

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL FAULMAN,

Plaintiff-Appellant,

v

AMERICAN HEARTLAND HOMEBUILDER,
L.L.C.,

Defendant-Third-Party Plaintiff-
Appellee,

v

JAG CONSTRUCTION,

Third-Party Defendant-Appellee.

UNPUBLISHED

January 4, 2007

No. 269287

Macomb Circuit Court

LC No. 04-004961-NO

Before: White, P.J., and Zahra and Kelly, JJ.

WHITE, P.J. (*dissenting*).

I respectfully dissent.

Plaintiff presented evidence that American Heartland's on-site supervisor was at the condominium site every day, eight hours per day, and routinely came by to check on JAG's carpentry work. The evidence before the circuit court was that the wall the JAG Construction employees constructed, and then raised by hand, was an exterior wall, with gables, and approximately 30' long by 15' high. The first floor of the condominiums had been erected but not the second floor, when this exterior wall was built and raised on the (incomplete) second floor of the condominium building. The JAG employees first constructed the wall, and then raised it. This was not the first wall built and raised by JAG at this construction site. American Heartland's on-site supervisor was familiar with the construction plans, and was aware that JAG was building and erecting walls at the site. There was no boon or crane at the site, until after the instant accident happened.

The deposition testimony of plaintiff and of American Heartland's own on-site supervisor, Don Wilson, was that this was a busy construction site, and that employees of multiple trades were present at the building at issue, going in and out, and doing things that included taking measurements. That JAG workers alone may have been present on the second

floor of the building at the time the accident happened does not preclude a finding that a high degree of risk to a significant number of workmen was posed, given that this was an exterior wall being raised on a second floor that was incomplete, and that after the wall collapsed, it hung off the side of the building.

Viewed in a light most favorable to plaintiff, sufficient evidence regarding each of the four elements of the common work area doctrine was presented to survive summary disposition. I would reverse.

/s/ Helene N. White