

STATE OF MICHIGAN
COURT OF APPEALS

SCOTT VANSLAMBROUCK,

Plaintiff-Appellant,

v

LOUCA MOLD MACHINING, INC. and
CAMPBELL/MANIX, INC.,

Defendants-Appellees.

UNPUBLISHED
October 13, 2000

No. 215263
Oakland Circuit Court
LC No. 97-002179-NO

Before: McDonald, P.J., and Sawyer and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting the motion for summary disposition filed by defendant Louca Mold Machining, Inc. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Louca contracted with Campbell/Manix, Inc. for the construction of an office building/work area. Louca contracted separately with Delta Concrete for the construction of concrete bases for heavy machinery to be located in the new work area. Plaintiff, an employee of Delta, was working at the site and sustained injuries when he lost his balance and fell at the edge of one of the pits. Reinforcement rods that had shored up the sides of the pit had been removed, and the ground around the edge of the pit had weakened.

Plaintiff filed suit against defendants, alleging that they breached their duties to provide a reasonably safe work area. Louca moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that it was not liable because it did not retain control of the work performed by plaintiff's employer. The trial court granted the motion pursuant to MCR 2.116(C)(10), finding that no genuine issue of fact existed as to whether Louca retained control over the work performed by plaintiff's employer, as to whether that work was inherently dangerous, or as to whether Louca was actively negligent in creating the dangerous condition in the pit. The trial court granted summary disposition in favor of defendant Campbell in a separate order from which plaintiff has not appealed.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Generally, a general contractor is not liable to employees of an independent contractor for the conduct of the independent contractor. The general contractor may be liable for the negligence of the independent contractor if it retained control over the work in a common area. A common area is one in which employees of multiple contractors work. Those employees need not have worked in the area at the same time. To have retained control sufficient to render a general contractor liable for the negligence of the independent contractor, the retention of control must have had an actual effect on the manner in which the work was performed. *Candelaria v B C General Contractors, Inc*, 236 Mich App 67, 72-73; 600 NW2d 348 (1999). In addition, a general contractor may be liable for the negligence of an independent contractor if the independent contractor was hired to perform work that was inherently dangerous, or posed a peculiar risk of harm to others. *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 405-406; 516 NW2d 502 (1994).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Berryman v K-Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992). A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. A possessor of land may be held liable for injuries resulting from negligent maintenance of the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

Plaintiff argues that the trial court erred by granting Louca's motion for summary disposition. We disagree and affirm. Contacts with an independent contractor consisting of general oversight and safety inspections do not establish the retention of control necessary to impose liability on the general contractor. *Samodai v Chrysler Corp*, 178 Mich App 252, 255; 443 NW2d 391 (1989). Plaintiff has not demonstrated that defendant's insistence that work be completed in a timely manner affected the way in which plaintiff's employer performed its tasks. *Id.* Plaintiff put forth no evidence which created a question of fact on the issue of retained control. Similarly, plaintiff did not demonstrate that his employer's activities were inherently dangerous or that they posed a peculiar risk of injury. Summary disposition was proper.

Finally, we hold that the trial court correctly granted summary disposition in favor of Louca on the claim of premises liability. Plaintiff failed to set forth evidence establishing that Louca was actively negligent in allowing the pit walls to become weakened due to lack of adequate shoring, or that it knew or should have known of the condition of the pit. *Berryman, supra*, 92.

Affirmed.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Helene N. White