

Lawsuit raises questions about landlord liability

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Capital Press

Published: August 11, 2015 10:16AM

Last changed: August 11, 2015 12:42PM

The liability of landlords for the farm labor practices of tenants is a key question in a pending legal case in Washington.

Should landlords be held legally responsible for the hiring activities of farm operators who lease their land?

That question is headed to the Washington Supreme Court as part of a lawsuit that pits farm workers against two farm management firms and an orchard owner.

The landlord in this case is the John Hancock Life Insurance Co., which owns several apple orchards in Yakima County, Wash.

Those properties are leased to two companies — Farmland Management Services and NW Management and Realty Services — that cultivate the land for a fee but turn the profits over to the owner.

In 2013, a federal judge ruled that all three companies owed more than \$1 million to 722 farm workers because the on-the-ground orchard operator failed to register as a farm labor contractor as legally required.

U.S. District Judge Thomas Rice reasoned that since the farm operator provided labor for a fee, it qualified as a labor contractor.

The defendants claimed the farm operator is effectively the direct employer in this case and doesn't act as a traditional labor contractor, but the judge rejected this argument.

As the penalty for not registering, he ordered the company to pay each worker \$500 per year worked, which amounted to \$1,004,000.

The ruling was challenged before the 9th U.S. Circuit Court of Appeals, which has now referred the case to the Washington Supreme Court.

Specifically, the 9th Circuit wants the state's highest court to answer two legal questions: Under Washington law, does an operator who manages "all aspects of farming" count as a labor contractor? And if so, can the landowner be held liable for unknowingly hiring an unregistered labor contractor?

While farmers are expected to ensure labor contractors follow the law, it's unusual for landlords to be held responsible as well, said Tim Bernasek, an attorney specializing in agriculture at the Dunn Carney law firm.

"I've not seen that kind of liability flow up to them," he said. "This is a very novel question that I don't know has been asked before."

While the type of arrangement between the insurance company and farm operators is relatively new in Northwest agriculture, crop-sharing agreements between landlords and growers are common, he said.

Regardless of its outcome, the case highlights the need for written contracts between landlords and farmers that spell out the tenant's obligations to abide by the laws and obtain all necessary registrations, Bernasek said.

Such agreements should indemnify the landlord of liability and allow him to audit the tenant to ensure all applicable rules are being followed, he said.

The traditional handshake agreement between tenants and landlords is simply too risky if the farmer is found to violate environmental or other laws, Bernasek said.

Dan Fazio, executive director of WAFLA, formerly the Washington Farm Labor Association, said hopefully the Washington Supreme Court will hopefully clarify that the farm operator in this case did not break the law.

"They didn't think they had to be registered as a contractor because they were the employer," he said.

Fazio called the \$1 million judgment "outrageous" because the workers weren't actually harmed by the lack of registration.

"It's an absolute miscarriage of justice," he said.