

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CVS 037520-590

LENNAR CAROLINAS, LLC.

Petitioner,

v.

COMMISSIONER OF LABOR OF THE  
STATE OF NORTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of November, 2024, I served a copy of the attached Amended Order entered on November 15, 2024 on all parties to this action by email and U.S. Mail:

NC Occupational Safety & Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699  
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The Honorable Laura Wetsch  
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FILED  
DATE: November 15, 2024  
TIME: 2:06:20 PM  
MECKLENBURG COUNTY  
CLERK OF SUPERIOR COURT  
BY: R. Smith

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**[PROPOSED] AMENDED ORDER  
FOLLOWING JUDICIAL REVIEW**

(OSHANC 2019-6131)

**FILED**

NOV 21 2024

NC Occupational Safety & Health  
Review Commission

The Court, having considered the record on appeal, the briefs, and the arguments of counsel during the hearing on appeal, hereby issues the following Order granting the Petition for Judicial Review filed by Petitioner Lennar Carolinas, LLC (“Petitioner”) against Commissioner of Labor of the State of North Carolina (“Respondent”).

This matter came before the Court following the timely Petition for Review filed by Petitioner seeking Judicial Review of the November 3, 2023, Order of the North Carolina Occupational Safety and Health Review Commission (“Review Commission”) pursuant to N.C.G.S. § 95-141 and §150B-43 *et seq.* The Review Commission affirmed the April 7, 2022, Order of Hearing Examiner Laura Wetsch finding that Petitioner committed a serious violation of 29 CFR § 1926.501(b)(13) for which Petitioner was assessed a penalty of \$7,000.00.

As an appellate court reviewing an agency’s final decision, this Court makes its decision based on the whole record on the findings of fact and *de novo* on the conclusions

of law of the Review Commission. *Harris v. N.C. Dep't of Pub. Safety*, 252 N.C. App. 94, 102 (2017).

Respondent has the burden of proof to establish all elements of the alleged violations by Petitioner of the standard cited in the Citation.

In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the Commissioner to prove each element of the contested citation by the greater weight of the evidence.

Rule .0514(a) of the Rules of Procedure of the NCOSH Review Commission.

Applying the above standards of review to the record in this matter, the Court makes the following findings and conclusions pursuant to N.C. Gen. Stat. §§ 95-141 and 150B-51.

On multi-employer worksites, general contractors are liable only for those violations that they could reasonably have been expected to prevent or abate by reason of their overall supervisory role on the construction site. *Commissioner of Labor v. Weekley Homes L.P.*, 169 N.C. App. 17, 28, 609 S.E.2d 407, 415, rev. denied, 359 N.C. 629, 616 S.E.2d 227 (2005).

We hold that a general contractor's duty under N.C. Gen.Stat. § 95-129(2), requiring that “[e]ach employer shall comply with occupational safety and health standards or regulations,” extends to employees of subcontractors on job sites. However, as stated in *Romeo Guest*, the duty is a reasonable duty and the general contractor is only liable for violations that its subcontractor may create if it could reasonably have been expected to detect the violation by inspecting the job site. *Romeo Guest*, OSHANC 96-3513, Slip Op.

*Commissioner of Labor v. Weekley Homes, L.P.*, 169 N.C. App. 17, 28 609 S.E.2d 407 (2005). The *Romeo Guest* decision of the NCOSH Review Commission, cited with the approval by the Court of Appeals, stated:

[A general contractor] is responsible only for those hazards that it could reasonably have detected because of its supervisory capacity. The general contractor is required to make reasonable efforts to anticipate hazards to a subcontractor's employees and reasonable efforts to inspect the jobsite to detect violations that its subcontractors may create.

*Commissioner of Labor v. Romeo Guest Associates, Inc., OSHANC 96-3513, Slip Op. at 6-7, (RB 1998)* (emphasis in the original).

Applying the above principles to this case, the issue in this case is whether Petitioner had actual or constructive knowledge that the employees of two subcontractors were not using fall protection measures during the time period at issue. Petitioner has a comprehensive safety policy that includes frequent inspections. Petitioner was not the employer of the workers whose conduct is at issue.

At issue is whether the two Construction Managers of Petitioner during the time period at issue saw or reasonably could have seen that the workers of subcontractors were not using required fall protection measures while working at that time on the houses on Lots 11 and 103 of Petitioner's Rea Farms subdivision. The time period at issue is the time leading up to the beginning of the interaction between Petitioner's two Construction Managers and the Compliance Safety and Health Officer on April 4, 2019.

During the time period at issue, Petitioner's two Construction Managers were in the process of making their second inspection of the day, right after lunch, of the construction activity at the Rea Farms subdivision. They were located at the intersection of Cornhill Avenue and Wheat Ridge Road. They were headed in the direction of Lots 11 and 103, but their progress in proceeding with their afternoon inspection was temporarily delayed while they attended to two matters requiring their attention, one involving another subcontractor

