

blueprints

MAPPING LEGAL SOLUTIONS FOR THE CONSTRUCTION INDUSTRY

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Limitations on Construction Claims Continue

By Michael D. Crow

In *Searfoss v Christman Company, Inc.*, the Michigan Court of Appeals addressed the legal theories available to an employee of a subcontractor injured on a construction site. Defendant Christman Company Inc., was the general contractor on a construction project. It hired Co-Defendant, Douglas Steel Company Inc., as a subcontractor. Douglas Steel Company, Inc. subcontracted a portion of its work to Plaintiff's employer, Citisteel. Plaintiff Searfoss was a pre-apprentice ironworker installing steel decking for Citisteel. In the course of his work, Searfoss walked to the edge of the decking and fell.

Despite the general rule that an independent contractor is not liable for a subcontractor's negligence, Plaintiff claimed several exceptions applied, including the general contractor's failure to hire a reasonably competent contractor, the doctrine of *respondeat superior*, the doctrine of retained control and the exception for injuries caused by inherently dangerous activities.

For the most part, the Michigan Court of Appeals, in this unpublished decision, resoundingly rejected Plaintiff's claims. With respect to Plaintiff's claim for negligent hiring, the court reiterated that general contractors have no duty to employ careful or competent contractors. See *Reeves v Kmart Corporation*, 229 Mich App 466, 475-476 (1998). In rejecting Plaintiff's claim of respondeat superior, the court reasoned such a claim requires, "That the employer retains control over the method of the work, (so that) there is in fact no contractee-contractor relationship, and the employer may be vicariously liable

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The *Searfoss* case is unpublished, has no binding effect and expresses no new law. However, the case stands as a gleaming example of the Michigan Supreme Court's decimation of construction claims in this state. Assuming one does not act negligently to the detriment of another, the only claim available to injured employees of subcontractors is against a general contractor (or a property owner who retains the responsibilities of a general contractor). However, the injured employee must prove the common work area exception applies. Four elements are necessary to establish this exception: (1) the 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. This is a very difficult standard to establish.

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under the principles of master and servant.” See *Candelaria v BC Gen Contrs, Inc.*, 236 Mich App 67, 73 (1999). The court also dismissed Plaintiff’s claim of retained control and inherently dangerous activity, relying on the Supreme Court’s recent decision in *Ormsby v Capitol Welding Company*, 471 Mich 45 (2004). In doing so, the court held the inherently dangerous activity doctrine does not apply to employees of a subcontractor and “The doctrine of retained control is subordinate to the ‘common work area doctrine’ and is not in itself an exception to the general rule of nonliability.” Id at 49.

The court remanded the case to the trial court for additional consideration of one issue. Because case law prior to *Ormsby* construed the retained control doctrine as a separate exception to non-liability, the court provided Plaintiff an opportunity to amend his pleadings to allege the common work area exception. As the common work area exception only applies to general contractors, however, the Michigan Court of Appeals limited the remand to Douglas Steel Company.

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