

STATE OF MICHIGAN
COURT OF APPEALS

LEE SIEGEL and BEVERLY SIEGEL,

Plaintiffs-Appellees,

v

BERNIE MERROW and MARYLOU MERROW,

Defendants-Appellants,

and

LUMBER & TRUSS, INC, d/b/a LAPEER
CUSTOM BUILDING,

Defendant.

UNPUBLISHED

January 12, 2006

No. 256232

Genesee Circuit Court

LC No. 03-076369-NO

Before: Donofrio, P.J., and Borrello and Davis, JJ.

MEMORANDUM.

In this negligence action, defendants appeal by leave granted from the trial court's order denying defendants' motion for summary disposition. We affirm.

During the construction of defendants' new home, plaintiff struck his head on a temporary support beam crossing over the basement stairway after installing a water line in the basement. Plaintiff instituted a cause of action for general contractor liability in the trial court alleging that his injury arose while he was working in a common work area. The trial court concluded that an issue of material fact remained regarding whether the condition was open and obvious and denied defendants' motion for summary disposition.

Pursuant to this Court's order granting leave in the instant matter, defendants' appeal is limited to only those issues brought in defendants' application to this Court. Therefore, the only issue we reach concerns the applicability of the open and obvious doctrine as a defense to plaintiff's claim for general contractor liability. Without a prior determination by the trial court regarding whether plaintiff's cause of action for general contractor liability is viable in

accordance with the elements¹ set out in *Ormsby v Capital Welding, Inc*, 471 Mich 45, 54; 684 NW2d 320 (2004), we have no basis on which to determine if the open and obvious doctrine is an appropriate defense to plaintiff's claim. *Ghaffari v Turner Construction Co*, 473 Mich 16, 31; 699 NW2d 687 (2005) ("The open and obvious doctrine has no applicability to a claim brought under the common work area doctrine."). Since the trial court reached the right result albeit for the wrong reason, we affirm the denial of defendants' motion for summary disposition. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed and remanded to the trial court for next steps consistent with this opinion. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Alton T. Davis

¹ "[F]or a general contractor to be held liable under the 'common work area doctrine,' a plaintiff must show that (1) the defendant, either the property owner or 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; 684 NW2d 320 (2004).