IN THE SUPREME COURT OF GUAM

EDWIN A. VILLALON, ROSALINA VILLALON and PACIFIC INDEMNITY INSURANCE COMPANY,
Plaintiffs-Appellants

vs.

HAWAIIAN ROCK PRODUCTS, INC. and NATIONAL UNION FIRE INSURANCE COMPANY of PITTSBURGH, PA.,
Defendants-Appellees

Supreme Court Case No. CVA00-015
Superior Court Case No.CV0578-98

OPINION

Filed: February 28, 2001

Cite as: 2001 Guam 5

Appeal from the Superior Court of Guam
Argued and submitted on October 26, 2000
Hagåtña, Guam

Appearing for the Plaintiff-Appellant:
Seth Forman, Esq.
Law Offices of Keogh and Forman
Ste. 105, C & A Prof. Bldg.
251 Martyr St.
Hagåtña, Guam 96932

Appearing for the Defendants-Appellees:
John B. Maher, Esq.
Michael D. Flynn, Jr., Esq.
McKEOWN VERNIER PRICE MAHER
Ste. 808, GCIC Bldg.
414 W. Soledad Ave.
Hagåtña, Guam 96910

BEFORE: BENJAMIN J. F. CRUZ, Chief Justice, PETER C. SIGUENZA, JR., Associate Justice, and JOHN A. MANGLONA, Designated Justice

SIGUENZA, J.:

[1] The Plaintiffs herein, Edwin and Rosalina Villalon, appeal from a judgment of dismissal of their personal injury action after the Superior Court of Guam granted the Defendants' Motion for Summary Judgment. We conclude that the lower court erred in finding that defendant, Hawaiian Rock Products, was the statutory employer of the Plaintiff and that, as a matter of law, their only remedies lay exclusively with the Guam Worker's Compensation Act. We therefore reverse and remand.

I- BACKGROUND

[2] Hawaiian Rock Products, Inc. (hereinafter "Hawaiian Rock") operates a ready-mix concrete, asphalt, and limestone crushing business at its leased premises. Reliable Equipment Corporation (hereinafter "Reliable") is in the business of leasing cranes and providing operators and other support for its heavy equipment. At all relevant times, Edwin Villalon (hereinafter "Villalon") was an employee of Reliable.

[3] Sometime in mid-September 1997, Hawaiian Rock was conducting repairs of one of its crushing plants. The repairs involved the replacement of frames and vibrating screens, and the re-attachment of a conveyor belt to the conveyor. Hawaiian Rock leased a crane from Reliable. It was to be used to move equipment and material. Reliable provided the crane, an operator and Villalon, who was tasked to assist the crane operator. On September 30, 1997, while working at Hawaiian Rock's leased premises, Villalon was injured when a rope broke and struck his arm.

[4] On March 5, 1998, Villalon and his wife filed a Complaint in the Superior Court of Guam against Hawaiian Rock alleging liability in negligence for personal injuries sustained and for the loss of consortium. On November 13, 1998, Pacific Indemnity Insurance Company (hereinafter "Pacific Indemnity") filed a Complaint in Intervention premised upon its status as the carrier of the worker's compensation insurance policy issued to Reliable and its consequent entitlement to reimbursement for worker's compensation benefits paid to Villalon. On September 29, 1999, Villalon's Complaint was amended to include National Union Fire Insurance Company of Pittsburgh, Pennsylvania (hereinafter "National Union") as a named Defendant. National Union is the general liability insurance carrier for Hawaiian Rock.

[5] On August 8, 1999, Hawaiian Rock filed a Motion for Summary Judgment and Motion to Dismiss which was heard before the trial court on January 5, 2000. In its Decision and Order of March 28, 2000, the court granted Hawaiian Rock's motion to dismiss. The court held that, pursuant to Guam's Worker's Compensation Act, Hawaiian Rock was the statutory employer of Villalon and that his recovery was restricted to the remedies provided under that statute.

