

STATE OF MICHIGAN
COURT OF APPEALS

KELLY CURRY,

UNPUBLISHED

Plaintiff- Appellant,

and

No. 203414

CILLA SCOTT,

Oakland Circuit Court

LC No. 94-480388 NO

Intervening- Plaintiff,

v

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

Defendants- Appellees,

and

WILLIAM PALAZZOLO and ART ROOSE,

Defendants.

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

KELLY, J. (dissenting).

I respectfully dissent. The record, I think, appears to present a genuine issue of material fact as to whether defendant Jimi Palazzolo, as owner of the property under construction, did, in fact, exercise substantial control and direction over independent contractors and the construction project in general.

In order for defendant Jimi Palazzolo to be liable to the employee of an independent contractor, he “. . . must retain at least partial control and direction of the construction work, beyond safety inspection and general oversight.” *Burger v Midland Cogeneration Venture*, 202 Mich App 310, 317; 507 NW2d 827 (1993). My reading of the testimony bearing on the issue of control, supports, at the very least, a question of fact as to who retained ultimate control over the construction project.

The deposition testimony of defendant Jimi Palazzolo indicates that he considered himself the general contractor of the project. He also testified that he hired and paid all of the subcontractors working on the project. He further stated that he regularly walked through the construction site and pointed out changes that he wanted to be made as the project progressed. George Ahee, an electrician at the site, testified that, in fact, when Jimi Palazzolo wanted changes to be made, he made them. Mr. Ahee further stated that he and Jimi Palazzolo, together, reviewed the blue prints of the project.

The deposition testimony of Cilla Scott and Arthur Roose, both independent contractors for the project, indicated that Jimi Palazzolo exercised substantial control over the project. Both contractors testified that named general contractor, William Palazzolo, was not regularly seen at the project site. Also, in the case of Cilla Scott, dealing with William Palazzolo was very difficult; she often bypassed his instruction and dealt directly with Jimi Palazzolo regarding the daily construction concerns.

In reviewing the testimony before this Court, the issue of control appears to be in material dispute. Clearly, “[w]hether a general contractor or landowner ha[s] retained control is a question of fact for the jury.” *Phillips v Mazda Motor Manufacturing (USA) Corp*, 204 Mich App 401, 408; 516 NW2d 502 (1994), citing *Plummer v Bechtel Construction*, 440 Mich 646, 664; 489 NW2d 66 (1992). Therefore, the trial court’s order granting defendant’s motion for summary disposition should be reversed and this case remanded to trial court for further proceedings.

/s/ Michael J. Kelly