

STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23CVS 06400-590

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 7, 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  
ncoshrc@oshrc.labor.nc.gov

The Honorable Laura Wetsch  
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STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

LENNAR CAROLINAS, LLC.

PETITIONER, BY: R. Lawson

v.

COMMISSIONER OF LABOR OF THE  
STATE OF NORTH CAROLINA,

RESPONDENT.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILED 23 CVS 006400-590  
DATE: November 7, 2024  
TIME: 2:43:02 PM  
MECKLENBURG COUNTY  
CLERK OF SUPERIOR COURT

**AMENDED ORDER  
FOLLOWING JUDICIAL REVIEW**

**(OSHANC 2020-6219)**

**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 March 8, 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 March 29, 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 a subcontractor 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 Petitioner's two Construction Manager Trainees of Petitioner during the time period at issue saw or reasonably could have seen that the workers of a subcontractor were not using required fall protection measures while working at that time on the house on Lot 1119 of Petitioner's Millbridge subdivision. The time period at issue is the time leading up to the beginning of the interaction between Petitioner's two Construction Manager Trainees and the Compliance Safety and Health Officer on June 17, 2019.

During the time period at issue, one of the two Construction Manager Trainees drove on Lily Pond Circle past the house under construction on Lot 1119, with the other Construction Manager Trainee in the passenger seat of the vehicle.

The two Construction Manager Trainees had reported to the Millbridge Subdivision that morning for their first assignment in the field. They were assigned the task of checking the final "punch list" repairs in homes to see if the homes were ready for delivery to the new

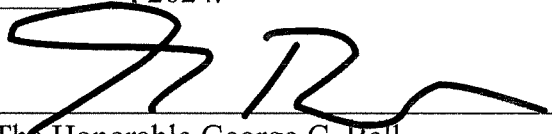
home buyers. They had completed checking their first house and were en route to their second house. The driver of the vehicle was reasonably paying attention to the conditions in the street and the passenger in the vehicle was reasonably looking at her smart phone to study the list of items that they were assigned to check at the second house. It was therefore reasonable that they did not notice the construction activity of the workers at the house under construction on Lot 1119 as they drove past.

Considering the record as a whole, Respondent failed to fulfill its burden of proof that the employees of Petitioner could reasonably see while driving past Lot 1119 that the workers of the subcontractor were not using fall protection measures while working at that time.

IT IS THEREFORE ORDERED, <sup>11/7/2024 9:59:38 AM</sup>ADJUDGED, and DECREED that the Order of the Review Commission is reversed, and the Citation issued to Respondent is vacated.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

11/7/2024

  
\_\_\_\_\_  
The Honorable George C. Bell  
Superior Court Judge Presiding,  
Mecklenburg County