

JOE DANNY PEREZ

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NO. 2013-CA-0712

VERSUS

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COURT OF APPEAL

TASCH, LLC

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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LEDET, J., CONCURS WITH REASONS

A finding of statutory employment can be made based on either of the following grounds: “first, being a principal in the middle of two contracts, referred to as the ‘two contract theory,’ *see* La. R.S. 23:1061(A)(2); or, second, the existence of a written contract recognizing the principal as the statutory employer, *see* La. R.S. 23:1061(A)(3).” *Daigle v. McGee Backhoe and Dozer Service*, 08-1183, p. 5 (La. App. 5 Cir. 4/28/09), 16 So.3d 4, 7. Pursuant to La. R.S. 23:1061(A)(2), 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.” *Allen v. State ex rel. Ernest N. Morial-New Orleans Exhibition Hall Authority*, 02-1072, p. 8 (La. 4/9/03), 842 So.2d 373, 379. The “two contract theory” thus contemplates no less than a three-party relationship: “a general contractor [or principal] 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.” *Dugan v. Waste Management, Inc.*, 45,407, p. 6 (La. App. 2 Cir. 6/23/10), 41 So.3d 1263, 1267.

All three elements of the “two contract theory” are present in this case. Tasch, LLC, the principal, entered into a contract with a third party, Ikon Construction, to renovate an existing school building. The record reflects that Tasch had no employees of its own. In order to fulfill its contract, which required construction work (including manual labor), Tasch entered into a subcontract with an intermediary—Doug Gamso. Mr. Gamso agreed to perform part of the construction work—pressure washing and water proofing of the school. Mr. Gamso employed Mr. Perez on this job. As a result, Mr. Perez is a statutory employee of Tasch.

In sum, the three-party relationship in this case that establishes the applicability of the “two contract theory” is as follows: (i) Tasch, the principal (general contractor); (ii) Mr. Gamso, the subcontractor; and (iii) Mr. Perez, the employee of the subcontractor.

For these reasons, I agree with the majority’s conclusion that the “two contract theory,” codified in La. R.S. 23:1061(A)(2), applies and concurs in the result.