Opinion issued May 10, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-18-00638-CV

MICHAEL TORRES AND ENEDINA TORRES, Appellants

V.

PASADENA REFINING SYSTEMS, INC. AND NATIONAL PLANT SERVICES, LLC, Appellees

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On Appeal from the 269th District Court
Harris County, Texas
Trial Court Case No. 2016-27805

DISSENTING OPINION

Because I conclude that the trial court did not err in rendering summary judgment for appellee, Pasadena Refining Systems, Inc. ("PRSI"), on the premises liability claim by appellants, Michael Torres ("Torres") and Enedina Torres, I

respectfully dissent. I believe that appellants did not present evidence raising a genuine issue of material fact on the duty element of their claim.

Whether PRSI owed Torres a duty is determined by the law governing a general contractor's duties to an independent contractor's employees. *See Dow Chem. Co. v. Bright*, 89 S.W.3d 602, 605–06 (Tex. 2002) (citing *Koch Ref. Co. v. Chapa*, 11 S.W.3d 153, 155 n.1 (Tex. 1999) ("A general contractor owes the same duty as a premises owner to an independent contractor's employee.")). In this context, there are two categories of premises-liability cases: (1) defects existing on the premises when the independent contractor entered and (2) defects arising from the independent contractor's work activity. *Coastal Marine Serv. of Tex., Inc. v. Lawrence*, 988 S.W.2d 223, 225 (Tex. 1999). The first category includes those conditions that existed on the premises when the business invitee entered for business purposes or that were created through some means unrelated to the activity of the independent contractor and its injured employee. *Clayton W. Williams, Jr., Inc. v. Olivo*, 952 S.W.2d 523, 527 (Tex. 1997). The second category includes those conditions that arise from the independent contractor's (or its injured employee's) work activity. *Id.* Here, the issue is whether PRSI is subject to liability to Torres under the second category.

The Texas Supreme Court has held that, under the second category, when a dangerous condition arises from an independent contractor's work, the "general

contractor ordinarily has *no duty* to warn the independent contractor's employees" of the condition. *Id.* (emphasis added). "The rationale for this rule is that a general contractor normally has no duty to ensure that an independent contractor performs its work in a safe manner." *Id.* The limited exception to this rule does not apply to this case.

Limited Exception

In 1985, in *Redinger v. Living, Inc*., the supreme court noted that it is the duty of the independent contractor to ensure that work conducted under its control is performed in a safe manner. 689 S.W.2d 415, 418 (Tex. 1985). The court held that if a general contractor exercises "some control" over an independent contractor's work, a duty arises to exercise reasonable care in supervising the activity. *Id.* The court adopted Restatement (Second) of Torts, section 414, which states:

> One who entrusts work to an independent contractor, but who retains control of any part of the work, is subject to liability for physical harm to others for whose safety the [general contractor] owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care.

Id. (quoting RESTATEMENT (SECOND) OF TORTS § 414 (1977)). Since *Redinger*, however, the supreme court has expressly limited the duty that arises on the part of a premises owner or general contractor.

In *Koch Refining*, the supreme court noted: "Every premises owner must have some latitude to tell its independent contractors what to do, in general terms, and may do so without becoming subject to liability." 11 S.W.3d at 156. The court noted that, in *Redinger*, it adopted only a "limited-duty rule" and that the comments to section 414 state that:

> In order for the rule stated in this Section to apply, the [general contractor] must have retained at least some degree of control over *the manner* in which the work is done. *It is not enough that he has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports*. . . .

Id. at 155 (quoting RESTATEMENT (SECOND) OF TORTS § 414 cmt. c (emphasis added)); *see, e.g.*, *Hoechst-Celanese Corp. v. Mendez*, 967 S.W.3d 354, 357–58 (Tex. 1998) (holding that requiring independent contractor to observe and promote compliance with federal laws, general safety guidelines, and other standard safety precautions did not impose duty on general contractor to ensure safety of independent contractor's employees).

