

**Fifth Circuit Court of Appeal
State of Louisiana**

No. 26-C-103

DOUGLAS DANTON, ET AL.

versus

ENTERGY LOUISIANA, LLC, ET AL.

IN RE HEARST PLAZA CONDOMINIUMS ASSOCIATION AND STATE FARM FIRE & CASUALTY COMPANY
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE RAYMOND S. STEIB, JR., DIVISION "A", No. 828-694

TRUE COPY

April 22, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Marc E. Johnson,
Scott U. Schlegel, and Timothy S. Marcel

WRIT DENIED

In this case arising from a fatal accident in which a man was electrocuted to death after touching an overhead power line while operating an aerial lift, defendants Hearst Plaza Condominium Association, CMMM Investments, LLC, and State Farm Fire & Casualty Company seek supervisory review of the trial court's partial denial of their motion for summary judgment. Upon *de novo* review of the application before us, on the showing made, we agree with the trial court that genuine issues of material fact preclude granting the motion for summary judgment in favor of defendants Hearst Plaza and State Farm at this time.

To the extent relators argue that Louisiana law, including the Overhead Power Line Safety Act, does not afford plaintiffs a remedy even under the facts as alleged in their petition, such arguments are best considered under the peremptory exception of no cause of action. *Am. Rebel Arms, L.L.C. v. New Orleans Hamburger & Seafood Co.*, 15-599, p. 4 (La. App. 5 Cir. 2/24/16), 186 So.3d 1220, 1222. While La. C.C.P. art. 927 authorizes this Court to raise such an exception on its own motion, we decline to do so *sua sponte* at this time. Relators have adequate remedies in the trial court. Accordingly, this writ is declined.

Gretna, Louisiana, this 22nd day of April, 2026.

TSM
MEJ

**Fifth Circuit Court of Appeal
State of Louisiana**

NO. 26-C-103

DOUGLAS DANTON, ET AL.

versus

ENTERGY LOUISIANA, LLC, ET AL.

SCHLEGEL, J., DISSENTS WITH REASONS

I respectfully dissent.

Relator/defendant, Hearst Plaza Condominiums Association (“Hearst”), managed the common areas of the office condominium building. Hearst contracted with Bull Frogg Waterproofing, LLC (“BFW”) to apply waterproofing sealant to the building. Plaintiff Douglas Danton was a principal of BFW, while plaintiff Gabriel Danton was an employee of BFW.

Negligence

BFW was an independent contractor of Hearst and assumed full responsibility for the waterproofing work. As a general rule, neither the owner nor the general contractor is liable for the negligence of an independent contractor who performs work for the owner or general contractor. *Darce v. Roberts*, 13-917 (La. App. 5 Cir. 5/14/14), 142 So.3d 173, 175. The most important factor to consider in deciding whether an independent contractor or an employer-employee relationship exists is the right of the employer to control and supervise the work of the individual. *Rosales v. American Liberty Ins. Co.*, 23-49 (La. App. 5 Cir. 10/31/23), 374 So.3d 203, 208-09.

Here, the record does not show that defendants retained or exercised control over the manner and means of the waterproofing work performed. The employees of BFW chose, rented, and operated the aerial lift and determined how the work would be performed. Hearst did not direct the equipment selection, its use near the power line, or direct when or how the work would be performed. As evidenced throughout the petition, plaintiffs initiated the instant suit with full acknowledgment of the contract between BFW and Hearst and did not question its enforceability. In opposition to the motion for summary judgment though, plaintiffs attempt to manufacture issues of fact related to the contract and argue that there were disputes related to implementation and control. However, it is well settled that a party who signs a written instrument is presumed to know its contents and cannot avoid its obligations by contending that he did not read it, that he did not understand it, or that the other party failed to explain it to him. *Aguillard v. Auction Mgmt. Corp.*, 04-2804 (La. 6/29/05), 908 So.2d 1, 17. Thus, plaintiffs' assertions that genuine issues of material fact exist with respect to the contract are unavailing. Hearst has shown that there are no genuine issues of material fact as to whether BFW was an independent contractor of Hearst.

Exception of No Cause of Action

I also disagree with the majority's suggestion that defendant's argument as to plaintiffs' lack of a remedy under the Overhead Power Line Safety Act, La. R.S. 45:141–146 ("OPLSA") is best addressed under the peremptory exception of no cause of action. In this case, the petition did not make any allegations under the OPLSA. Plaintiffs asserted claims for negligence and only raised the OPLSA in response to defendant's motion for summary judgment in an effort to establish a duty and create a genuine issue of material fact. Specifically, plaintiffs argued that there were genuine issues of material fact as to who had the

responsibility for notifying Entergy to either de-energize the power lines or insulate the power lines under the OPLSA. It is therefore appropriate to address the plaintiffs' claims under the OPLSA in ruling upon the motion for summary judgment under the particular facts of this case.

The OPLSA

The OPLSA does not create a tort duty running from property owners to independent contractors or their employees. Instead, the OPLSA creates a statutory cause of action solely for the benefit of the owner or operator of the overhead line (e.g., Entergy) to recover its own damages, including indemnity and costs, from those who violate the Act. *See* La. R.S. 45:144(A); *Moreno v. Entergy Corp.*, 12-097 (La. 12/4/12), 105 So.3d 40, 49 (“Instead, because subsection (C) of La. R.S. 45:144 erases an immunity raised against personal injury claims, we are constrained to find that the cause of action described in subsection (A) (the cause of action being against ‘the person violating this Chapter,’ *i.e.*, the OPLSA) is a cause of action applicable to personal injury claims brought against an electrical utility company.”)

Thus, any duty imposed by the OPLSA relates to damages suffered by Entergy, not personal injury damages claimed by plaintiffs. If Entergy had sued, genuine issues of material fact could exist regarding apportionment of fault among responsible parties. But only as to Entergy's damages. Entergy, however, is no longer a party in this case as plaintiffs' claims against it have been dismissed on summary judgment.

Plaintiffs' reliance upon *Bonck v Entergy Louisiana, LLC, et al.*, 20-398 (La. App. 5 Cir. 12/15/2020) (unpublished writ disposition), is misplaced. First, the denial of a writ application has no precedential value for any purpose and does not bar reconsideration of the same issue. *Cole v. St. Joseph of Harahan, L.L.C.*, 24-148 (La. App. 5 Cir. 8/7/24), 398 So.3d 109, 113. But more

importantly, the *Bonck* writ disposition is distinguishable as it addressed liability and fault allocation in the context of damages to the line owner and operator (Entergy). Using the OPLSA to create a duty between plaintiffs and defendants improperly expands the statute beyond legislative intent.

Thus, I respectfully dissent and would grant the motion for summary judgment.

SUS

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **04/22/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-103

E-NOTIFIED

24th Judicial District Court (Clerk)
Hon. Raymond S. Steib, Jr. (DISTRICT JUDGE)
Leonard L. Levenson (Respondent)

Jared A. Davidson (Relator)
Brinley A. Rhys (Relator)
Christian W. Helmke (Respondent)

MAILED

Jason D. Bone (Relator)
Attorney at Law
1555 Poydras Street
Suite 2000
New Orleans, LA 70112

David R. Paddison (Respondent)
Attorney at Law
600 Covington Center
Covington, LA 70433

Donna R. Barrios (Respondent)
Attorney at Law
650 Poydras Street
Suite 2750
New Orleans, LA 70130

Zachary D. Howser (Respondent)
Attorney at Law
755 Magazine
New Orleans, LA 70130

Kelly E. Theard (Respondent)
Attorney at Law
755 Magazine Street
New Orleans, LA 70130