
Limit of a General Contractor's Liability Under the Common Work Area Doctrine

By Mark A. Nasr / Mar 15, 2018

The Court of Appeals, in the recent decision *Cockfield v. Sachse Construction & Development Corporation, et al.*, has again analyzed the affirmative obligations a general contractor has to ensure the safety of subcontractors' employees working on a construction site. The answer, consistent with prior Supreme Court and Court of Appeals decisions, hinges on the application of the common work area doctrine to the specific facts at hand.

Sachse Construction and Development Corporation ("Sachse") served as the general contractor for a commercial project in Birmingham, Michigan. Plaintiff was an employee of American Steel Construction, Inc. ("ASC"), a subcontractor on the project. On January 7, 2013, plaintiff and a colleague were assembling a stairway in the building. During the course of his work, plaintiff went to the top platform of the uncompleted stairway to look for a tool. Unfortunately, one of the clamps broke, causing the stairway and plaintiff to fall. Plaintiff thereafter filed suit against Sachse.

During discovery, plaintiff acknowledged that he did not wear any fall protection equipment even though it was present on site, but argued that there was no place for him to "tie off", and that he informed a Sachse construction manager of same. In his suit, plaintiff argued, among other things, that Sachse negligently failed to discharge its duty as the general contractor by failing to provide safety harnesses, failing to instruct the workers in the common area of the stairway to utilize safety harnesses, and negligently instructing their subcontractors to perform dangerous activities without proper safety devices when they knew, or should have known, that severe injury could occur as a result of a fall from a section of unwelded stairway.

Sachse moved to dismiss plaintiff's complaint. Sachse relied on the general rule that general contractors cannot be held liable for the negligence of subcontractors and their employees, and that the common work area exception to the general rule was inapplicable. Sachse also argued that it owed plaintiff no legal duty because MIOSHA regulations apply only to a worker's employer—in this case ASC—and that subcontractors have the duty to ensure workplace safety for their employees.

The Court of Appeals found the Michigan Supreme Court's ruling in *Latham v Barton Malow Co*, 480 Mich 105 instructive. The Supreme Court ruled in that case that, traditionally, "in the absence of its own active negligence, a general contractor is not liable for the negligence of a subcontractor or a subcontractor's employee and . . . the immediate employer of a construction worker is responsible for the worker's job safety." Further, the common work area doctrine is an exception to the rule of general contractor nonliability. *Latham*, 480 Mich at 112. For a general contractor to be held liable under the common work area doctrine, a plaintiff must show that (1) the general 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 workmen (4) in a common work area. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 54.

Plaintiff admitted that he and one other ASC employee had been assembling the stairway, and no other contractors used the stairway before it was installed. The Court noted that in a previous case, *Hughes v PMG Bldg, Inc*, 227 Mich App 1 (1997), the Court of Appeals determined that four workers subject to the same danger did not amount to a significant number for common work area doctrine purposes. *Id.* at 6-8. Additionally, in *Alderman v JC Dev Communities, LLC*, 486 Mich 906, 906 (2010), the Supreme Court held that two to six employees of one subcontractor did not constitute a significant number of workers.

Based upon the lack of active negligence by Sachse, and the lack of a significant number of workmen being present, the Court of Appeals affirmed the trial court's dismissal of plaintiff's complaint, ruling that the common work area doctrine was inapplicable.

Michigan courts continue to walk a fine line concerning what constitutes an assumption of affirmative obligation by a general contractor on a project. Clark Hill's Construction Law Practice Group has uniquely skilled legal professionals who provide advice and consultation to members of the construction industry on a daily basis to navigate the obligations and risks inherent on a project, including roles and responsibilities of various parties. If you have any questions, or would like assistance, please contact Mark A. Nasr at 313.309.9466 | mnasr@clarkhill.com, or another member of Clark Hill's Construction Law Team.