In *Dow Chemical*, the supreme court held that, for a duty to arise, a general contractor must have retained the right to control the "operative details," that is, the "means, methods, or details," of the independent contractor's work. 89 S.W.3d at 606, 608; *see, e.g.*, *Enserch Corp. v. Parker*, 794 S.W.2d 2, 6 (Tex. 1990) (holding that general contractor's provision of procedures, frequent visitation, and supervision of independent contractor's employees constituted evidence of retained

control); *Redinger*, 689 S.W.2d at 418 (imposing duty on general contractor who was present on worksite and exercised control over work by issuing on-site orders directing means and method that caused plaintiff's injury). In addition, the general contractor's right of control "must relate to the injury the negligence causes." *Dow Chem.*, 89 S.W.3d at 606. That is, there must be a nexus between the general contractor's retained control and the condition or activity that caused injury to the independent contractor's employee. *See Mendez*, 967 S.W.2d at 357. It is not enough that the general contractor controlled one aspect of the independent contractor's activities if the injury arose from another. *Gen. Elec. Co. v. Moritz*, 257 S.W.3d 211, 214 (Tex. 2008).

When, as here, the injury arises from an alleged failure by the general contractor to maintain a safe workplace, the inquiry focuses on whether the general contractor retained control over the condition or activity that caused injury. *See United Scaffolding, Inc. v. Levine*, 537 S.W.3d 463, 479 (Tex. 2017) (holding that "relevant inquiry" for determining duties owed was defendant's right of control over *scaffold* and subsequent responsibility to warn about or remedy dangerous condition thereon and that court of appeals erred in expanding scope of control inquiry to consider control over general refinery operations); *Lee Lewis Constr., Inc. v. Harrison*, 70 S.W.3d 778, 783 (Tex. 2001) (considering general contractor's control over *fall-protection systems* used by independent contractor's employees).

Notably, "safety requirements give rise to a *narrow* duty of care." *Mendez*, 967 S.W.3d at 357. That is, a "general contractor that promulgates mandatory safety requirements and procedures owes only a narrow duty to ensure that those requirements and procedures do not 'unreasonably increase, rather than decrease, the probability and severity of injury.'" *JLB Builders, L.L.C. v. Hernandez*, 622 S.W.3d 860, 867 (Tex. 2021) (quoting *Mendez*, 967 S.W.3d at 358). A general contractor who requires that an independent contractor observe workplace safety guidelines does not incur an unqualified duty to ensure the safety of the independent contractor's employees. *Mendez*, 967 S.W.3d at 357–58.

Discussion

Here, Torres alleged that, while working for an independent contractor, 3-J Ryan, Inc. ("Ryan"), he fell from defective scaffolding on the PRSI premises that was constructed, maintained, and inspected by a Ryan subcontractor, National Plant Services, LLC ("NPS"). Torres alleged that safety issues, i.e., a lack of proper ingress to the scaffold platform and a lack of a self-retracting lifeline on the scaffold, caused or contributed to his injuries. He asserted that PRSI, the refinery premises owner or general contractor, had a duty to either warn him of such conditions or to make them safe.

Thus, the duty inquiry must focus on whether appellants presented evidence that PRSI had control over the safety of the scaffold at issue and over Ryan's

employees' use of fall-protection systems. *See Levine*, 537 S.W.3d at 479 (holding that issue presented was control over safety of scaffold used by independent contractor's employees); *Lee Lewis Const.*, 70 S.W.3d at 783 (holding that issue presented was control over fall-protection systems used by independent contractor's employees). Such control may be established through: (a) evidence of a contractual agreement expressly assigning PRSI a right of control encompassing the safety of the scaffold at issue or Ryan's employees' use of fall-protection systems or (b) evidence that PRSI actually exercised such control. *See Dow Chem.*, 89 S.W.3d at 606.

Here, in its no-evidence motion for summary judgment, PRSI argued that it was entitled to judgment because there was no evidence that it (1) retained such contractual control or (2) exercised actual control. *See* TEX. R. CIV. P. 166a(i).

1. *Contractual Control*

In their summary-judgment response, appellants asserted that the terms of the contract ("Contract") between PRSI and Ryan "establish[] PRSI's retention of contractual control over the safety of the work."

