Circuit Court for Montgomery County
Case No. 466413V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 889

September Term, 2020

JOHN THOMAS MORAN, SR., *et al.*

v.

HUNTER MODULAR CONSTRUCTION COMPANY, INC., *et al.*

Gould
Ripken,
Eyler, Deborah S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: July 28, 2021

This case comes before us following a tragic construction site accident that resulted in the death of John Moran Jr. ("Moran Jr."). Moran Jr. died when nylon straps used to suspend a modular unit severed, causing the unit to fall and trapping him between the foundation wall and the unit. Moran Jr.'s father ("Appellant"), acting as the personal representative for his son's estate, filed a negligence and wrongful death action against several defendants. Following a hearing on Motions for Summary Judgment filed by three of the defendants, the Circuit Court for Montgomery County entered judgment against Appellant. Appellant appeals the judgment in favor of one defendant, Hunter Construction Inc. ("Hunter"), contending the circuit court erred in its proximate cause and duty analyses. Because we discern no error by the circuit court, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Heights School, located in Potomac Maryland, hired contractors to construct a new music building on its campus. The building was to be constructed using prefabricated modular structures that would be lowered and set into a concrete foundation using a crane, and then welded together. Wilmot Modular ("Wilmot") was the general contractor on site, and it contracted with subcontractors Maxim Crane Works ("Maxim") and Hunter to assist in the construction. Wilmot designated Norman Tuer ("Tuer") as the site superintendent.

Under Wilmot's contract with Maxim, Maxim was to assist with the placement of the units. Specifically, the contract defined the scope of Maxim's work as: "rig and set 8 piece modular—heaviest pick is 25,000 lbs. at planned 70[ft.]." The charges that Maxim would bill Wilmot for included the cost to counterweight load in and load out, the hourly cost of the rigger, and the cost of the rigging where "Maxim will supply two spreader bars

and cable/shackle rigging." The contract also included a 3D Lift Plan for the setting of the 8-piece modular building. Maxim employed Moran Jr. as a rigger for the project, John Linder ("Linder") as the crane operator, and Meng Zhen He ("He") as an additional rigger. The workers on site understood Moran Jr. to be the lead rigger for the project.[1]

Under Wilmot's contract with Hunter, Hunter was to assist with the installation of the modular buildings. The contract provided that such installation included: "[m]obilization," "[b]lock/level 4Plex on foundation," "[w]eld units in place to foundation," "[s]et 4 frames with floor, no walls or ceiling—level and weld only," "[w]eld or bolt of frames," and "[r]emove axels & tires." The contract did not include rigging, lifting, or setting the modular units. The Hunter team consisted of, among others, James Lee Hunter ("J. Hunter") and Dustin Hunter (D. Hunter"), who understood the scope of their work to include moving the units from the staging area to the load zone, assisting Maxim with rigging, assisting with final placement of the buildings after said buildings had been brought over, and performing additional duties to align and complete the project.

On the morning of the accident, Tuer, the site superintendent, conducted two safety meetings. Although the record is not clear on exactly who was present at each meeting, Tuer indicated that the first safety meeting was solely Hunter personnel, and the second meeting included Maxim personnel and several members of the Hunter team. At the first meeting, bringing the units down to the load zone, avoiding pedestrians, preventing damage to the units, and checking equipment were discussed. In that first meeting, there was also

[1] At the time of the job, Moran Jr. had completed the required training to be qualified as a Level II Rigger, and He was an apprentice rigger.

a discussion addressing placement of the units as well as pinch points and open excavations. No specifics of how Maxim intended to rig the lift were discussed at the first meeting.

At the second safety meeting—led by the Crane Operator and Moran Jr.—the specifics of the lift were discussed. These discussions included whether to use wire rope or nylon "web" slings.[2] Moran Jr., as Maxim's "rigging man," decided the lifting configuration, and he decided that web slings would be the preferred lifting device. Moran Jr. discussed the plan to use the nylon straps with Linder, who agreed, provided they also use softeners. Maxim—with the help of Hunter personnel—placed softeners between the slings and the sharp edges of the unit to prevent severing of the slings.[3] Additionally, the spreader beam Maxim intended to use was too short, which caused the front sling to slide to a different position on the unit, increasing the likelihood of the slings severing. To combat this problem, Moran Jr. installed a ratchet strap underneath the unit to secure the slings in place during the lift.

Many of the workers on site, including J. Hunter and D. Hunter, were concerned about the rigging plan and expressed such reservations to Maxim. J. Hunter noticed that because the spreader beam was not long enough, the nylon slings would not be vertical to the unit, but more angular and consequently more "in jeopardy of being cut" by the unit.

[2] These web slings are nylon bands that are placed around the body and base of the unit in a basket formation.

[3] Hunter's assistance with the rigging procedure was limited to placing the softeners because Maxim, with three workers present, did not have enough people to place four softeners.

After seeing this equipment brought by Maxim, J. Hunter expressed his reservations to the Maxim team, including Moran Jr., about the use of nylon straps, the length of the spreader beam, and the use of the ratchet strap. D. Hunter was also concerned with the use of the nylon slings and the ratchet strap. He brought his concerns to the attention of Maxim personnel, and specifically Moran Jr. Moran Jr. indicated that the team was operating under standard procedure and that the slings were rated to the proper loads to sustain the weight, which he verified by checking the tags and labels. Despite others also raising safety concerns about the web slings and ratchet strap, the Maxim team commenced operations as planned.

