STATE OF MICHIGAN

COURT OF APPEALS

BRENT CURRY,

Plaintiff-Appellant,

v

CORNERSTONE BUILDING GROUP, INC.,

Defendant/Cross-Defendant/Third-Party Plaintiff-Appellee,

and

PAC-VAN INC.,

Defendant-Cross-Plaintiff,

and

STRAIGHT ARROW MODULAR, LLC,

Defendant,

and

CONTI ELECTRIC INC.,

Third-Party Defendant.

UNPUBLISHED
March 31, 2009

No. 283191
Oakland Circuit Court
LC No. 2006-077688-NO

Before: Saad, C.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Plaintiff Brent Curry appeals as of right the trial court court's order granting summary disposition to defendant Cornerstone Building Group, Inc. (defendant) in this action arising from injuries plaintiff suffered at a construction site. We affirm.

Defendant served as the general contractor for construction of a new bank building in Commerce Township, Michigan. To facilitate its operations at the site, defendant leased a

temporary trailer, to be used as an office for its construction superintendent, together with a temporary metal stairway to access the trailer. In accordance with the industry standard, the temporary stairway was placed adjacent to, but was not affixed to, the trailer, there being no means to affix the stairway to the trailer.[1] Plaintiff was employed as a journeyman electrician by Conti Electric, the electrical subcontractor for the project. On December 15, 2004, plaintiff was asked to move light fixtures from the bank building into defendant's trailer for safe storage while the bank building was carpeted. As he was doing so, his leg slipped down between the stairs and the trailer causing injury to his back and knee.

Plaintiff first argues that the trial court erred by summarily disposing of his premises liability claim. We disagree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 30; 651 NW2d 188 (2002). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In evaluating such a motion, a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. *Corley v Detroit Board of Educ*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10).

As our Supreme Court explained in *Orel v Uni-Rak Sales Co*, 454 Mich 561, 568; 563 NW2d 241 (1997), quoting *Merritt v Nickelson*, 407 Mich 544, 552-553; 287 NW3d 178 (1980), "[p]remises liability is conditioned upon the presence of both possession and control over the land. . . . [o]*wnership alone is not dispositive.*" See also, *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 660; 575 NW2d 745 (1998), quoting *Merritt, supra* at 552; *Orel, supra* at 568 ("It is well established . . . that '[p]remises liability is conditioned upon the presence of both possession and control over the land.'"). Thus, that defendant did not own the property upon which the trailer sat is not dispositive; the trailer and stairway constituted defendant's premises if defendant exercised both possession and control over it. Defendant leased the temporary trailer and stairway, arranged for its delivery to the construction site, selected its location on site, and maintained exclusive possession and control over it, using it as its on-site office for the duration of the project. Therefore, we conclude that the trailer and stairway constituted defendant's premises.

---

[1] Defendant Pac-Van, Inc. leased the trailer and stairway to defendant; defendant Straight Arrow Modular, LLC, delivered the trailer and stairway and placed them at the construction site. Having granted defendant Cornerstone Building Group's motion for summary disposition, the trial court also dismissed plaintiff's claims against Pac-Van and Straight Arrow. Neither Pac-Van nor Straight Arrow is party to this appeal.

To state a valid claim sounding in premises liability, "a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty; (3) the breach was the proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages." *Benton v Dart Properties*, 270 Mich App 437, 440; 715 NW2d 335 (2006). With respect to the duty defendant owed to plaintiff, there is no dispute that plaintiff was a business invitee at defendant's trailer when the incident occurred. As such, plaintiff was entitled to "the highest level of protection" imposed under premises liability law; defendant was not only obligated to protect him from known dangers but also had "the additional obligation to make the premises safe, which requires the landowner to inspect the premises, and depending on the circumstances, make any necessary repairs or warn of any discovered hazards." *James v Alberts*, 464 Mich 12, 19-20; 626 NW2d 158 (2001), quoting *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 64 NW2d 88 (2000).

In *Clark v K-Mart Corp*, 465 Mich 416; 634 NW2d 347 (2001), the plaintiff allegedly injured herself after she slipped on several loose grapes on the floor of the defendant's store. The Supreme Court noted that there was no direct evidence of when or how the grapes came to be on the floor. Nonetheless, the Court reasoned that the jury could have reasonably inferred that they were dropped there when a customer approached a nearby checkout lane while it was still open, at least an hour before plaintiff's fall. Thus, the jury could have inferred that an employee of the store should have noticed the grapes in the intervening time and cleaned them up. The Supreme Court noted that the case was distinguishable from many where "defendants have been held entitled to directed verdicts because of the lack of evidence about when the dangerous condition arose." *Id*. at 421.