Our primary objective in construing a contract is to give effect to the parties' intent. *Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd*., 574 S.W.3d 882, 888 (Tex. 2019). We interpret contract language according to its plain, ordinary, and generally accepted meaning unless the contract directs otherwise. *Id.* We consider

the writing as a whole in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless. *Id.* at 889. "Contract terms cannot be viewed in isolation . . . because doing so distorts meaning." *Id.* "Consistent with our long-established precedent," "[n]o one phrase, sentence, or section [of a contract] should be isolated from its setting and considered apart from the other provisions." *Id.*

In reversing the trial court's summary judgment granted to PRSI, the majority relies on the following *single sentence* from the Contract: "When the PRSI notifies the Contractor, either verbally or in writing, that the Contractor is not complying with a safety and health requirement either set forth in this Contract or incorporated by reference, the Contractor shall correct the deficiency immediately." The majority concludes that reserving "the right" to require Ryan to correct an unsafe work practice is "analogous" to granting PRSI a contractual right to control the "means, methods, or details of Ryan's work."

Reading the Contract as a whole, however, reveals that Section 1.2 *expressly disclaims* any right on the part of PRSI to control the "manner or method" of Ryan's work:

> PRSI *shall* ***not*** *have the right to control or direct the manner or method* of the performance or providing of the Services/Goods by [Ryan]. PRSI is *interested only in the results* obtained and has only the general right of inspection and supervision in order to secure the satisfactory completion of Services/Goods.

(Emphasis added.) Section 1.2 designates Ryan as an "independent contractor" and makes it solely responsible for the supervision, direction, and control of its employees and subcontractors.

The sentence on which the majority relies, in bold emphasis below, appears in its context at Exhibit C of the Contract, "PRSI General HSE [Health, Safety, and Environmental] Requirements," which provides, in pertinent part:

> [*Ryan*] *shall be fully and completely responsible for managing all HSE considerations* associated with its performance of the work unless specific direction is otherwise provided in writing by PRSI.
>
> . . . .
>
> [*Ryan*] *shall not allow an unsafe . . . condition* or behavior over which it has control to be conducted during performance of the work. *When such a condition or behavior is identified by [Ryan]*, the related activity shall be discontinued until the condition or behavior has been eliminated or mitigated. If [Ryan] does not have the ability to eliminate or mitigate the condition or behavior, it shall immediately notify PRSI in writing.
>
> . . . .
>
> PRSI shall have *the right, but not the obligation*, to inspect the worksite and associated work records and to interview personnel to ascertain that [Ryan] is complying with the expectations and requirements of this attachment.
>
> Should [Ryan] fail to observe the requirements of this attachment, PRSI shall have *the right* to stop the work performed by [Ryan] at the worksite and to take the action necessary to resolve the condition with all related costs of such action for [Ryan's] account.
>
> . . . .
>
> Stop Work or Suspension. The PRSI has *the right* to stop or suspend the work of [Ryan] for any reason, including, but not limited to, [Ryan's] failure to comply with any of the safety and health requirements either set forth in this Contract or incorporated by reference.

> ***<u>Correction of Deficiencies</u>. When the PRSI notifies [Ryan], either verbally or in writing, that [Ryan] is not complying with a safety and health requirement either set forth in this Contract or incorporated by reference, [Ryan] shall correct the deficiency immediately.***
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> . . . .
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> B. Worksite Safety.
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> . . . .
>
> *[Ryan] shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance of the work. . . .*
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> . . . .
>
> [Ryan] shall perform the work in alignment with the following specific HSE requirements.
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> . . . .
>
> Personal Protective Equipment
>
> . . . .
>
> [*Ryan*] *shall provide and require all personnel to wear specialty personal protective equipment as required by the task* or specified on the work permit (e.g., *fall protection systems . . .)* . . . .

(Emphasis added.) Thus, read as a whole, Exhibit C, which governs Health and Safety requirements and "Worksite Safety," expressly states that *Ryan* "shall be *fully and completely responsible* for managing *all HSE considerations* associated with its performance of the work" and "shall be responsible for *initiating, maintaining and supervising all safety precautions* and programs in connection with performance of the work" (emphasis added). With respect to fall-protection systems, the Contract expressly requires *Ryan*, not PRSI, to "provide and require all personnel to wear specialty personal protective equipment as required by the task or specified on the work permit (e.g., fall protection systems . . .)."

Exhibit C provides that PRSI reserved a "right, but not the obligation," to inspect the worksite to ascertain whether Ryan was complying with the HSE requirements, and PRSI reserved a "right" to stop the work. It is well established that reserving a "general right to order the work stopped" or "to inspect its progress" is not evidence of retained control. *Dow Chem.*, 89 S.W.3d at 607–08 ("[I]t is not enough that the premises owner has merely a general right to order the work stopped."); *Koch Ref.*, 11 S.W.3d at 155; *see also Gonzales v. Ramirez*, 463 S.W.3d 499, 506–07 (Tex. 2015) ("[A] possibility of control is not evidence of a 'right to control' actually retained. . . ."); *Ellwood Tex. Forge Corp. v. Jones*, 214 S.W.3d 693, 702 (Tex. App.—Houston [14th Dist.] 2007, pet. denied) (holding *right* to forbid independent contractor from working without fall protection did not impose duty to ensure that independent contractor's employees used fall protection); *Victoria Elec. Co-op, Inc. v. Williams*, 100 S.W.3d 323, 330 (Tex. App.—San Antonio 2002, pet. denied) (retaining "latitude to 'inspect, test, and approve' . . . work to make sure it was complying with . . . safety requirements" did "not implicate a right to control the details of the independent contractor's work"). Imposing liability on owners and general contractors who retain a right to order the work stopped "would deter [them] from setting even minimal safety standards." *Dow Chem.*, 89 S.W.3d at 608.

Notably, the Contract in this case contains the same provision that the majority concludes distinguishes the contract in *Dow Chemical*. *See id*. at 606–07. The majority states that the contract in *Dow Chemical* "clearly disclaimed any retention of a contractual right of control on behalf of the general contractor" in the emphasized portion of the following provision:

> 30.01. Responsibilities—CONTRACTOR shall be an independent contractor under this Contract and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder and *any provisions in this Contract which may appear to give DOW the right to direct CONTRACTOR as to details of doing the work herein covered or to exercise a measure of control over the work shall be deemed to mean that CONTRACTOR shall follow the desires of DOW in the results of the work only.*

Id. (emphasis added).

Here, however, the Contract also expressly disclaims that PRSI retained any right to control the "manner or method" of Ryan's work and states that PRSI is interested only in the results obtained, as follows:

> 1.2 **INDEPENDENT CONTRACTOR**. The Parties agree that Contractor is and always shall be an independent contractor in the performance of ***every part*** of this Contract. . . . PRSI ***shall not have the right to control or direct the manner or method*** of the performance or providing of the Services/Goods by [Ryan]. PRSI is interested ***only in the results obtained*** and has only the general right of inspection and supervision in order to secure the satisfactory ***completion*** of Services/Goods.

(Emphasis added.) Thus, like the supreme court concluded in *Dow Chemical*, the Contract here did not impose a duty on PRSI to ensure Torres's safety because PRSI

did not retain the right to control the means, methods, or details of Torres's work. *See id.* at 607.

In *JLB Builders*, the supreme court considered a similar contract, stating that the independent contractor there was to perform as such and was solely responsible for the supervision, direction, and control of its employees, "for the manner and means of accomplishing the Work," and "for initiating, maintaining and supervising all safety precautions and programs in its Work." 622 S.W.3d at 869. The contract also similarly stated that the general contractor had "no authority to direct, supervise or control the means, manner or method of construction of the Work." *Id.* The supreme court held that such provisions "clearly do not confer a right to control" and that it saw "no indication that [the general contractor's] supervisory control extended to the means and methods of [the] work." *Id.* at 869–70. The contract there also required the independent contractor to comply with numerous safety procedures, including a detailed "Fall Protection Plan" mandating safety harnesses. *Id*. at 869. However, as here, the plaintiff did not explain how the procedures unreasonably increased the probability and severity of injury. *Id*. (citing *Dow Chem*., 89 S.W.3d at 607 (rejecting that requiring independent contractor to comply with owner's safety rules and regulations gave rise to contractual right to control work)). The supreme court held as a matter of law that the contract did not provide a basis for imposing liability on the general contractor. *Id.* at 870.

