

**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**

**COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA,**)

COMPLAINANT,)

v.)

MAPLE LEAF CONSTRUCTION, INC.,)
and its successors,)
RESPONDENT.)

ORDER

OSHANC NO.: 2024-6618
INSPECTION NO.'s: 318267515
CSHO ID: S0054

FILED

MAR 28 2025

NC OSH Review Commission

THIS MATTER came on for a virtual recorded hearing and was heard remotely before the undersigned on March 4, 2025. The Complainant, Commissioner of Labor of the State of North Carolina, hereafter referred to as Complainant or Commissioner, was represented by Stacey A. Phipps, Special Deputy Attorney General, North Carolina Department of Labor. Respondent, Maple Leaf Construction, Inc., hereafter referred to as Respondent, Company or Maple Leaf, was represented by Todd A. Jones. Complainant’s witnesses were Compliance Safety and Health Officer, Lynn Stephenson, and Vice President and co-owner of Maple Leaf Construction, Inc., Bruce Beaulieu. Respondent’s witness was Project Manager, Sebastian Flores.

ISSUES PRESENTED

- I. Whether Complainant proved that the citation against Maple Leaf Construction, Inc. was correctly issued for failing to take reasonable steps to see that its subcontractor used appropriate fall protection on the second floor of a residential construction site.
- II. Whether isolated employee misconduct should excuse the citation in the case.

SAFETY STANDARD AND/OR STATUTE AT ISSUE

29 CFR 1926.501(b)(13) provides as follows:

“Each employee engaged in residential construction activities 6feet (1.8 m) or more above lower levels was not protected by guardrail systems, safety net system, or personal fall arrest system, nor was the employee provided with an alternative fall protection measure under another provision of paragraph 1926.501(b)”

FINDINGS OF FACT

- 1. Complainant is an agency of the State of North Carolina charged with the administration and enforcement of the Occupational Safety and Health Act of North Carolina, N.C. Gen. Stat. §95-126, *et seq.*, hereafter the “Act.” Complainant makes inspections and issues

citations and other pleadings and brings this action pursuant to N.C.Gen. Stat. §95-133, *et seq.*

2. Respondent is a domestic corporation that maintains a place of business in Pittsboro, North Carolina as a framing contractor in the residential construction business.
3. Respondent was a first tier subcontractor to Pulte Home Company, LLC dba Pulte Homes.
4. Respondent hired a second tier subcontractor, Cortes Spartans Framing, LLC, to do framing work.
5. On June 9, 2023, an employee of Cortes Spartans Framing, LLC suffered fatal injuries when he fell from a window opening on the second floor and landed on concrete.
6. The accident was timely reported by the general contractor, Pulte Homes.
7. During the period between June 10, 2023, and August 30, 2023, Compliance Safety and Health Officer Lynn Stephenson, employed by the North Carolina Department of Labor, inspected Respondent's worksite located at 380 Glen Clovis Drive, Raleigh, Wake County, North Carolina, hereafter referred to as "the site."
8. On June 10, 2023, CSHO Stephenson presented credentials to Respondent and initiated an inspection.
9. The CSHO properly entered onto the site and properly conducted the inspection pursuant to the fatality report.
10. Bruce Beaulieu, co-owner of Respondent, consented to the inspection and accompanied CSHO Stephenson during the walk-around portion of the inspection.
11. Following the inspection, on December 7, 2023, Complainant issued one SERIOUS citation to Respondent with one item, carrying the following proposed abatement date and penalty:

Citation/Item No.	Regulation Violated	Abatement Date	Penalty
1/001	29 CFR 1926.501(b)(13)	Corrected during inspection	\$4,687.50

12. This case was initiated by a timely Notice of Contest dated January 29, 2024. The Notice was received by Complainant with a request for formal pleadings.
13. A complaint and answer were timely filed.
14. On the morning of June 9, 2023, between approximately 8:30 and 9:00, Respondent's Project Manager, Sebastian Flores, visited the site where Cortes Spartans Framing, LLC was working. His purpose for visiting the site was oversight of the work being done which routinely included ensuring safety rules were being followed.
15. Flores found the crew on the site and observed that there was no flooring on the second story.
16. Generally, safety rails don't go up until flooring has been put down.