The dangerous condition at issue here was a gap between the trailer and the steps sufficiently wide for plaintiff's foot to slip into. As in *Clark*, there was no direct evidence about when that condition arose. Plaintiff presented testimony that his foreman observed a two to three inch gap prior to the accident but it is not clear from the record how long that gap existed and, more importantly, such a gap would not have been wide enough to present a danger to plaintiff. Plaintiff also presented testimony that it was known in the industry that the stairway could become separated from the trailer as a result of wind, heavy use, being struck by a vehicle or other object, or for other reasons. However, alternatively, the gap observed by plaintiff's foreman could have also widened as a result of plaintiff's work moving the light fixtures into the trailer. In any event, no evidence was presented from which a fact-finder could logically infer when the gap widened sufficiently to create a dangerous condition. Thus, plaintiff failed to "establish[] a sufficient length of time that the jury could infer that defendant should have discovered and rectified the condition," and defendant was entitled to summary disposition "because of the lack of evidence about when the dangerous condition arose." *Clark*, *supra* at 420-421.

Plaintiff also argues that the trial court erred by granting summary disposition of his common-work area claim. We disagree.

At common law, a general contractor, such as defendant, generally could not be held liable for the negligence of independent subcontractors and their employees. *Ormsby*, *supra* at 53; *Signs v Detroit Edison Co*, 93 Mich App 626, 632; 287 NW2d 292 (1979). However, "[i]n *Funk*, [*supra*, our Supreme] Court, exercising its common-law authority, expanded the duties of those ultimately in control of a construction project worksite (most often the general contractor),

by creating the common-work area doctrine." *Latham v Barton Malow Co,* 480 Mich 105, 111-112; 746 NW2d 868 (2008). This doctrine

> is understood as an exception to the general rule that, in the absence of its own active negligence, a general contractor is not liable for the negligence of a subcontractor or a subcontractor's employee and that the immediate employer of a construction worker is responsible for the worker's job safety.
>
> Essentially, the rationale behind the *Funk* doctrine is that the law should be such as to discourage those in control of the worksite from ignoring or being careless about unsafe working conditions resulting from the negligence of subcontractors or the subcontractors' employees. This Court explored the history of the doctrine in depth in *Ghaffari v Turner Constr Co*, [473 Mich 16; 699 NW2d 687 [2005),] in which we observed that "'in many cases only the general contractor is in a position to coordinate work or provide expensive safety features that protect employees of many or all of the subcontractors.'" Subcontractors and their employees, even if they are aware of hazards, may be unable to rectify the situation themselves or to compel others to do so. In cases in which normal safety precautions can reduce a hazardous condition so that it no longer creates a high degree of risk to workers, the general contractor's duty is to take reasonable steps to ensure that those safety precautions are taken. In such cases, in order to state a cause of action against a general contractor under the common-work-area doctrine, the plaintiff must show that the general contractor's failure to reasonably ensure that workers were observing safety procedures resulted in a significant number of workers being exposed to a high degree of risk in a common work area. [*Latham, supra* at 111-112.]

Thus, to state a valid common-work area claim, a plaintiff must establish that:

> (1) the defendant . . . general contractor, failed to take reasonable steps within its supervisory and coordinating authority (2) to guard against readily observable and avoidable dangers (3) that created a high degree of risk to a significant number of workmen (4) in common work areas. [*Ormsby, supra* at 54.]

See also, *Ghaffari, supra* at 20-21 (summarizing the development of the common-work area doctrine). Because the common-work area doctrine "imposes liability only if the general contractor fails to prevent negligence," the danger at issue "cannot be just the unavoidable, perilous nature of the site itself. Rather, the danger for which a duty attaches is an avoidable danger to which a significant number of workers are exposed . . . ." *Latham, supra* at 107.

Considering the record presented, we conclude that the trial court properly determined that plaintiff failed to establish that the stairway presented a readily observable danger. There was no evidence that any complaints were made about a dangerous gap between the stairway and the trailer, that defendant's superintendent observed or was made aware of any such gap, that plaintiff or his coworker observed any such gap, or that anyone expressed any concerns about the safety of the stairway. Additionally, all relevant testimony concurred that it was the industry standard to place the stairs adjacent to, and not affix them to, the trailer, and further, that there was no means to affix the stairway to the trailer. Thus, there was no evidence that there was a

readily observable danger posed by the stairway.

We affirm. Defendant may tax costs pursuant to MCR 7.219, having prevailed in full.

/s/ Henry William Saad
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra