STATE OF MICHIGAN

COURT OF APPEALS

PHILIP MARTIN,

Plaintiff-Appellant,

v

MARVIN IAFRATE,

Defendant-Appellee.

UNPUBLISHED
April 26, 2002

No. 229304
Macomb Circuit Court
LC No. 99-001144-NO

Before: Gage, P.J., and Griffin and Buth*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

A property owner or general contractor may be liable in negligence to employees of an independent contractor if supervisory control is retained. *Candelaria v B C General Contractors, Inc*, 236 Mich App 67, 72-74; 600 NW2d 348 (1999). In order to impose liability on the landowner or general contractor, the plaintiff must prove four elements:

> (1) a general contractor with supervisory and coordinating authority over the job site, (2) a common work area shared by the employees of several subcontractors, and (3) a readily observable, avoidable danger in that work area (4) that creates a high risk to a significant number of workers. It is not necessary that other subcontractors be working on the same site at the same time; the

* Circuit judge, sitting on the Court of Appeals by assignment.

> common work area rule merely requires that employees of two or more subcontractors eventually work in the area. [*Hughes v PMG Building, Inc,* 227 Mich App 1, 6; 574 NW2d 691 (1997) (citations omitted).]

See also *Funk v General Motors Corp,* 392 Mich 91, 104, 106-107; 220 NW2d 641 (1974), overruled in part on other grounds by *Hardy v Monsanto Enviro-Chem Systems, Inc,* 414 Mich 29; 323 NW2d 270 (1982).

The trial court assumed for purposes of the motion that defendant, the property owner, was also serving as the general contractor and that the work occurred in a common area. Even assuming that the lack of safety equipment on the roof created a readily observable avoidable danger, the trial court found that the danger did not create a high degree of risk to a significant number of workmen. Given that plaintiff was only one of three or four men who did or would work on the roof, the trial court's finding was not erroneous. *Hughes, supra* at 7-8.

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth