

2018 IL App (1st) 172341-U
No. 1-17-2341
November 5, 2018

FIRST DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

SAMUEL CARRION,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellant,)	
)	No. 15 L 3883
v.)	
)	The Honorable
EXXON MOBIL CORPORATION,)	Patricia O'Brien Sheahan,
)	Judge Presiding.
Defendant-Appellee.)	

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

ORDER

¶ 1 *Held:* A party who retains a general right to supervise an independent contractor's work is not liable for injuries caused by the contractor's unsafe procedures unless the party knew or should have known of the independent contractor's unsafe procedures.

¶ 2 Samuel Carrion (Carrion) suffered severe injuries while working for Catalyst Handling Resources LLC (CHR) on a project for Exxon Mobil Corporation (Exxon). Carrion sued Exxon, claiming Exxon retained control over the safety of the project and it exercised that control negligently. We hold that Carrion has not presented evidence that could support a

finding that Exxon knew or should have known of the unsafe procedures that led to Carrion's injury. Accordingly, we affirm the circuit court's order granting Exxon's motion for summary judgment.

¶ 3

BACKGROUND

¶ 4

Exxon periodically shuts down some of its process units for several days so that it can repair and refurbish its equipment. In 2010, Exxon entered into a contract with CHR for "inspection, maintenance, revamp or renewal" of some of its equipment. Exxon scheduled an overhaul of its Catalyst Continuous Reforming Reactor at its Joliet plant for May 2013. CHR prepared a plan for the work it expected to do on the reactor, and in June 2012, CHR filled out Exxon's Job Safety Analysis form (JSA) for the expected work. On the form, CHR listed each step in the work it would do on the reactor, the hazards associated with each step, and the measures CHR promised to take to minimize the risk of injury.

¶ 5

The reactor at the Joliet plant stands about 280 feet tall. It combines four stacked subreactors. Each subreactor curves in at the top and the bottom. At the center of each subreactor's ceiling sits an oval plate about six feet across. The plate serves as part of the ceiling of the lower reactor and as part of the floor of the upper reactor. CHR needed to use a crane to lift the plates out of the top of the reactor. CHR's JSA notes the hazards of "Equipment falling from height," "loads overhead," workmen in "Confined space," "Suspended loads/Heavy lifting," and "Incorrect rigging." Exxon approved CHR's JSA for the work on the reactor. In May 2013, Exxon issued permits for CHR to do the work described in the JSA.

¶ 6 On May 6, 2013, after CHR employees removed the plates from the bottoms of the uppermost and second subreactors, CHR needed to remove the plate from the bottom of the third subreactor. The day started with a safety meeting, where CHR personnel reminded the crew about the hazards involved in the lift and the measures to counteract those hazards. Daniel Christian of Exxon attended the meeting.

¶ 7 Work on the plate began a few hours later. Aaron Von Senden (Von Senden) ran a nylon sling through the bolt hole in the middle of the plate at the bottom of the third subreactor. Crew members attached the sling and accompanying shackles to the crane. Carrion removed the final bolts that held the plate in place. The crane pulled up one side of the plate so that it stood nearly vertical in the hole it vacated. The crew called CHR's mechanical manager, Mike Howell (Howell), and told him they were ready to lift.

¶ 8 The crane successfully lifted the plate through the third subreactor and through the hole in its ceiling left by removal of the plate at the bottom of the second subreactor. Carrion entered the second subreactor to help guide the plate through the second subreactor to the uppermost subreactor. Von Senden went up to the uppermost subreactor to help guide the plate out of the second subreactor.

¶ 9 Carrion prepared to leave the second subreactor as the plate reached the top of that subreactor. He saw the plate get caught on the lip of the hole in the ceiling of the second subreactor. The nylon sling holding the plate broke, and the plate struck Carrion on its way to the floor of the second subreactor. Carrion sustained severe injuries.

¶ 10 Both Exxon and CHR investigated the incident and wrote reports explaining how it happened. According to CHR's report, when the crew told Howell that they were ready to

lift the plate, Howell responded, "OK, Good." The crew took that to mean they should start lifting without any further input from Howell. The report stated that the crew "selected inappropriate method for lifting and did not properly account for sharp edges when rigging was put under load." CHR found that the JSA should have included more detail and the crew should not have started the lift before Howell inspected the rigging.

¶ 11 Exxon's report also concluded that the use of improper rigging led to the accident. The report noted, "[t]he rigger stated he was not aware that his nylon sling and shackle rigging arrangement would create pinch point that could cause the sling to fail." Exxon said, "[t]he rigging arrangement used did not match what was specified within the JSA."

¶ 12 Carrion received worker's compensation. CHR fired Von Senden.

¶ 13 In April 2015, Carrion filed a complaint against Exxon, alleging Exxon's negligence caused the accident. Exxon filed a motion for summary judgment supported by the JSA, the reports, the contract between Exxon and CHR, Exxon's form for maintenance procedures, and depositions of the witnesses. Carrion supported its response with more depositions and a statement from an expert witness who agreed to testify for Carrion.

¶ 14 The contract provides that CHR "shall be an independent contractor controlling and supervising its personnel and equipment used in performance of the Order and not the agent or employee of Purchaser." CHR warranted that it would "perform services with due diligence and in a safe, workmanlike, and competent manner."

¶ 15 Luis Sordia (Sordia), CHR's safety supervisor, testified that "CHR made the determination of the manner of the rigging of the slings," and "Exxon didn't have anything to

do with that." Sordia said, "the original plan was to use three-quarter-inch steel cables," not a nylon sling, for the lift. Von Senden made the decision to use the nylon sling.

¶ 16 At the morning safety meeting, Howell testified that he told the crew to use metal rigging and not nylon rigging to lift the plate. Another crew had used metal rigging to lift the plate from the bottom of the second reactor. When he received the call saying the crew had prepared to lift the plate, he said, "Okay. I'm on my way." The crew knew they should wait for Howell to inspect the rigging. Howell testified that the plate weighed 3400 pounds, and "[t]he whole crew knew the weight." CHR needed to know the weight to determine how to rig the plate for removal. Exxon did not know how CHR lifted the plate out of the reactor.

¶ 17 Trevor Penny (Penny), project director for CHR, agreed that CHR knew the plate weighed 3400 pounds, and it obtained the weight from Exxon drawings as part of planning the lift. Penny admitted that Exxon "would not have been aware of the actual rigging" on the plate.

¶ 18 Daniel Christian, Exxon's maintenance supervisor, admitted that he issued permits for CHR's work.

¶ 19 Carrion testified that in the safety meeting on May 6, 2013, Exxon's representative said the plate weighed 2700 pounds. Carrion admitted that no Exxon personnel came to the reactor during the lift.

¶ 20 Carrion's expert reported that the plates from the bottoms of the top two subreactors – plates CHR had already removed before the accident – weighed as much as the plate from the bottom of the third reactor.

¶ 21 At the hearing on the motion for summary judgment, the circuit court said:

"Everyone here testified consistently. Exxon had policies and procedures in place, Exxon had safety guidelines, and Exxon attended safety talks every day before work. Exxon also approved the JSA's and work permits.

But, significantly, everyone also said that CHR had full control over the means and method of work. CHR chose which slings to use for which jobs and how it was rigged, and Exxon was not present at the time of the accident.

*** [The] retained control theory fails given the evidence that Exxon Mobil retained no more than a general right of supervision, abdicating the operating details, mainly the means and methods of the particular work, to CHR."

¶ 22 The court granted Exxon's motion for summary judgment. Carrion now appeals.

¶ 23 ANALYSIS

¶ 24 We review *de novo* the order granting Exxon's motion for summary judgment. *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 291 (2000). Although Carrion advanced other theories in the circuit court, on appeal he relies solely on liability for retained control, as set forth in section 414 of the Restatement (Second) of Torts. Our supreme court adopted section 414 as a statement of Illinois law. *Carney v. Union Pacific R.R. Co.*, 2016 IL 118984, ¶ 35.

¶ 25 According to section 414:

"One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others

for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care." Restatement (Second) of Torts § 414 (1965).

¶ 26 Comment b to section 414 explains a significant limitation on liability for retained control:

"[T]he principal contractor is subject to liability if he fails to prevent the subcontractors from doing even the details of the work in a way unreasonably dangerous to others, if he knows or by the exercise of reasonable care should know that the subcontractors' work is being so done, and has the opportunity to prevent it by exercising the power of control which he has retained in himself. So too, he is subject to liability if he knows or should know that the subcontractors have carelessly done their work in such a way as to create a dangerous condition, and fails to exercise reasonable care either to remedy it himself or by the exercise of his control cause the subcontractor to do so." Restatement (Second) of Torts § 414, Comment b, at 387-88 (1965).

¶ 27 As the court said in *Diaz v. Legat Architects, Inc.*, 397 Ill. App. 3d 13, 35 (2009), "[t]he general contractor's knowledge, actual or constructive, of unsafe work methods or a dangerous condition is a precondition to direct liability."

¶ 28 The uncontested evidence here shows that no one from Exxon saw CHR's crew using the nylon rigging to lift the plate. In the contract, CHR assumed responsibility for performing the requested work safely. Neither the contract nor Exxon's safety procedures imposed on Exxon a duty to check the method CHR chose for lifting the plate. Where the defendant "has

an insufficient opportunity to observe unsafe working conditions, then knowledge will not be inferred and direct liability will not ensue." *Calderon v. Residential Homes of America, Inc.*, 381 Ill. App. 3d 333, 347 (2008). Here, as in *Lee v. Six Flags Theme Parks, Inc.*, 2014 IL App (1st) 130771, ¶¶ 102-06, the plaintiff has presented no evidence that could support an inference that Exxon should have guessed that CHR's crew would negligently use nylon rigging to lift the plate. Especially because CHR's other crews had already successfully lifted two similar plates – using metal rigging – Exxon could rely on CHR to continue using safe procedures.

¶ 29 Carrion contends he raised an issue of material fact as to whether Exxon told CHR the wrong weight for the plate and thereby contributed to causing the accident. But Carrion testified only that on the morning of the lift, Exxon's representative at the safety meeting said the plate weighed 2,700 pounds. CHR had prepared for the lift, based on the weights CHR's witnesses said they obtained from Exxon's records, long before the day of the lift. Moreover, CHR had already extracted from the reactor two plates of the same weight as the plate involved in the accident. We find no triable issue as to whether CHR knew the weight of the plate when it lifted the plate, or whether a misstatement on the morning of the lift contributed to causing the accident.

¶ 30 CONCLUSION

¶ 31 Carrion presented no evidence that Exxon knew or should have known that CHR's crew would use an unsafe, inadequate rigging to lift the third plate from the reactor. Accordingly, we affirm the circuit court's order granting Exxon's motion for summary judgment.

¶ 32 Affirmed.