[6] On May 12, 2000, Pacific Indemnity, Hawaiian Rock and National Union stipulated to the dismissal, without prejudice, of Pacific Indemnity's claim for reimbursement from Hawaiian Rock or National Union. Villalon timely filed his Notice of Appeal.

II- JURISDICTION AND STANDARD OF REVIEW

[7] Jurisdiction of this court is not in dispute and is found pursuant to Title 7 Guam Code Annotated sections 3107 and 3108(a) (1994). A grant of summary judgment is reviewed *de novo*. *Guam v. Marfega Trading Co.*, 1998 Guam 4, ¶ 9*; Kim v. Hong*, 1997 Guam 11, ¶ 5; *Iizuka Corp. v. Kawasho Int'l*,

Inc., 1997 Guam 10, ¶ 7. Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact . . . ." Guam R. Civ. P. 56(c) (1995). There is a genuine issue if there is "'sufficient evidence' which establishes a factual dispute requiring resolution by a fact-finder." *Iizuka*, 1997 Guam 10 at ¶ 7. However, the dispute must be as to a "material fact." *Id*. "A 'material' fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. . . Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." *Id.* (citation omitted).

[8] If the movant can demonstrate that there are no genuine issues of material fact, the non-movant cannot merely rely on allegations contained in the complaint, but must produce at least some significant probative evidence tending to support the complaint. *Id*. at ¶8. (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2510 (1986)). In addition, the court must view the evidence and draw inferences in the light most favorable to the non-movant. *Id.* (citation omitted).

[9] The parties dispute the interpretation of particular provisions of the Worker's Compensation Act. Thus, this court reviews issues of statutory interpretation *de novo*. *People v. Quichocho*, 1997 Guam 13, ¶ 3.

III- DISCUSSION

[10] Chapter 9 of Title 22 of the Guam Code Annotated contains the provisions of Guam law with respect to Worker's Compensation. *See* Title 22 GCA § 9101 *et seq*. (1996). It provides for the payment of compensation, in the case of death or disability of an employee, but only if the disability or death results from an injury sustained while engaged in industrial employment or public employment or both as

defined in the statute. *See* Title 22 GCA § 9104(a) (1996). The statute further provides that every employer shall be liable for and shall secure payment to his employees of the compensation payable under the Act. *See* Title 22 GCA § 9105 (a) (1996). Moreover, compensation is payable irrespective of fault as to the cause of the injury. *See* Title 22 GCA § 9105(b) (1996). If the employer has obtained the coverage prescribed by the statute then the liability of the employer for compensation is exclusive and in place of all other liability of such employer to the employee. *See* Title 22 GCA § 9106 (1996).

[11] The parties frame the issue around the characterization of Hawaiian Rock as the "statutory employer" of Villalon pursuant to statute. The particular provision provides, in relevant part:

> **§ 9103. Definitions**.
>
> (j) *Employer*. This term, unless otherwise stated, includes any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer. It includes the owner or lessee of premises, or other person who is in fact the proprietor, or operator of the business carried on there but who by reason of there being an independent contractor, or for any other reason, is not the direct employer of the workmen there employed. If the employer is insured it includes his insurer as far as applicable.

Title 22 GCA § 9103(j) (1996).

[12] Hawaiian Rock contends that the plain language of the statute conclusively indicates that it is Villalon's employer. Essentially, the argument is that Hawaiian Rock was Villalon's statutory employer because Hawaiian Rock was the lessee of premises and was in fact the operator of the business carried on there but who, by reason of there being an independent contractor, was not the direct employer of Villalon. This is the same logic and approach the lower court took in deciding on the motion. The lower court held that general principles of statutory construction and Guam's prior case authority justified its conclusion that it was the legislative intent to include all "employers" irrespective of the purpose of the employment relationship. Villalon counters that under the various tests that courts generally apply to

determine whether statutory employer status is conferred, the exclusive liability afforded by the Worker's Compensation Act does not inure to Hawaiian Rock's benefit. He argues that he was no more involved in the manufacture or production of rock products, Hawaiian Rock's regular business, than when a farmer hires a contractor to construct a barn. Hawaiian Rock responds that the broad coverage and interpretation of the worker's compensation act given by the courts of Guam obviates the need to delve into the type of work done, the type of business involved and so forth. We, however, decline to view this jurisdiction's prior authority as Hawaiian Rock does.

