville Forest is the issue in dispute, and as discussed, the WCJ was not clearly wrong in accepting the explanation provided by Mr. Andrus and Mr. Tuminello.

After reviewing the record in its entirety, we find no error in the WCJ's finding that Pineville Forest was not Mr. Fee's statutory employer. This portion of the judgment is affirmed.

Southern Packaging

The WCJ concluded that the two contract theory was satisfied, such that Southern Packaging was Mr. Fee's statutory employer, because the trees purchased by Southern Packaging from the Pourciau family must be harvested pursuant to the timber deed (contract no. 1) and because Southern Packaging then contracted with B & W Logging to perform that service (contract no. 2). The WCJ set forth the following factual conclusions in its oral reasons for ruling:

> ...[T]hey [Southern Packaging] take their logs wherever they come, but they do go out and make contracts with landowners to harvest their trees, but they are not in the business of harvesting trees. They then contract with loggers to harvest the trees. If they didn't harvest the trees, they'd go out of business. If they didn't harvest the trees that they contracted to, they'd go out of business. They could not afford to lose the money. So, to me, it is absolutely the intent of the contract that the trees be

> harvested; therefore, it definitely fits within [the] two-contract theory that the trees with regard to Southern Packaging must be harvested. Southern Packaging contracted with B&W to perform that service; therefore, Southern Packaging does stand as the principal, having subcontracted work that must be done for them to continue to be in business, to the employer in this business, B & W Logging..."

In its appeal, Southern Packaging argues that the WCJ erred, as a matter of law, by going outside the four corners of the timber deed to determine the intent of the parties when the contract clearly and unambiguously does not require Southern Packaging to harvest timber.

"Interpretation of a contract is the determination of the common intent of the parties." LSA-C.C. art. 2045. Parol or extrinsic evidence is generally inadmissible to vary the terms of a written contract unless the written expression of the common intention of the parties is ambiguous. **Campbell v. Melton**, 01-2578 (La. 5/14/02), 817 So.2d 69, 75. The determination of whether a contract is clear or ambiguous is a question of law. **Sims v. Mulhearn Funeral Home, Inc.**, 07-0054 (La. 5/22/07), 956 So.2d 583, 590. A contract is considered ambiguous on the issue of intent when either it lacks a provision bearing on that issue, its terms are susceptible to more than one interpretation, there is uncertainty or ambiguity as to its provisions, or the intent of the parties cannot be ascertained from the language employed. **Campbell**, 817 So.2d at 75.

When a contract can be construed from the four corners of the instrument without looking to extrinsic evidence, the question of contractual interpretation is answered as a matter of law. **Sims**, 956 So.2d at 590. The reasonable intention of the parties to a contract is to be sought by examining the words of the contract itself, and not assumed. **Prejean v. Guillory**, 10-0740 (La. 7/2/10), 38 So.3d 274, 279. Common intent is determined, therefore, in accordance with the general, ordinary, plain and popular meaning of the words used in the contract. **Prejean**, 38 So.3d at 279. "When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent." LSA-C.C. art. 2046. Accordingly, when a clause in a contract is clear and unambiguous, the letter of that clause should not be disregarded under the pretext of pursuing its

spirit, as it is not the duty of the courts to bend the meaning of the words of a contract into harmony with a supposed reasonable intention of the parties. **Prejean**, 38 So.3d at 279.

Southern Packaging argues that the WCJ disregarded the clear and explicit words of the timber deed and relied upon selective portions of Mr. Tuminello's deposition to reach her decision that the true intent of the deed was for timber to be harvested. We agree and find, as a matter of law, that the timber deed is clear and unambiguous. Therefore, the WCJ legally erred by disregarding its terms in search of what it believed was the true intent of the parties.

The contract at issue is dated October 3, 2006, is titled "TIMBER DEED," and was perfected by members of the Pourciau family, as vendors, and Southern Packaging, as purchaser. The timber deed reflects that Southern Packaging purchased certain trees, identified in the document, on two tracts of land, also identified in the document, owned by the vendors, for the lump sum of $50,000.00. The timber deed further provides:

> This sale is made for and in consideration of the following additional provisions, viz:
>
> 1. Purchaser shall have until September 15, 2008 within which to harvest and remove the timber herein purchased from the property, after which date title to all timber then remaining on the property shall ispo facto revert to and become the property of the owners of the surface thereof...
>
> * * * *
>
> 4. Purchaser shall not be obligated to cut or remove any particular quantity or kinds of timber or to carry on its operations at any particular time or times within the terms hereof, or in any particular manner. Purchaser may leave on the property such of the marked timber or parts thereof as it does not desire to take but shall remove any timber which it fells.