Here, PRSI retained an independent contractor, Ryan, to perform the work at issue. *Ryan*, not PRSI, subcontracted to NPS the design, construction, and daily inspection of the scaffolding at issue. Subsequently, alleging that he was injured by a defect in the scaffold, Torres brought a negligence claim against PRSI. As discussed above, the Contract between PRSI and Ryan, like the contracts in *JLB* and *Dow*, expressly disclaimed any right on the part of PRSI to control the "manner or method" of the work. *See id*.; *Dow Chem*., 89 S.W.3d at 606–07. Also similarly, the Contract expressly designated Ryan as an independent contractor and made it solely responsible for the supervision, direction, and control of its employees and subcontractors. Like in *JLB*, the Contract made Ryan "*fully and completely responsible* for managing *all HSE considerations* associated with its performance of the work" and "for initiating, maintaining and supervising *all safety precautions* and programs in connection with performance of the work." (Emphasis added). In addition, Ryan, and not PRSI, was required to "provide and require all personnel to wear specialty personal protective equipment . . . (e.g., fall protection systems . . .)." Because there is no evidence that PRSI controlled the "the means, methods, or details" of Torres's work, like in *JLB* and *Dow*, PRSI established as a matter of law that it owed no duty to ensure Torres's safety. *See JLB Builders*, 622 S.W.3d at 869–70; *Dow Chem*., 89 S.W.3d at 606–07.

Further, as discussed above, PRSI's reservation of a "right, but not the obligation," to inspect the worksite and a "right" to stop the work are not evidence of retained control. *See Dow Chem.*, 89 S.W.3d at 607–08. The supreme court has expressly held that a general contractor's implementation of mandatory safety procedures in creating a safer construction site "*does not serve as evidence*" that its independent contractors are "not free to do the work in their own way and is not evidence that [the general contractor] controlled the method of work or its operative details." *Id.* at 608 (emphasis added). "[R]equiring compliance with safety procedures does not give rise to a duty to an independent contractor's employees so long as those procedures do not unreasonably increase, rather than decrease, the probability and severity of injury." *JLB Builders*, 622 S.W.3d at 869 (internal quotations omitted). There is no allegation in this case that PRSI promulgated safety rules or requirements that increased the probability or severity of Torres's injury. *See id*.

Based on the foregoing, I would conclude that appellants did not present evidence that PRSI retained contractual control over the safety of the scaffold or over Ryan's employees' use of fall-protection systems. Accordingly, I would address appellants' argument that PRSI exercised actual control.

2. *Actual Control*

With respect to actual control, appellants, in their summary-judgment response, argued that PRSI was "actively engaged in directing, supervising, and controlling the details of the work that Torres and [Ryan] were performing."

This inquiry focuses on whether appellants presented evidence that PRSI exercised actual control over the safety of the scaffold at issue or Ryan's employees' use of fall-protection systems. *See United Scaffolding*, 537 S.W.3d at 479 (holding relevant inquiry was defendant's right to control *scaffold* and responsibility to warn about or remedy dangerous condition thereon and that court of appeals erred in expanding scope of inquiry to factors such as control over refinery operations); *Lee Lewis Constr.*, 70 S.W.3d at 783 ("[W]e must determine if [plaintiffs] presented more than a scintilla of evidence that [the general contractor] exercised actual control over safety, in particular, *the fall-protection systems* used by [the independent contractor's] employees.") (emphasis added).

In *Ellwood Texas Forge Corp.*, the court of appeals concluded that there was no evidence of actual control. 214 S.W.3d at 704. There, Ellwood, a steel-foraging plant, hired PI, an independent contractor, to replace an air conditioner. *Id.* at 695–96. Jones, an employee of PI, was injured when he fell from a ladder during the work. *Id.* at 696. Jones, who was not wearing fall-protection equipment at the time of his fall, sued Ellwood. *Id.* Ellwood's safety policies required independent

contractors' employees working over six feet above ground to use fall-protection equipment, and Ellwood had a right to enforce its safety rules and stop the work. *Id.* at 701. Before the work began, an Ellwood maintenance coordinator, Wegner, had signed a safe work permit intended to identify the specific jobs that PI was to perform and the required safety equipment, but no fall-protection devices were listed. *Id.* at 696. Wegner testified that he did not know that PI employees were working without fall protection; Jones testified that Wegner was at the jobsite and knew. *Id*.