[13] Section 9103(j)'s definition of employer is the same as its precursor, Section 37002(j) of the Government Code. That provision was at issue in the case of *Siguenza v. Guam Greyhound, Inc.*, CV0779-83 (Super. Ct. Guam Sept. 30, 1986). There, Guam Greyhound had contracted with Bundy for the repair and painting of portions of the interior of the building owned by Guam Greyhound. Bundy was to supply the labor and some of the equipment for the work. Bundy hired a foreman and four or five other workers, including the plaintiff. The plaintiff was on a scaffold supplied by Guam Greyhound approximately 30 feet above the ground. The scaffold tipped over and plaintiff suffered serious injuries from the fall.

[14] The court found that Guam Greyhound was the owner of the premises on which the accident took place, that it had operated its business as a race track on that property, and that by reason of an independent contractor it was not the plaintiff's direct employer. *Siguenza*, CV0779-85 (Super. Ct. Guam Sept. 30, 1986) at 4. It reasoned that a plain reading of the statute indicated that Guam Greyhound was the statutory employer of the plaintiff. *Id.*

//

//

[15] In reaching this result, the court declined to rely on Idaho case authority as controlling but rather viewed it as persuasive on the issue; however, it demonstrated that its interpretation was supported by the interpretation of the similar Idaho law. *Id.* at 4-5. The court broadly compared the facts of *Beedy v. Washington Water Power Co.*, 238 F.2d 123 (9th Cir. 1956) with the facts before it and concluded that in both cases a plaintiff was employed by an independent contractor to provide repair and maintenance work on property owned by the defendant. *Id.* It further observed that under Idaho law, repair and maintenance work constituted part of the regular business of the property owner. *Id.* Thus, the *Siguenza* court similarly concluded that the plaintiff was the statutory employee of the defendant. *Id.*

[16] In the case of *Friley v. Kalin*, CV0883-91 (Super. Ct. Guam Jan. 25, 1994), the plaintiff had been hired to perform services as a singer and dancer at a show at the Sandcastle, a Las Vegas style revue. She was injured when another entertainer's black leopard bit her leg. She subsequently brought suit against the Sandcastle, the leopard's owner, and various insurance companies. The issue was whether the plaintiff's remedy lay exclusively under the worker's compensation law or whether she could maintain the civil action against the defendants. *Id.* at 3-4. The court determined that a plain reading of the worker's compensation statute indicated that the Guam Legislature intended it to reach beyond common law direct employees and cover independent contractors as well. *Id.* at 5. It noted that the Appellate Division of the District Court of Guam had taken the same expansive view of the employer-employee relationship. *Id.* at 5-6. (citing *Shim v. Vert Constr. Co., et al*, Civil Case No. 91-00019A (D. Guam App. Div. Nov. 18, 1988), *Shin Hyon-Su v. Maeda Pacific Corp. et al*, Civil Case No. 87-00063A (D. Guam, App. Div., June 8, 1988) and *Mendiola v. Kyowa Shipping Co., Ltd.*, Civil Case No. 83-0001 (D. Guam App. Div., July 16, 1984)). The court then held that the fact that the plaintiff was an independent contractor made no difference in the outcome. *Id.* at 6-7. It reasoned that the plaintiff was "under contract of service" to perform for the

benefit of Sandcastle and that Sandcastle was the "operator of the business carried on there." *Id.* (citing to Gov't Code 37002(i) and (j), the definitions of "employee" and "employer", respectively). Thus, the Sandcastle was the statutory employer of the plaintiff. *Id.*

[17] In another case involving the Sandcastle, a performer was performing when she slipped on water that had collected on the stage from a special effects prop and sustained injuries. She filed a complaint against the Sand Castle and its insurer claiming negligence. *Frieze v. Sandcastle et al.*, CV0139-94 (Super. Ct. Guam Aug. 1, 1994). One of the issues was whether the plaintiff was entitled to relief outside of the worker's compensation law as an independent contractor. *Id.* at 3.

