

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN PATRICK CRUMLEY and MAGEN
CRUMLEY,

UNPUBLISHED
May 12, 2009

Plaintiffs-Appellants,

v

MULTI BUILDING COMPANY, INC.,

No. 284293
Oakland Circuit Court
LC No. 2007-085214-NF

Defendant-Appellee.

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Plaintiff¹ appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was employed by Trio Carpentry as one of a crew of six carpenters, building a house. Defendant concedes it was the general contractor on the project. In addition to the carpenters, working at the building site on the day of plaintiff's injury were the general contractor, a lumber salesman, and plumbers working in the basement. Plaintiff was on the second story of the house, framing walls, when a sudden gust of wind caught a newly constructed wall and blew it over. Plaintiff testified that only 15 to 20 minutes passed from the time the wall was in position to the time it fell and that, except for this gust, the wind was not otherwise blowing hard that day. The wall had not been "toed in" (i.e., nailed to the floor) or braced in any way, and was attached only where the studs were nailed to the floor. The wall hit plaintiff and both the wall and plaintiff fell to the ground. Plaintiff was seriously injured, and sued defendant on the theory of general contractor liability for the safety of a common work area.

¹ Plaintiff Magen Crumley's claims are derivative; "plaintiff" in this opinion refers to Brian Crumley.

Defendant moved for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact), arguing that plaintiff had not shown that a question of fact existed on all of the elements required for a common work area suit, as set forth in *Ormsby v Capital Welding, Inc.*, 471 Mich 45, 57; 684 NW2d 320 (2004):

(1) that the defendant 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 a common work area.

Defendant's motion brief focused on the last three elements, arguing that the danger was not readily observable, that it did not create a high degree of risk to a significant number of workmen, and that it was not in a common work area.

After hearing arguments, the trial court opined that plaintiff did not meet all four elements, as *Ormsby* requires. The area was a common work area because other contractors would eventually be working in the same area where plaintiff was injured. However, the second element was not met. Even though the wall's *condition*—the fact that the wall was not “toed in”—could be observed, the *danger* of the wall falling was not readily observable. Plaintiff's own deposition indicated that he was not aware of anything else that should have been done, not aware that the wall posed a danger, and did not expect the gust of wind because it was not particularly windy that day. Because plaintiff provided no evidence that anyone was aware the wall presented a danger, the second element of the test was not met, and summary disposition was appropriate.

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court considers the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The party opposing the motion has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists. MCR 2.116(G)(4); *Coblentz v Novi*, 475 Mich 558, 569; 719 NW2d 73 (2006).

The liability of a general contractor is established if the plaintiff shows:

(1) that the defendant 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 a common work area. [*Ormsby*, *supra* at 57.]

All four elements are required. *Id.* at 58-59.

The trial court in this case found the second element dispositive, holding that the danger that the wall would be dislodged and strike a worker on a day that was not extraordinarily windy was not readily observable and avoidable. The trial court correctly distinguished between the wall's condition of not being nailed down and the danger that something would cause the

unsecured wall to fall and cause injury in the relatively short span of time that it was unsecured. Moreover, plaintiff presented no evidence that the danger was readily observable to anyone other than the carpenters on the roof or that defendant should have known those workers were not doing their job properly and that the wall was in danger of falling. Plaintiff himself stated he had not expected an unsecured wall to fall unless it was an extremely windy day.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens