

The Supreme Court of the State of Louisiana

DANIEL HARRIS

No.2021-C-00084

VS.

BOH BROS. CONSTRUCTION CO., L.L.C.
AND ABC INSURANCE COMPANY

IN RE: Boh Bros. Construction Co., L.L.C. - Applicant Defendant; Applying For
Writ Of Certiorari, Parish of Orleans Civil, Orleans Civil District Court Number(s)
2017-03303, Court of Appeal, Fourth Circuit, Number(s) 2020-CA-0248;

March 16, 2021

Writ application granted. See per curiam.

WJC

JLW

JDH

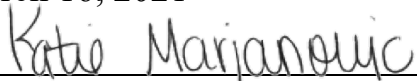
SJC

JBM

Genovese, J., would deny and assigns reasons.
Griffin, J., dissents.

Supreme Court of Louisiana

March 16, 2021



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2021-C-00084

DANIEL HARRIS

VERSUS

BOH BROS. CONSTRUCTION CO., LLC, ET AL.

**APPLYING FOR SUPERVISORY WRIT TO
THE FOURTH CIRCUIT COURT OF APPEAL**



PER CURIAM

WRIT GRANTED. Defendant, Boh Bros., contracted with the United States Army Corps of Engineers to build a concrete canal under Louisiana Avenue as part of a flood control project in uptown New Orleans. The contract required a three foot steel wall surround the culvert to protect against falls. Boh Bros installed a 42 inch steel wall, exceeding the minimum requirement. In addition, a six foot chain-linked fence surrounded the entire site. Plaintiff, Daniel Harris, is completely blind. On the night of his accident, he somehow ended up inside the fenced-in construction site at the bottom of the culvert. He cannot recall how he ended up inside the construction site, and there are no witnesses to testify how his fall occurred. He filed suit against Boh Bros., who claims government contractor immunity.

To qualify for this immunity, a party must meet the requirements set forth by the U.S. Supreme Court in *Boyle v. United Techs. Corp.*, 487 U.S. 500, 512 (1988). This requires the government approve reasonably precise specifications, the contractor's work conform to those specifications, and the contractor warn the government of any dangers known to the contractor, but not to the government. *Id.*

Applying these factors, the trial court found immunity and granted summary judgment. The contract contained precise specifications approved by the Army

Corps of Engineers. This included detailed specifications regarding the installation of a retaining wall surrounding the culvert and the installation of a safety fence around the construction site. Defendant presented evidence that it conformed to required specifications. The construction site was surrounded by a six foot chain-link fence and the culvert was surrounded by a 42 inch retaining wall on all sides. Testimony from the project manager confirmed the project met contractual specifications. The Army Corp of Engineers also maintained a presence at the project and evaluated the site to assure compliance. Finally, the government knew of the risk of construction activities.

The court of appeal reversed, finding defendant failed to meet the first requirement of *Boyle*—that the government approve reasonably precise specifications. Specifically the court pointed to defendant’s failure to submit a copy of the plans and specifications approved by the Army Corps of Engineers. However, a filing before the trial court indicated the “Plaintiff does not dispute the first prong of the Affirmative Defense of Governmental Contractor Immunity applies. Thus, there is no need to discuss that issue as clearly the government approved the specifications.”

An admission by a party in a judicial proceeding is a judicial confession and is full proof against the party making it. La. Civ. Code art. 1853; *C.T. Traina, Inc. v. Sunshine Plaza, Inc.*, 2003-1003, (La.12/3/03), 861 So.2d 156, 159. This admission “has the effect of waiving evidence as to the subject of the admission—of withdrawing the subject matter of the confession from issue.” *Cichirillo v. Avondale Indus., Inc.*, 2004-2894, (La. 11/29/05), 917 So.2d 424, 429 (citing *Cheatham v. City of New Orleans*, 378 So.2d 369, 375 (La. 1979)). Plaintiff’s admission removed the first requirement of *Boyle* from issue. The court of appeal erred in denying defendant immunity on this ground.

After erroneously analyzing the first element, the court of appeal expressly pretermitted consideration of the remaining elements. Therefore, we remand to the court of appeal to complete its review of defendant's government contractor immunity claim.