[18] The court began by noting that the general rule, for purposes of worker's compensation, was that independent contractors are not included within the meaning of the term "employee absent any provision requiring such an inclusion. *Id.* (citing 82 Am. Jur. 2d *Worker's Compensation* § 165 (1992)). It found, however, that certain provisions in Guam's law include independent contractors in the definition of "employee" for the purpose of worker's compensation. First, the court cited to section 37002(i) of the Government Code which defined an employee as "any person who has a entered into the employment of or works under contract for service or apprenticeship with an employer" and concluded that the code made even independent contractors statutory employees and limited recovery for injuries sustained on the job to worker's compensation. *Id.* (emphasis in original). Additionally, the court found that the definition of employer includes "the owner or lessee of premises, or other person who is in fact the proprietor, or operator of the business carried on there but who, by reason of there being an independent contractor, or for any other reason, is not the direct employer of the workmen there employed." *Id.* at 3-4 (citing to Guam Gov't Code § 37002(j))(emphasis in original)). Thus, it held that the law was clear and that worker's compensation was the only available remedy to the plaintiff. *Id.* at 4,7.

[19] Hawaiian Rock was previously involved in a case where it sought to impute statutory employer status upon another. *Angelo v. Hawaiian Rock Products*, CV0174-93 (Super. Ct. Guam Apr. 29, 1994). In that case, Hawaiian Rock delivered to the work site ready-mixed cement for use by the contractor and subcontractor there for the construction of a storage building. *Id.* at 1. Plaintiffs were employees of the subcontractor. While the cement was being poured, a boom attached to Hawaiian Rock's truck struck the plaintiffs causing injury. Hawaiian Rock filed a motion for summary judgment alleging that the plaintiffs' cause of action against it was barred pursuant to the Guam Workmen's Compensation Act. Hawaiian Rock argued that the general contractor was its and the Plaintiffs' statutory employer. *Id.* at 2. Plaintiffs argued that Hawaiian Rock was merely delivering cement to a purchaser, the general contractor, and that the use of Hawaiian Rock's pump truck and operator was necessary to accomplish the delivery and complete the sale for cement. *Id.* The court framed the issue as whether the general contractor was the statutory employer of Hawaiian Rock and proceeded to examine Guam Government Code Section 37002(j). *Id.* at 4. The court noted:

> Although a plain reading of the statute would indicate that the Guam legislator [sic] intended the word "employer" to be interpreted broadly, it is generally accepted that a contractor is not the statutory employer of employees of material suppliers who deliver materials to the work site. 1C A. Larson, The Law of Workmen's Compensation, § 49.16(h) at 9-100 (1993). "The compensation act does not apply where the transaction between the immediate employer and the person sought to be held liable as his employer is that of purchase and sale, . . ." 99 C.J.S. Workmen's Compensation § 107 (1958). "The rule stated is subject to the exception that when the contract to sell is accompanied by an undertaking by either party to render substantial services in connection with the goods sold, that party is a contractor within the meaning of the statute." *Bendure v. Great Lakes Pipe Line Company*, 433 P. 2d 558, 564 (1967).

Id. (internal quotations and citations in original).

[20] The court held that Hawaiian Rock did not render substantial services in connection with the delivery of the cement and that it was not a statutory employee of the general contractor under the Guam

Workmen's Compensation Act. *Id.* at 6. There was no contract, written or oral, delineating the relationship between Hawaiian Rock and the general contractor. However, Hawaiian Rock submitted a document labelled "equipment rental" to establish the existence of a statutory employer-employee relationship. *Id.* at 5. It was contended that that document established that Hawaiian Rock was hired by the general contractor to pour concrete at the construction site and that the general contractor was to be charged an hourly rate for the rental of the pump truck and the pump truck operator. *Id.* Hawaiian Rock alleged that the case did not merely involve a delivery of cement but rather a more intricate process which was undertaken by Hawaiian Rock requiring it to render substantial services in the construction project. *Id.* The court rejected Hawaiian Rock's arguments and found that no contract existed to support Hawaiian Rock's contention that its relationship with the general contractor was more than that of a purchaser and seller involving the delivery of the product. *Id.* Among the facts relied upon by the court was that it was undisputed that the subcontractor provided the labor on the project and the cement was poured into trenches with partial forms constructed by the plaintiffs and other employees of the subcontractor. *Id.* at 5-6. The subcontractor's employees spread and levelled the cement after it was poured into the forms, and Hawaiian Rock was not involved in the finishing of the concrete nor the removal of the forms after it had set. *Id.* The fact that delivery required the use of a pump truck and seventy five foot boom did not warrant a finding of substantial services rendered when compared with the fact that Hawaiian Rock had only spent a total of three hours on the project which included travel time to and from the work site. *Id.* Additionally, the heavy equipment and the experienced pump truck operator were necessary to facilitate the delivery of cement and that the sole responsibility of Hawaiian Rock was to deliver the cement and pour it where the foreman directed. *Id.* The assessment of these facts led the court to conclude that Hawaiian Rock did not render substantial services in connection with the delivery to justify an inference that Hawaiian Rock was

the statutory employee of the general contractor. *Id.*

[21] Consistent with earlier Guam cases as we have outlined them above, it has been held that "the statutory definition of employer is an expanded definition 'designed to prevent an employer from avoiding liability under the workmen's compensation statutes by subcontracting the work to others who may be irresponsible and not insure their employees.'" *Harpole v. State*, 958 P. 2d 594, 597 (Idaho 1998) (citations omitted). That is, it "creates a statutory relationship of employer and employee, where no such relationship existed at common law." *King v. Snide*, 479 A. 2d 752, 754 (Vt. 1984). But it has generally been held that in order to find a person a statutory employer, the work being carried out by the independent contractor on the owner's or proprietor's premises must be of the type that could have been carried out by employees of the owner or proprietor in the course of his usual trade or business. *Id.* at 754-755 (citing 1C A. Larson, Workmen's Compensation Law § 49:12). Thus, an important inquiry is:

> Whether the work contracted for by the owner or proprietor with the independent contractor is a part of, or process in, the trade, business or occupation of the owner or proprietor must be decided on a case by case basis. Due consideration must be given to the customary practice of the owner or proprietor in carrying on his usual business and to the terms of the contract between the employee and the independent contractor.

Id. (citing to 99 C.J.S. Workmen's Compensation § 109b(1)).

//

//

[22] We recognize that prior Guam decisions may have tended to indicate that the status of an injured person as an independent contractor is irrelevant in the context of Guam's worker's compensation law. *See e.g.*, *Friley*, CV0883-91 (Super. Ct. Guam Jan. 25, 1994); *Frieze*, CV0139-94 (Super. Ct. Guam Aug. 1, 1994). But to read these cases and to construe the statute as such would be to ignore the purposes and intent of worker's compensation and the circumstances of its appropriate application.

