# STATE OF MICHIGAN

# COURT OF APPEALS

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KRIS PORTER,

Plaintiff-Appellant,

v

DAIMLER-CHRYSLER CORPORATION,

Defendant-Appellee.

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UNPUBLISHED
May 19, 2005

No. 253025
Macomb Circuit Court
LC No. 2002-003775-NO

Before: Gage, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendant summary disposition. We affirm.

Defendant contracted with International Industrial Contracting Company ("IICC") for the installation of a racking system inside defendant's Sterling Heights plant. Plaintiff, an employee of IICC, was injured when he was pinned between a wall and a rack component that was suspended from one of defendant's overhead cranes operated by another employee of IICC.

Plaintiff argues that the trial court erred in granting summary disposition. We review de novo a trial court's decision on a motion for summary disposition. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). When reviewing a decision on a motion for summary disposition pursuant to MCR 2.116(C)(10), "we consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Rose, supra* at 461. Summary disposition is appropriately granted, "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*.

Plaintiff's first three arguments concern the doctrines of common work area and retained control. Generally, property owners and general contractors are not liable for the negligent conduct of independent subcontractors and their employees. *Ormsby v Capital Welding, Inc,* 471 Mich 45, 53; 684 NW2d 320 (2004). Contrary to what plaintiff argues, "[t]he doctrines of 'common work area' and 'retained control' are not two distinct and separate exceptions" to this general rule. *Ormsby, supra* at 60. As the Court in *Ormsby*, explained:

> [U]nder the "common work area doctrine," a general contractor may be held liable for the negligence of its independent subcontractors only if all the

> elements of the four-part "common work area" test set forth in *Funk* [*v General Motors Corp*, 392 Mich 91; 220 NW2d 641 (1974)] have been satisfied. Further, the "retained control doctrine" is subordinate to the "common work area doctrine" and simply stands for the proposition that when the "common work area doctrine" would apply, and the property owner has stepped into the shoes of the general contractor, thereby "retaining control" over the construction project, that owner may likewise be held liable for the negligence of its independent subcontractors. [*Id.*]

Thus, the question of retained control is only relevant to the extent that the common work area doctrine applies. As indicated in *Ormsby*, The "common work area doctrine" is derived from *Funk*, *supra*, and is comprised of four elements, the existence of a common work area being only one of those elements. *Ormsby*, *supra* at 55-57, 59 n 11. To establish liability under *Funk*, a plaintiff must prove: (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 workers (4) in a common work area. *Ormsby*, *supra* at 57.

In the instant case, the submitted evidence establishes that a barricade was placed around the area where plaintiff was working, and plaintiff testified that he took all his orders and directions from an IICC foreman. Although plaintiff asserts that defendant required IICC to use defendant's cranes when they were available, he fails to provide appropriate citations to the record to support this assertion.[1] In any event, the project supervisor testified that use of defendant's cranes was permitted, but not required, for the project. Thus, plaintiff has failed to present any evidence that defendant failed to take reasonable steps within its supervisory and coordinating authority to guard against readily observable and avoidable dangers. *Ormsby, supra* at 57.

Further, plaintiff does not identify any evidence indicating that other workers were subjected to the same hazard, or that there was a high risk of injury to a significant number of other workers, as required by *Funk*. *Ormsby*, *supra* at 57. Although plaintiff testified that defendant's employees were allowed inside the barricade, he explained that nobody else was allowed in the immediate area and that people were kept out of the way of the shelving racks and crane while the racks were being installed. See *Hughes v PMG Building, Inc*, 227 Mich App 1, 6-7; 574 NW2d 691 (1997) (finding that other workers were not subjected to the same hazard under *Funk*, even though there was evidence that employees of other subcontractors might eventually work in the same area). Therefore, the trial court properly found that there was no genuine issue of material fact concerning the applicability of the common work area or the retained control doctrines.

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[1] It is insufficient for plaintiff "'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

We also reject plaintiff's argument that the inherently dangerous activity doctrine provides a basis for holding defendant liable as an exception to the general rule of nonliability. The purpose of the doctrine is to protect innocent third parties who are injured because of an inherently dangerous undertaking. *DeShambo v Nielsen*, 471 Mich 27, 28; 684 NW2d 332 (2004). Like the plaintiff in *DeShambo,* plaintiff in the instant case was an employee of an independent contractor, rather than a third party. *Id.* Therefore, the inherently dangerous activity doctrine does not apply.

Plaintiff also challenges the trial court's reliance on documentary materials submitted by plaintiff, rather than defendant, in determining that defendant was entitled to summary disposition pursuant to MCR 2.116(C)(10). MCR 2.116(G)(5) provides that "[t]he affidavits, together with the pleadings, depositions, admissions, and documentary evidence then *filed in the action* or submitted by *the parties*, must be considered by the court when the motion is based on subrule (C)(1)-(7) or (10)." (Emphasis added.) Thus, the trial court properly considered evidence submitted by plaintiff when it granted defendant summary disposition pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Richard Allen Griffin