IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEITH MURSON,	§	
	§	No. 2, 2001
Plaintiff Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
THE HENRY FRANCIS DuPONT	§	in and for New Castle County
WINTERTHUR MUSEUM, INC.,	§	C.A. No. 97C-06-142
a Delaware corporation, and RESOURCE	§	
MANAGEMENT INTERNATIONAL,	§	
INC., a Delaware corporation,	§	
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: June 13, 2001
Decided: August 3, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices.

O R D E R

This 3rd day of August, 2001, on consideration of the briefs of the parties, it appears to the Court that:

1) In this personal injury action, Keith Murson appeals from a decision of the Superior Court granting summary judgment to The Henry Francis duPont Winterthur Museum, Inc. and Resource Management International, Inc. Murson was injured in 1995, while working on a boiler renovation project at Winterthur. He was employed by Joseph Stong, Inc., the company hired by Winterthur to perform the

boiler renovation work. Resource Management was a contractor hired by Winterthur to remove asbestos from the boiler room.

2) Stong began the renovations by installing a temporary boiler system and preparing the old system for removal. When that phase was completed, Stong left the job site and Resource Management came in to remove asbestos. Resource Management disconnected the old boilers from the overhead pipes and disassembled the old boilers during the asbestos removal. After Resource Management was finished, Stong returned to the job site to install the new boilers. Murson was injured during this second phase, while he was removing an overhead "header" pipe in preparation for the installation of the new boiler.

3) It is settled law that a property owner is not liable for injuries to the employee of an independent contractor, "unless the owner retains active control over the manner in which the work is carried out and the methods used."[1] The same is true for a general contractor that retains no active control over a subcontractor.[2]

4) Murson argues that Winterthur exercised enough control over the manner in which the work was performed to create an issue of fact for the jury. Murson points out that Winterthur acted as its own general contractor; it gave Stong safety

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[1] *Williams v. Cantera*, Del. Super., 274 A.2d 698, 700 (1971) (citations omitted).

[2] *Seeney v. Dover Country Club Apartments*, Del. Super., 318 A.2d 619 (1974).

guidelines to follow; it regularly inspected the work Stong performed; and it occasionally submitted change orders. None of those activities, however, constitutes "active control" over the manner in which the work is done. Accordingly, there are no issues of fact that would preclude summary judgment.

5) Murson's argument with respect to Resource Management is a bit different. Murson says that Resource Management was responsible for disconnecting the old boilers from the overhead pipes and for removing the pipe hangers, thereby creating the dangerous condition that caused his injury. According to Murson, since Resource Management had full control over the job site at the time the dangerous condition was created, Resource Management is liable for his injury. This argument lacks merit, as there were no pipe hangers missing from the pipe that caused Murson's injury. Thus, Resource Management did not create a dangerous condition and cannot be held liable on that theory.

6) Finally, Murson argues that Winterthur and Resource Management are liable for failure to reasonably protect against the dangerous condition created when large overhead pipes were left hanging and unconnected. Murson analogizes to a situation where one subcontractor failed to construct temporary rails for a staircase,

and an employee of another subcontractor fell off the staircase.[3] The facts in this case, however, are not at all similar. The overhead pipe that injured Murson did not fall on him because Resource Management or Winterthur left it improperly secured. Murson was removing the pipe and mistakenly believed that the pipe was supported by a "chain fall." Stong installed the chain falls as part of the process of removing the overhead pipes. Thus, to the extent that any party can be said to have created a dangerous condition, it was Stong, not Winterthur or Resource Management.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

[3] *See Figgs v. Bellevue Holding*, Del. Super., 652 A.2d 1084 (1994).