[23] Both of the cases above relied on the statutory definition of "employee" as provided in Guam Government Code § 37002(i).[1] Specifically, the language that provides that "any person who has entered into the employment of or works *under contract of service* or apprenticeship with an employer." *See Friley*, CV0883-91 (Super. Ct. Guam Jan. 25, 1994) at 6; *Frieze*, CV0139-94 (Super. Ct. Guam Aug. 1, 1994) at 3. However, within the statutory definition of employee there is a significant *caveat* that the term "employee" excludes a person whose employment is "purely casual, and not for the purposes of the employer's trade or business . . . ." *See* 22 GCA § 9103(i). A plain reading of that provision is that a person who may be under contract for services is an employee ***except*** if his employment is casual ***and*** not for the for the purpose of the employer's trade or business.

[24] To construe and apply the statutory employer definition contained in 22 GCA § 9103(j) irrespective of the purpose of the employment would be to render meaningless other provisions of the

[1] That section provides:

> (i) Employee. This term, as used herein, is synonymous with worker, and means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer. It includes aquacultural and agricultural workers but excludes a person whose employment is purely casual and not, for the purpose of the employer's trade or business. As used herein the term employee includes any person who has worked forty (40) hours per week during the previous sixty (60) days, exclusive of holidays, for the same employer.

Guam Gov't Code § 37002(i) now codified as Title 22 GCA § 9103(i)(1996) (As amended by P.L. 16-1:2, eff. Feb. 10, 1981).

worker's compensation statute. We agree with the trial court that it is a principle of statutory construction to look first at the plain language of the statute; but it is also fundamental that a construction resulting in an absurd and unjust result and would clearly be inconsistent with the purposes and policies of the act in question should be avoided. *See* Sutherland Stat. Const. § 45.12 (5th ed.). Here, the statute specifically provides that coverage of the act is limited to the injury or death of an employee that results from injuries sustained "*while engaged in* industrial employment or public employment or both as defined in § 9103". *See* Title 22 GCA § 9104(a) (1996) (emphasis added). Industrial employment is defined as including "employment in a trade, occupation or profession *which is carried on* by the employer for the sake of pecuniary gain." *See* Title 22 GCA § 9103(l) (1996) (emphasis added). Thus, while we agree that the definition of employer is broad we do not see it as so broad as to allow any independent contractor or any person who is in no way involved with the employer's trade, business or occupation the ability to claim against that employer's worker's compensation insurance.[2]

[25] Our conclusion that coverage under the statute is dependent upon the determination that the injured person is engaged in work that is related to the business of the alleged employer finds support in the fact that the government agency tasked with the administration of the worker's compensation law conducts such an inquiry to determine whether an injured person is entitled to coverage. The Worker's Compensation Commission has utilized the "Relative Nature of Work Test" to determine whether or not

[2]Illustrative of the absurdity of Hawaiian Rock's view of the statute was a hypothetical discussed at oral argument. The court presented counsel with the hypothetical of the IBM technician who comes to repair a computer in a law office, given the reliance of such instruments in the modern law office, that person is injured - can the injured person claim coverage by worker's compensation? Following Hawaiian Rock's logic the answer would be yes. The same answer results when the injured person is a process server or other individual who happens to be injured on the premises.

an employee-employer relationship exists between the parties in a worker's compensation claim.[3] That test is described as follows:

> This test, then, which for brevity will be called the "relative nature of the work" test, contains these ingredients: the character of the claimant's work or business–how skilled it is, how much of a separate calling or enterprise it is, to what extent it may be expected to carry its own accident burden and so on–and its relation to the employer's business, that is, how much it is a regular part of the employer's regular work, whether it is continuous or intermittent, and whether the duration is sufficient to amount to the hiring of continuing services as distinguished from contracting for the completion of a particular job.

Burns v. Nyberg, 697 P.2d 1165, 1170 (Idaho 1985)(Bistline, dissenting)(citing to Larson, Workmen's Compensation Law, § 43.52). The test is usually used to distinguish employees from independent contractors. *See Lowe v. Zarghami*, 731 A. 2d 14, 19-20 (N.J. 1999). It is used primarily in worker's compensation cases but has been found useful in other contexts. *Id.* at 20. (citations omitted).

