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PREMISES LIABILITY-PROPERTY OWNERS ARE STILL PROTECTED FROM LIABILITY TO EMPLOYEES OF INDEPENDENT CONTRACTORS

Must a landowner warn an independent contractor's employees of obvious hazards they already know about? Four times in the last ten years the Texas Supreme Court has said the answer is "no."

In *General Electric Company v. Arthur Lee Moritz*, 2008 Tex. Lexis 576; 51 Tex Sup. J. 1030, the Texas Supreme Court recently held that the Judge, and not a jury, decides what legal duties landowners owe to independent contractors. In its conclusion, the Court affirmed its prior decisions that a landowner is liable to the employees of an independent contractor only for claims arising from a pre-existing defect, rather than from the contractor's work, and then only if the pre-existing defect was concealed.

FACTS OF THE CASE

Plaintiff Moritz worked for an independent contractor that delivered General Electric parts to customers. Everyday for 18 months, Moritz drove his pick-up to GE's warehouse, which had a loading dock with two large doors. Moritz loaded supplies either by backing his truck up the ramp into the warehouse itself, or by backing up next to the door without a ramp. But on Sundays, he would load his truck on the ramp or outside the driveway.

On the day Moritz was injured, both doors on the loading dock were blocked by GE supplies, so he parked his truck on the ramp. Moritz was helped to load electrical conduit into the bed of his pick-up truck by two GE employees, after which the employees secured his load with ratchet-type straps. He then tried to add a rubber bungee cord, but the cord broke while he was leaning back to stretch it, causing the Plaintiff to fall off the ramp's side and fracture his hip, pelvis and thumb.

Moritz sued GE, the owner of GE's warehouse, and the property management company alleging that as owners or occupiers of the premises they were liable for negligence regarding activities on the premises and the premises condition. The trial court granted Summary Judgment for the Defendants, but the Court of Appeals found fact questions and reversed the trial court's decision.

A LANDOWNER'S DUTY

Moritz alleged a premises-condition claim against all Defendants. Generally, a landowner is liable to the employees of an independent contractor only for claims arising from a pre-existing defect rather than from the contractor's work and then only if the pre-existing defect was concealed. With respect to existing defects, the Supreme Court has held that an owner or occupier has a duty to inspect the premises and warn of *concealed* hazards that the owner knows or should know about. The Supreme Court found that Moritz's claimed defect, the absence of rails on the loading ramp, was obviously a pre-existing condition and was not a concealed hazard.

THE SUPREME COURT'S RULING

The Supreme Court found that an independent contractor owes its employees a non-delegable duty to provide them a safe place to work, safe equipment to work with, and to warn them of potential hazards. Thus, one who hires an independent contractor generally expects the contractor to take into account any open and obvious premises defects in deciding how the work should be done, what equipment to use in doing it, and whether its workers need any warnings. Placing the duty on an independent contractor to warn its own employees or to make safe open and obvious defects ensures that the party with the duty is one with the ability to carry it out.

Accordingly, the Supreme Court held that when a Defendant hires an independent contractor to come on the premises and perform work as it sees fit, the Defendant landowner may reasonably expect the contractor to instruct its own employees on the safe means and manner for doing so. Further, regardless of whether Moritz acted prudently, the Defendants had no duty to warn him that the ramp he used daily had no hand rails. Accordingly, the Court of Appeals' Judgment was reversed and the Supreme Court rendered a Take-Nothing Judgment in favor of the Defendant.

THE HEATED DISSENT

In the dissent, two dissenting Justices accused the majority of abandoning long standing principles of premises liability law in its effort to shield landowners and occupiers from liability for known premises defects. In doing so, the dissent argues that the Court articulated an exceptional no-duty rule for the premises liability claims of independent contractor's employees. The dissent argues that placing a duty of care on the independent contractor makes sense when the independent contractor is given control over workplace conditions, but makes no sense at all when, as in this case, the independent contractor lacks control of the premises.

The heated dissent is noteworthy since during the last three years the Texas Supreme Court Justices have agreed with each other 78% of the time. More importantly, the dissent demonstrates that the dissenting Justices believe the Court's holding in *Moritz* strengthens the protections afforded to landowners and occupiers to the claims of an employee of independent contractor for known premises defects.

WHAT DOES THIS MEAN?

With the *Moritz* decision, The Texas Supreme Court has now reaffirmed on four occasions in the last ten years that a landowner owes no duty to warn an independent contractor's employees of obvious hazards they already know about. This means that:

- (1) When a landowner or occupier retains an independent contractor to perform work on its premises, great care should be exercised to preserve defenses to the claims of an independent contractor's employees by insuring that the landowner or occupier does not retain a right to control the contractor's work either through contract or by conduct;
- (2) When a landowner or occupier has no right to control the activities of an independent contractor's employees, and an independent contractor is hired to come on the premises and perform work as it sees fit, a landowner or occupier may reasonably expect the contractor to instruct its own employees on the safe means and manner of doing so; and
- (3) When a landowner or occupier retains no right to control the activities of an independent contractor's employees it owes the employees of the independent contractor **no** duty to warn of pre-existing conditions that are not a *concealed hazard*.

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