

Invitation Denied: Common Work Area Doctrine Remains Defensible Following *El-Jamaly*

By Katie L. Kennedy

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For the first time since *El-Jamaly v Kirco Manix Constr, LLC*, ___ Mich ___; ___ NW3d ___ (2024) (Docket No. 164902), the Court of Appeals issued an unpublished opinion finding that the trial court did not err in holding that Plaintiff failed to establish liability under the common work area doctrine.

In *Dular v DTE Energy Co*, unpublished per curiam opinion of the Court of Appeals, issued October 15, 2024 (Docket No. 367115), Plaintiff, an employee of Champion Painting Specialty Services Corp. (“Champion”), was injured after gaps on a lower-level work platform were concealed with a contamination barrier tarp. When Plaintiff walked over the work platform, he fell into one of the concealed gaps. On the day before Plaintiff’s accident, DTE Electric Company (“DTE”) requested a mockup because it wanted Champion to begin decontaminating the area. Champion wanted to wait due to the numerous workers performing various tasks in the area, but DTE wanted the work done immediately because the project was behind schedule.

Plaintiff filed suit alleging, in relevant part, claims of negligence under the common work area doctrine and premises liability against DTE. DTE filed a Motion for Summary Disposition, which the trial court granted. Plaintiff appealed. On appeal, Plaintiff argued that the trial court erred by granting DTE summary disposition regarding Plaintiff’s negligence claim under the common work area doctrine. The Court of Appeals disagreed and affirmed the decision of the trial court.

The Court’s opinion, in relevant part, focused on the first element of the common work area doctrine, which required Plaintiff to establish that DTE failed to take reasonable steps within its supervisory and coordinating authority. See *El-Jamaly*, ___ Mich at ___; slip op at 15. The Court found that Plaintiff did not meet this burden because DTE advised Champion to place the contamination barrier tarp on the upper-level work platform. DTE did not instruct Champion, or any other workers, to place the contamination barrier tarp on the lower-level work platform where Plaintiff was injured. Accordingly, DTE was not liable under the common work area doctrine.

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In the face of our Supreme Court’s decision in *El-Jamaly*, which provided lower courts with a basis upon which to deny dispositive motions regarding the common work area doctrine, *Dular* reinforces the viability of summary disposition potential where defective elements remain the focus of defense.

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Construction Industry Practice Group Chair

[John G. Mitchell](#) | jmitchell@secrestwardle.com or 248-539-2869

For questions pertaining to this article

[Katie L. Kennedy](#) | KKennedy@secrestwardle.com or 248-539-2851



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Troy | 248-851-9500

Grand Rapids | 616-285-0143

www.secrestwardle.com

Contributors

Construction Industry Practice Group

Chair

John G. Mitchell

Editors

Sandie Vertel

Susan Willcock

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