[26] Further, our holding is also consistent with that of other jurisdictions in determining under what circumstances coverage by their respective worker's compensation statutes is applied. The Supreme Court of Idaho articulates the inquiry of whether one is a statutory employer as: [4]

[3]This court has collaterally addressed the statutory employer doctrine in the case of *Bondoc v. Worker's Compensation Comm'n*, 2000 Guam 6. In that case, an injured employee sought review of the Worker's Compensation Commission's determination that he was ineligible for the benefits under the Worker's Compensation Act. The court was faced with inconsistent conclusions that the Commission had generated while applying the "Relative Nature of the Work Test" to determine whether Bondoc was entitled to worker's compensation coverage. The court took no position as to the appropriateness of the test but instead sought to demonstrate the inconsistent manner in which it was applied. *Bondoc*, 2000 Guam 6, at ¶ 12, n.6. However, it has been stated that, in the context of worker's compensation statutes, courts have given substantial weight to the interpretation of an expert administrative agency. *See* Sutherland Stat. Const. § 73.02 (5th ed.). Although a court generally observes this rule of deference, it need not defer to the agency's interpretation when the meaning of the statute is clear and unambiguous. *Id.*

[4]The Guam statute provides it is the "owner or lessee of premises, or other person who is *in fact* the proprietor, or operator of the business carried on there. . ." *See* 22 GCA § 9103(j) (emphasis added).

> The true test is, did the work being done pertain to the business, trade, or occupation of the [defendant] carried on by it for pecuniary gain? If so, the fact that it was being done through the medium of an independent contractor would not relieve the defendant from liability.

Harpole, 958 P. 2d at 597. In addition, Vermont is a jurisdiction with a statutory definition of employee similar to our own.[5] The Supreme Court of Vermont interpreted an earlier version of this provision which contained the disjunctive "or" rather than the conjunctive "and" in its present manifestation. *Chamberlain v. Central Vermont Ry. Co.*, 137 A. 326, 328 (Vt. 1927). In that case, the court addressed the issue of "purely casual employment" and quoted its approval of the rule:

> While each case must be largely decided upon its own facts, we believe the Legislature intended that where one is employed to do a particular kind of work, which employment recurs with regularity, and where there is a reasonable ground that such recurrence will continue for a reasonable period of time, such employment is not casual. On the other hand, where the employment for one job cannot be characterized as permanent or periodically regular but occurs by chance, or with the intention and understanding on the part of both employer and employee that it shall not be continuous, it is casual.

Id. at 329. Finally, the distinction between an employee and independent contractor is determinative as to whether an injured person is entitled to compensation under the act. *See eg.*, *Burns v. Nyberg*, 697 P. 2d 1165 (Idaho 1985).

[27] There is no inconsistency with what we hold today and the prior Guam authorities outlined above. It is obvious that in the previous Guam court cases, there was the determination that the injured person was

---

[5]The statute provides:

> (14) "Worker" and "Employee" means a person who has entered into the employment of, or works under contract of service or apprenticeship with, an employer, but shall not include:
>
> > (A) a person whose employment is of a casual nature, and not for the purpose of the employer's trade or business. . .

VT. STAT. ANN. Title 21, § 601(14)(A) (1999) (quotations in original).

employed for the purpose of the employer's trade or business. *See Frieze*, CV0139-94 (Super. Ct. Guam Aug. 1, 1994) (wherein the plaintiff was an independent contractor entertainer and defendant is engaged in the business of entertainment); *and Friley*, CV0883-91 (Super. Ct. Guam Jan. 25, 1994) (same). Similarly, in *Siguenza*, CV0779-85 (Super. Ct. Guam Sept. 30, 1986), the court determined that the repair and maintenance work performed there constituted part of the regular business of the property owner. In the case denying coverage by the worker's compensation statute, the court determined that the facts did not show that the defendant engaged in some substantial services in the construction business of the alleged statutory employer. *See Angelo*, CV0174-93 (Super. Ct. Guam Apr. 29, 1994).

