

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KELLEY CURRY,

Plaintiff-Appellant,

and

CILLA SCOTT,

Intervening-Plaintiff,

v

ZZ, Inc., d/b/a PALAZZOLO'S HAIR SALON and  
JIMI PALAZZOLO,

Defendants-Appellees,

and

WILLIAM PALAZZOLO and ART ROOSE,

Defendants.

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Before: Sawyer, P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants ZZ, Inc., and Jimi Palazzolo. We affirm.

This appeal arises out of injuries plaintiff, an employee of an architectural firm, sustained while working on a renovation project on defendants' premises. Plaintiff argues that the trial court erred in holding that defendants were not liable for injuries sustained to a subcontractor through their negligence under an exception for liability when a premise owner assumes the function of a contractor, or for

defendant Jimi Palazzolo's negligence and subsequent liability in his role as a general contractor under a common work area analysis. We disagree.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim. *Johnson v Turner Construction Co*, 198 Mich App 478, 480; 449 NW2d 27 (1993). Summary disposition is appropriate where there is no issue of material fact and the movant is entitled to a judgment as a matter of law. *Id.*

Generally, an owner is "not responsible for injuries caused by a carefully selected contractor to whom he has delegated the task of erecting a structure." *Funk v General Motors Corp*, 392 Mich 91, 101; 220 NW2d 641 (1974), overruled in part on other grounds *Hardy v Monsanto Enviro-Chem Systems, Inc*, 414 Mich 29; 323 NW2d 270 (1982). As such, the immediate employer of an independent contractor is usually responsible for the job safety of his employee. *Id.* at 104. Moreover, it is "the business of a general contractor to assure that reasonable steps within its supervisory and coordinating authority are taken to guard against readily observable, avoidable dangers in common work areas which create a high degree of risk to a significant number of workmen." *Id.* However, where an owner has not truly delegated, but retains control of the work, the law imposes a nondelegable duty to guard against the risk. *Id.*

However, there is no specific test in order to determine whether an owner retained control over a construction project. *Burger v Midland Cogeneration Venture*, 202 Mich App 310, 317; 507 NW2d 827 (1993). An owner's obligation to control as evidenced by a contract is not sufficient to impose liability for injuries to subcontractors' employees. *Erickson v Pure Oil Corp*, 72 Mich App 330, 339; 249 NW2d 411 (1976); *Johnson, supra* at 481. Additionally, an owner must have more control than just safety inspection, general oversight, the ability to stop work or resume work, inspect progress, and to make suggestions which need not necessarily be followed. *Burger, supra* at 317; *Plummer v Bechtel Construction Co*, 440 Mich 646, 660-661; 489 NW2d 66 (1992). However, retaining authority to hire or terminate any subcontractor and retaining a right of supervision such that a contractor is not entirely free to do the work in his own way would allow a trier of fact to conclude that an owner retained control. *Id.* at 661-662.

The facts that support Jimi Palazzolo's exercise of control over the subcontractors are that he hired the subcontractors and, in some instances, contracted directly with the subcontractors. A favorable inference from the contracts to plaintiff would be that Jimi maintained the right to terminate or continue the relationships with the subcontractors. The fact that Jimi obtained the permits suggest greater interaction on behalf of the owners. However, we believe that none of these facts would suffice under the law to impose the type of liability contemplated under the theory of retained control. This is especially true in light of the fact that none of the contractors suggested that Jimi actually controlled their jobs and that they were left to manage the work according to their specifications. Moreover, the testimony of Cilla Scott and Jimi suggested that Jimi had delegated the everyday supervision or liaison activities to William Palazzolo and Scott. Uncontroverted testimony suggested that William could override Jimi's suggestion. Jimi's involvement left the subcontractors to do the job in their own way without the type of involvement beyond general inspection and oversight. Thus, because Jimi delegated

his control of the project, he cannot be held liable to plaintiff as a premise owner under the retained control theory on the facts.

Plaintiff cites to *Plummer* suggesting that it provides a basis for attaching liability to Jimi Palazzolo, as a general contractor, for his negligence in implementing safety measures on the worksite in common work areas. However, because Jimi failed to exercise the necessary control to be found liable as a premise owner under the *Funk* analysis, Jimi is not liable under the *Plummer* analysis because he did not exercise sufficient control in order to act as a general contractor. Compare with *Hughes v PMG Building, Inc*, 227 Mich App 1, 5-6; 574 NW2d 691 (1997).

Thus, because plaintiff failed to demonstrate any facts supporting defendants' liability to plaintiff under the retained control theory, or defendant Jimi Palazzolo's liability to plaintiff as a general contractor under the common work area analysis, the trial court did not err in granting defendants' motion for summary disposition.

Affirmed.

/s/ David H. Sawyer

/s/ Martin M. Doctoroff