17. Flores saw there were some walls up on the second floor, but he saw no workers on the second floor. Because of what he observed, he reminded “everyone” to put up the safety rails. He noted the “guys were pretty good at it,” as they had been working with Respondent for a long time.
18. Flores had on one occasion sent the crew home for a disciplinary purpose, but found the Cortes Spartans crew to be reliable. No details for the disciplinary action were brought out at hearing.
19. Flores chose to rely on his oral warning about the safety rails.
20. No witnesses to the fall of the employee, Ricardo Castillo, were identified.
21. The height from which Mr. Castillo fell was approximately 10 feet, 6 inches.
22. The CSHO found that regular and frequent inspections were being done by Flores and noted that the employees confirmed this fact.
23. Upon cross examination, CSHO Stephenson conceded that she was “on the fence” as if she had a choice between recommending a non-serious citation vs a serious citation.
24. CSHO Stephenson thought she had no choice in the type of citation she recommended because the unprotected fall was for a height greater than six feet.

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
2. Pursuant to N.C. Gen. Stat. §95-135, the North Carolina Occupational Safety and Health Review Commission has jurisdiction over the parties to this action and its subject matter.
3. General contractors “shall comply with occupational safety and health standards or regulations” and this duty “extends to the employees of subcontractors on job sites,” but “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.” *N.C. Comm’r of Labor v. Weekley Homes, L.P.*, 169 N.C. App. 17, *rev. denied*, 359 N.C. 629 (2005).

DISCUSSION

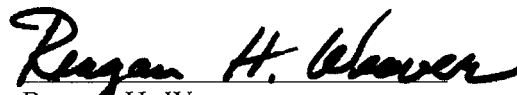
One of the holdings from the *N.C. Comm’r of Labor v. Weekley Homes, L.P.* case speaks to the facts of this case directly. As noted in that decision, the duty of the general contractor to detect a violation of the OSHA standards by its subcontractor is limited to circumstances where the general contractor could reasonably have been expected to detect the violation of a standard by inspecting the site. In this case, Maple Leaf Construction is in the position of a general contractor that hired the Cortes Spartans subcontractor to do the framing on a particular site. Maple Leaf’s Project Manager, Sebastian Flores, visited the site on the same day as the accident occurred and told the crew members to put up the safety rails after he saw there were some walls up. The crew had worked with Maple Leaf for a “long time” and had a good record of performing reliably. While Flores thought he remembered one instance when the crew may have been sent home for a

mistake that needed to be fixed, the date and nature of the instance was not explored at the hearing. The question is whether the action taken by Flores meets the standard established by the *Weekley Homes* decision. At hearing, Complainant seemed to suggest that Flores should have waited for the crew to install the safety railings before leaving. Given the reputation that Cortes Spartans had, despite one infraction that was not explained, Maple Leaf was reasonable in its expectation that the crew would install the railings. Hindsight would suggest that if Flores had waited for the crew to install the flooring, which would have been required first, then the railings second, then Mr. Castillo would probably have not fallen. Hindsight is not the standard by which reasonableness should be evaluated the question under *Weekley Homes* is whether Maple Leaf could have detected the violation with an inspection. In fact, the hazard *was* detected. The action taken on discovery of the hazard was reasonable and Flores' reliance on his instruction being followed was reasonable. As Respondent argued, they should not be required to do more than they did.

Finding the conduct of Maple Leaf to have been reasonable obviates the need to address the second issue of employee misconduct.

WHEREFORE, the Citation against the Respondent is dismissed, including the penalty imposed.

This the 28 day of March, 2025.



Reagan H. Weaver
Hearing Examiner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER upon:

TODD A. JONES
ANDERSON JONES, PLLC
PO BOX 20248
RALEIGH, NC 27619

By depositing a copy of the same in the United States Mail, by certified mail, return receipt requested, postage prepaid at Raleigh, North Carolina, and upon:

STACEY A. PHIPPS
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602


By depositing a copy of the same in the United States Mail, first class, postage prepaid at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101

via email.

THIS THE 2 DAY OF April 2025.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
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