[28] In other words, the respective courts in the Guam cases above concluded that the plain language of Gov't. Code section 37002(j) justified the results, that is, **if** defendant was the owner of premises **and** if defendant was in fact the operator of the business carried on, **and** but for the presence of the independent contractor then defendant would be the direct employer of injured party then defendant is the statutory employer. The inquiry of whether the work contracted for by the owner or proprietor with the independent contractor is a part of, or process in, the trade, business or occupation of the owner or proprietor was implied. This is especially true when the facts supporting this conclusion were fairly obvious in those cases.

[29] In summary, it is not merely for the fact of the presence of an independent contractor, or that the employer is carrying on a business on the premises, which determines whether worker's compensation coverage is warranted. There must be a consideration of the essence of the injured person's work at the time of injury that indicates that he was engaged in the trade, occupation or business of the employer. Therefore, we hold that for an injured person to recover compensation under the act or for an employer, statutory or direct, to benefit from the exclusivity of liability it provides, the injured person must have been engaged in or carrying on the trade or business of the ostensible employer.

[30] In this case, Reliable rented a crane to Hawaiian Rock. The record discloses that Hawaiian Rock often utilized cranes supplied by Reliable; however, it appears that the cranes were always rented to assist in repair work. In the context of the relevant time, no contract existed between Reliable and Hawaiian Rock delineating the equipment or services involved; however, it is clear that Hawaiian Rock would rent the crane at the rate of $75.00 per hour and that two of Reliable's employees were assigned to operate the crane. At the time of Villalon's injuries, the crane was to be used to lift equipment and materials so that repairs to a crushing plant could be effected. It is not disputed that Villalon was not directly engaged in the production of concrete or asphalt nor in the limestone crushing activities of Hawaiian Rock.

[31] And while there are circumstances where repair and maintenance work may constitute part of regular course of Hawaiian rock's business; there is nothing in the record which we can perceive as indicating that Villalon's employment, at the time of injuries, was anything that can be characterized as the repair of Hawaiian Rock's crushing plant. Villalon and the crane operator were only utilized to move equipment or materials from one place to another. Reliable's employees would only be moving the equipment and material according to where Hawaiian Rock's employees would tell them to. Neither of Reliable's employees were involved in the actual repair of the crushing plant, specifically, the replacement of the conveyor belt. *See* Excerpts of Record at 79 (Deposition of Anthony Quidachay).

[32] The record shows that Reliable was one of a few other companies from which Hawaiian Rock would rent cranes. *See* Excerpts of Record at 77 (Deposition of Anthony Quidachay). Hawaiian Rock's utilization of cranes in the course of its regular business occurred frequently; however, the need for the use of the cranes in the type of repairs involved here occurred less frequently, about once every three years. *See* Excerpts of Record at 76 (Deposition of Edgar Rosero). The record indicates that Villalon's employment at the Hawaiian Rock work site and the duties he was to discharge while there was not a

permanent or periodically regular occurrence.

[33] Therefore, we conclude that Villalon was not engaged in activity that could be fairly characterized as a part of Hawaiian Rock's trade or business at the time of his injuries. Consequently, he is not restricted to the remedies provided by the Worker's Compensation Act.

IV- CONCLUSION

[34] After our *de novo* review of the summary judgment granted in this case, we conclude that the work done by Villalon, at the time of his injuries, was not a part of or process in the trade, business or occupation of Hawaiian Rock. Thus, the trial court erred in finding that Hawaiian Rock was the statutory employer of Villalon. We therefore, **REVERSE** and **REMAND** the case for further proceedings consistent with this opinion.

PETER C. SIGUENZA, JR.
Associate Justice

JOHN A. MANGLONA
Designated Justice

BENJAMIN J.F. CRUZ
Chief Justice