On appeal, Ellwood argued that there was no evidence that it exercised actual control over the safety of the jobsite. *See id.* at 698, 701. Jones argued that Ellwood had such control because it "had a right to forbid [PI] from working without fall protection and to dictate what fall protection [PI] used." *Id.* at 697–98. The court held that "Ellwood's right to forbid PI employees from doing their work in a dangerous manner [was] insufficient to impose a duty on Ellwood to ensure that PI and its employees followed Ellwood's safety rules and regulations." *Id.* at 698. Instead, a premises owner assumes only a narrow duty to ensure that its rules or requirements do not unreasonably increase the probability and severity of injury. *Id.* at 702. Actual control is not demonstrated by having a "right to preclude work from beginning in the first instance or stopping it after it has commenced" or by placing a safety representative on site to observe the independent contractor's work. *Id.*

In support of their argument, appellants rely on *Lee Lewis Construction*, 70 S.W.3d 778. There, a hospital hired a general contractor, LLC, to remodel a hospital tower. *Id.* at 782. LLC hired an independent contractor, KK Glass, to provide glass work on the project. *Id*. While Harrison, a KK employee, was working on the tower's tenth floor, he fell and suffered fatal injuries. *Id*. It was undisputed that Harrison was not using an independent lifeline that would have stopped his fall. *Id*. Harrison's wife sued LLC for negligence. *Id*. The supreme court considered whether Harrison presented more than a scintilla of evidence that LLC exercised actual control over safety, i.e., the fall-protection systems used by KK employees. *Id*. at 783. The record showed that LLC's president assigned LLC's job superintendent "the responsibility to routinely inspect the ninth and tenth floor addition to the south tower to see to it that the subcontractors and their employees properly utilized fall protection equipment." *Id*. at 784. LLC's superintendent "personally witnessed and approved of the specific fall-protections systems [KK] used" and "knew of and did not object to [KK] employees using a bosun's chair without an independent lifeline." *Id*. The supreme court concluded that this testimony constituted more than a scintilla of evidence of actual control over the fall-protection systems on the jobsite. *Id*.

In *Dow Chemical*, the supreme court examined *Lee Lewis*. In *Dow*, a premises owner, Dow, retained Gulf States, an independent contractor, who employed Bright

as a carpenter. 89 S.W.3d at 605. After Bright, while working on Dow's premises, was injured by a falling pipe put in place by another Gulf States employee, Bright sued Dow. *Id*. With respect to actual control imposing a duty on Dow, Bright presented evidence that Dow had conferences with Gulf States' employees, performed on-site inspections, maintained personnel on the work site, and retained a right to stop the work. *Id*. at 607–09. The court concluded, however, that because there was no evidence that Dow had approved how the pipe in question was secured or, knowing of its dangerous condition, instructed Bright to perform the work, Dow did not, as a matter of law, exercise actual control. *Id*. at 609. The supreme court noted that it had "*never concluded* that a [premises owner] actually exercised control of a premises where, as [there], there was no prior knowledge of a dangerous condition *and no specific approval of any dangerous act*." *Id*. (emphasis added).

Here, appellants did not, in their summary-judgment response in the trial court, point to any evidence that PRSI had prior knowledge of a dangerous condition with respect to the safety of the scaffold or that it specifically approved a dangerous act. *See id*. Even were we to consider evidence that appellants presented in support of other arguments in their summary-judgment response, i.e., the testimony of PRSI safety supervisor Elliott Johnson that PRSI had prior knowledge that there was not a self-retracting lifeline on the scaffold at issue, appellants did not direct the trial court to any evidence that PRSI specifically approved a dangerous act, such as

ordering Torres to utilize the scaffold despite the lack of safe ingress or a self-retracting lifeline. *See id*.

Thus, like the supreme court concluded in *Dow*, because appellants did not present evidence that PRSI knew of a dangerous condition and specifically approved a dangerous act, the instant case is distinguishable from *Lee Lewis*. *See Dow Chem.*, 89 S.W.3d at 609 ("Had the Dow safety representative actually approved how the pipe in question was secured or instructed Bright to perform his work knowing of the dangerous condition, we could have a fact scenario mirroring *Lee Lewis*.").

In sum, I believe that appellants' summary-judgment evidence does not reflect that PRSI either retained contractual control or exercised actual control over the safety of the scaffold at issue or Ryan's employees' use of fall-protection systems. Accordingly, I would affirm the summary judgment granted in favor of PRSI. Because the majority holds otherwise, I respectfully dissent.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Kelly and Goodman.

Radack, C.J., dissenting in part.