The WCJ acknowledged the clear wording of the contract but, nevertheless, went beyond the four corners of the agreement and based its ruling on what it concluded was Southern Packaging's financial motivation for harvesting the timber:

> Ms. Louapre [counsel for Southern Packaging] is correct that the contract does not say that they must remove these trees by a particular deadline, period. That's not what the contract says. The contract does say, however, that if you don't harvest the trees by this deadline, you lose your money. You lose the money that you paid to harvest the trees. Southern

> Packaging would lose the $50,000 that they had the set timeframe to harvest the trees [sic].

In response to Southern Packaging's appeal, Mr. Fee does not directly address paragraph 4 of the timber deed which expressly relieves Southern Packaging of any obligation to perform work. Instead, Mr. Fee cites extrinsic evidence to argue that Southern Packaging intended to harvest the timber it purchased from the Pourciau family. He argues that, "in these types of contracts there is an inherent obligation on the part of the buyer of the timber to cut and remove the standing timber within the time specified in the contract."[6] This argument lacks merit and ignores codified and well-settled rules of contract interpretation. See LSA-C.C. art. 2045 and art. 2046; see also **Prejean**, 38 So.3d at 279.

Upon our *de novo* review of the timber deed, we find that Southern Packaging was not required to harvest timber. Mr. Fee failed to produce evidence that Southern Packaging contracted to perform work, which it then subcontracted with his direct employer, B & W Logging, to perform.

The purpose behind the two contract theory is to establish a compensation obligation on the part of the principal *who contractually obligates itself to a party for the performance of work* and who then subcontracts with intermediaries whose employees perform any part of that work. **Thomas v. State, Department of Transportation & Development**, 27,203 (La.App. 2 Cir. 10/12/95), 662 So.2d 788, 792, judgment reinstated, 27,203 (La.App. 2 Cir. 1/31/97), 688 So.2d 697, writ denied, 97-0745 (La. 5/1/97), 693 So.2d 736. This purpose is not furthered under the facts of the present case, where the alleged principal did not contractually obligate itself to

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[6] We find the cases cited by Mr. Fee, **Martin Timber Co., Inc. v. Pegues**, 30,361 (La.App. 2 Cir. 7/6/98), 715 So.2d 728, writ denied, 98-2124 (La. 12/11/98), 729 So.2d 590 (whether the trial court properly exercised judicial control to afford the lessee additional time to cut and remove specified timber pursuant to a timber agreement which was both a lease and a sale); **Crowell & Spencer Lumber Co. v. Burns**, 191 La. 733, 186 So. 85 (1939) (recognizing that, at the expiration of the time specified in the timber deed, the rights to the timber revert to the vendor if the vendee failed to exercise its right to cut the timber; vendee cannot convey to subsequent vendee any longer period in which to remove the timber than it acquired from the original vendor); **St. Louis Cypress Co. v. Thibodaux**, 120 La. 834, 45 So. 742 (1908) (on rehearing) (holding that title to timber which has been cut, but not removed from the land, within the stipulated time reverted to the landowner pursuant to the contract of sale), to be distinguishable as none involve the issue presently before the court, *i.e.*, whether a timber deed, which provides the purchaser the right to cut timber within a certain period of time but does not obligate it to do so, is sufficient to satisfy the requirements of the two contract theory as established by LSA-R.S. 23:1061 and relevant jurisprudence as well as LSA-R.S. 23:1032 A(2), defining "principal."

perform work. Jurisprudence analyzing the proper application of the two contract theory supports this conclusion.

In **Insurance Company of North America v. Gaylord Container Corp.**, 99-0904, 99-0905 (La.App. 1 Cir. 6/23/00), 764 So.2d 1214, this court concluded that a contract that required only the payment of a specified price did not satisfy the two contract theory. There, the plaintiff, Murphy LaBauve, was employed by V.B. Fairley and, at the time he was injured, was delivering pulpwood to Gaylord Container Corporation, a timber mill, on behalf of Whitfield Timber Company, a timber dealer. **Gaylord**, 764 So.2d at 1217. The trial court concluded that a two contract statutory employer relationship existed between Gaylord and LaBauve pursuant to LSA-R.S. 23:1061.[7] **Gaylord**, 764 So.2d at 1215. This court reversed, noting that the agreement between Whitfield and Gaylord was limited to the price that Gaylord agreed to pay for deliveries received from Whitfield. **Gaylord**, 764 So.2d at 1217. The court continued:

> The lack of any obligation by Whitfield to sell to Gaylord or to perform a specific service in favor of Gaylord, negates the possibility that Fairley's employee was a statutory employee of Gaylord. Moreover, although Gaylord appears to have customarily bought any pulp wood [sic] that was delivered by its various dealers, there has been no demonstration that it was under any legal obligation to do so.

