STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM MCDONALD and
NANCY MCDONALD,

Plaintiffs-Appellees,

v

DETROIT EDISON COMPANY,

Defendant/Third-Party Plaintiff/Appellant,

v

GEM INDUSTRIAL CONTRACTORS CORPORATION,

Third-Party Defendant.

UNPUBLISHED
September 12, 1997

No. 190769
Monroe Circuit Court
LC No. 92-000831

Before: White, P.J., and Cavanagh and J. B. Bruff*, JJ.

PER CURIAM.

Defendant Detroit Edison[1] appeals from a judgment entered upon a jury's verdict for plaintiffs in this premises liability/workplace negligence action and the trial court's denial of defendant's motions for summary disposition, directed verdict and judgment notwithstanding the verdict. We affirm.

Defendant first argues that the trial court erred in instructing the jury that defendant owed plaintiff William McDonald (plaintiff) a duty to protect or warn him of any known or knowable dangerous conditions on its premises. We disagree. A premises owner's duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land that the owner knows or should know the invitees will not discover, realize, or protect themselves against generally extends to invitees who are employees of independent contractors. *Butler v Ramco-Gershenson, Inc*, 214 Mich App 521, 532; 542 NW2d 912 (1995).

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* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant owned the scaffolding, and defendant's employees assembled, inspected and attached a white "safe scaffold" tag to the "pole and knuckle" scaffold that plaintiff had been instructed to disassemble. One of defendant's supervisors testified that the purpose of the white tag was to provide notice that the scaffold had been competently built, inspected and approved to be safe. The supervisor testified that persons mounting the scaffold were expected to do a visual daily inspection, but were not expected by defendant to physically inspect each nut and bolt each day because if the scaffold bore a white tag, that type of inspection would have occurred during the installation or erection process. Loosened bolts could not be detected by a visual inspection. There was thus ample evidence that defendant, whose employees assembled and inspected the scaffold, should have known of the loosened bolt or bolts and that defendant should have expected that persons like plaintiff would not discover or realize the danger the scaffold posed since it bore a white "safe scaffold" tag.

Although defendant correctly argues that a premises owner is not liable when the employee of an independent contractor is injured while repairing the condition that causes the injury, that exception is factually inapplicable to this case. *Butler, supra* at 532 n 6; *Nemeth v Detroit Edison Co,* 26 Mich App 481, 485-487; 182 NW2d 617 (1970). Here, plaintiff was injured when loose bolts in a knuckle or knuckles gave way on the scaffold, causing a pole to slip. Plaintiff, through his employer, Gem, was not hired to inspect the scaffold, or to correct the defect by properly tightening the bolts in the knuckles. Nor was he hired to disassemble an improperly built or dangerous scaffold. Rather, he was assigned to disassemble a purportedly safe and properly constructed scaffold. In sum, we conclude that the trial court did not err in submitting plaintiffs' premises liability claim to the jury.

Next, defendant argues that the trial court erred in denying its motions for summary disposition, directed verdict, and judgment notwithstanding the verdict because defendant established as a matter of law that it did not retain and exercise sufficient control over plaintiff's work. We disagree.

Defendant's employees ordered that the scaffold be disassembled. The scaffold was owned by defendant and had been assembled, inspected and tagged as safe by defendant's employees. Plaintiff had received training from defendant in scaffold disassembly. The contract directed Gem to follow defendant's safety rules in doing its work. Defendant also provided safety training to all of Gem's employees who worked at the site. If defendant's employees saw a Gem employee violating a safety rule, defendant's employees could stop the Gem employee's work and have that employee fired.

We conclude that the trial court properly determined that a genuine issue of material fact remained on this question, precluding summary disposition. *Plummer v Bechtel Construction,* 440 Mich 646, 649, 658-663; 489 NW2d 66 (1992). Nor did the trial court err in denying defendant's motions for a directed verdict and for judgment notwithstanding the verdict. The evidence was such that reasonable jurors could differ regarding whether defendant retained some degree of control over the manner in which the work was done. *Id.* at 659-663, 660 n 17.

Defendant argues as an alternative ground for reversal that, if it controlled plaintiff's employment, plaintiff was precluded from tort recovery against defendant by the exclusive remedy provision of the Workers' Disability Compensation Act, MCL 418.131; MSA 17.237(131). Because

defendant failed to raise this argument below, it may not be asserted on appeal. *Garavaglia v Centra, Inc*, 211 Mich App 625, 628; 536 NW2d 805 (1995). Further, we conclude defendant's argument lacks merit.

Finally, defendant argues that the trial court erred in instructing the jury that defendant was obligated to comply with all relevant provisions of the Michigan Occupational Safety and Health Act, MCL 408.1001 *et seq.*, MSA 17.50(1) *et seq.*, in the absence of a specific determination by the jury that defendant retained and exercised control over plaintiff's work. We disagree.

Defendant argues it objected to the instruction, but does not cite to the record. Plaintiffs argue that defendant's objection was not specific and did not regard the issue now raised, and cite to the record. We agree with plaintiff that defendant's objection was not specific and did not raise the issue defendant advances on appeal. *Hammack v Lutheran Social Services of Michigan*, 211 Mich App 1; 535 NW2d 215 (1995). Further, safety regulations in the workplace apply to all workers on the site, whether they work for the landowner or an independent contractor. *Beals v Walker*, 416 Mich 469, 481; 331 NW2d 700 (1982); *Hardaway v Consolidated Paper Co*, 366 Mich 190, 197; 114 NW2d 256 (1962). In any event, plaintiffs established a prima facie case that defendant retained and exercised control over plaintiff's work, thus the trial court's instructions adequately and fairly presented the parties' theories and applicable law to the jury. *Plummer, supra* at 659, 661.

Affirmed.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ John B. Bruff

[1] Gem Industrial Contractors Corporation ("Gem") is not a party to this appeal. The trial court granted a judgment for Gem in defendant's third-party action against it on June 7, 1995.