Gaylord, 764 So.2d at 1218.

For the same reason, the two contract theory was not satisfied in **Beaver v. ExxonMobil Corp.**, 361 F. Supp.2d 565 (M.D. La. 2005). In **Beaver**, ExxonMobil entered into a contract with Fluor Daniel to modify ExxonMobil's refinery. **Beaver**, 361 F.Supp.2d at 566. Fluor Daniel, in turn, subcontracted with J.E. Merit Construction Company, plaintiff's employer, to provide services required under its contract with ExxonMobil. **Beaver**, 361 F.Supp.2d at 566. ExxonMobil argued that it was the plaintiff's statutory employer under the two contract theory established by LSA-R.S. 23:1061. **Beaver**, 361 F. Supp. 2d at 566. The federal court disagreed and found that

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[7] Mr. LaBauve's accident occurred prior to the 1997 amendment to LSA-R.S. 23:1061, see La. Acts 1997, No. 315, § 1; therefore, the analysis was governed by the prior version of the relevant statute. However, we find the analysis and holding in **Gaylord** to be relevant and applicable to the present case. Both before and after the 1997 amendment, LSA-R.S. 23:1061 has been interpreted to require a showing that the alleged principal contracted to perform work and in order to fulfill its contractual obligation to perform the work, the principal entered into a subcontract for all or part of the work performed. See **Beddingfield v. Standard Construction Co.**, 560 So.2d 490, 491-92 (La.App. 1 Cir. 1990); **Fee**, 233 So.3d at 652; **Allen**, 842 So.2d at 379.

ExxonMobil did not satisfy the requirements of the two contract theory as set forth by the Louisiana Supreme Court in **Allen**, 842 So.2d 377. **Beaver**, 361 F.Supp.2d at 567-8. Like Southern Packaging, ExxonMobil was not required to perform work in order to fulfill its contractual obligations and did not subcontract any work it was to perform. **Beaver**, 361 F.Supp.2d at 568. Instead, ExxonMobil's only obligation was to pay Fluor Daniel for services rendered. **Beaver**, 361 F.Supp.2d at 568.

Here, Southern Packaging and the Pourciau family agreed to the purchase price of the timber. It was arguably in Southern Packaging's best interest to reap the return on its investment by harvesting the timber on the Pourciau land prior to the expiration of the term set forth in the timber deed. Further, Mr. Tuminello could not recall a prior instance where Southern Packaging purchased standing timber but did not harvest it.[8] Nevertheless, the timber deed clearly and unambiguously gave Southern Packaging only the *right* to harvest timber. It did not impose an *obligation* upon Southern Packaging to perform work, a requirement necessary to establish a statutory employer relationship pursuant to the two contract theory. See LSA-R.S. 23:1061 A(2); LSA-R.S. 23:1032 A(2); **Allen**, 842 So.2d at 379. Considering this, we find that Southern Packaging was not Mr. Fee's statutory employer. We reverse the portion of the WCJ's judgment against Southern Packaging and render judgment in favor of Southern Packaging and against Mr. Fee.

CONCLUSION

For the foregoing reasons, the portion of the April 25, 2018, judgment holding that Pineville Forest Products, Inc., is not Walter Fee's statutory employer pursuant to LSA-R.S. 23:1061 is affirmed. We reverse the April 25, 2018, judgment insofar as it holds that Southern Packaging, Inc. was Mr. Fee's statutory employer and render judgment in favor of Southern Packaging, Inc. and against Walter Fee.

All costs of this appeal shall be paid equally by the parties, with one-third to be paid by Walter Fee, one-third to be paid by Southern Packaging, Inc., and one-third to be paid by Pineville Forrest Products, Inc. and Capital Insurance Co.

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[8] Mr. Tuminello estimated that five percent of the lumber used in Southern Packaging's business comes from standing timber it purchases from landowners. Mr. Tuminello estimated that Southern Packaging has purchased standing timber on less than ten occasions.

AFFIRMED IN PART, REVERSED IN PART, AND RENDERED.