Linder, the crane operator, lifted the unit about four to five feet in the air. He was following Moran Jr.'s hand signals to guide him toward the foundation wall, and they transported the building about 200-300 feet without any issues when he got the "all stop" signal from Moran Jr. Moran Jr. indicated that the ratchet strap was going to interfere with landing the frame onto the wall. After discussion with D. Hunter about setting the unit down to remove the straps, Moran Jr. signaled Linder to swing the crane to the right. Within ten to fifteen seconds of Moran Jr. giving the stop signal, the rigging failed, causing the unit to fall.[4]

A number of the workers who witnessed the incident stated that the rigging failed because Moran Jr. had released the ratchet strap, which in turn caused the web slings to be

[4] Testimony from those present differs as to whether the suspended unit was at a complete stop when it fell, or whether it was moving rightward. However, this discrepancy is not material.

severed. One stated that he observed Moran Jr. reach his arm approximately eighteen inches under the unit "trying to disconnect something" moments before the strap broke. Another rigger also witnessed Moran Jr. reach under the unit to release the ratchet strap, although he stated he saw only the first unsuccessful attempt. The worker standing closest to Moran Jr. said he saw him reach under the unit, and while he did not know Moran Jr. was going to try and release the ratchet strap, he thought Moran Jr. was trying to stop the building. Tuer also witnessed Moran Jr. reach his hand under the unit. Tuer, as well as others on the job site, yelled at Moran Jr. to get his hand out from under the unit, which fell within seconds of Moran Jr. reaching under the unit. As the building fell, Moran Jr. was pulled towards the unit. Moran Jr.'s hard-hat was crushed by the front beam, and his body was ultimately trapped between the unit and the foundation wall.

The forensics expert hired by Appellant opined that, based on the photographs taken on the scene and the autopsy report, Moran Jr. was struck in the back by the modular unit with enough force to propel him into the foundation wall. He further stated that Moran Jr.'s injuries were inconsistent with him having been pulled down or sucked into or under the load because of the absence of crush injuries and hemorrhaging. The expert also concluded that the pattern of injuries was consistent with Moran Jr. having his back toward the unit. He finally noted that although it did not seem likely, he could not rule out as a possibility that Moran Jr.'s hand was under the unit at the time it fell, nor could he reach a conclusion as to whether Moran Jr. had been standing or bending over.

Additional experts, including Appellant's expert on materials science, concluded that the rigging failed because the sling was cut, not because it was overloaded. Hunter's

expert opined that "the failure mechanism was the release of the ratchet strap," which was what caused the sling to be cut. The only way to release the ratchet strap while the strap was under load was by applying "some physical interaction," such as reaching underneath the unit. Hunter's expert concluded that once the physical interaction was applied and the ratchet strap was released, 1,100 lbs. of tension that the ratchet strap was restraining caused the straps to slide along the unit edge. The straps severed as they slid, causing the unit to fall.

Appellant, acting on behalf of Moran Jr.'s estate, filed a lawsuit against numerous defendants, including Hunter. As to Hunter, Appellant alleged negligence and wrongful death. With respect to the negligence claim, Appellant contended that Hunter was negligent in failing to implement a number of safety procedures including procedures directly related to the use of the crane and rigging, as well as failing to stop the lift. Hunter filed a motion for summary judgment claiming that it did not owe Moran Jr. a duty, that it did not proximately cause the injuries to Moran Jr., and that Moran Jr. was contributorily negligent.

The circuit court granted Hunter's motion finding that, "even assuming that Hunter owed a general duty of care to the other subcontractors and their employees at the worksite, the specific dangerous condition that caused Mr. Moran [Jr.]'s death was not something that Hunter either created or controlled," and so there was no evidence that "any such duty was breached." The court also found that Hunter did not proximately cause the injury because there was no evidence that "any action or inaction by Hunter caused the building to fall." In addition, the court found there was no genuine dispute of material facts, and that the undisputed material facts "show[ed] that Mr. Moran [Jr.], through his actions, was

contributorily negligent as a matter of law." In sum, the court granted summary judgment in favor of Hunter finding that even assuming a duty existed, there was no evidence of breach, Hunter was not the proximate cause, and Moran Jr. was contributorily negligent. Appellant filed this timely appeal.

ISSUES PRESENTED FOR REVIEW

On appeal, Appellant contends the trial court erred in both its proximate cause determination and its duty analysis. He presents two questions for our review:

I. Did the circuit court err in granting Hunter's motion for summary judgment on the issue of proximate cause?

II. Did the circuit court err in refusing to conduct a full analysis as to whether Hunter owed Moran Jr. a duty of care?

For the reasons discussed below, we hold that the circuit court did not err.

DISCUSSION

I. THE COURT DID NOT ERR IN FINDING THAT HUNTER WAS NOT THE PROXIMATE CAUSE OF MORAN JR.'S INJURIES.

We review a circuit court's grant of summary judgment de novo. *Koste v. Town of Oxford*, 431 Md. 14, 25 (2013). In doing so, we examine whether a genuine dispute of material fact exists, and in the absence of such a dispute, whether the moving party is entitled to judgment as a matter of law. *Id.* We review the trial court's ruling on the motion examining "all evidence and inferences made in the light most favorable to the party against whom the motion was made." *Fowlkes v. Choudhry*, 472 Md. 668, 708 (2021). "On appeal from the entry of summary judgment, we review only the grounds upon which the trial court relied in granting summary judgment." *Washington Mut. Bank v. Homan*, 186

Md. App. 372, 388 (2009) (internal quotation marks and citations omitted). However, "if the alternative ground is one upon which the [trial] court would have had no discretion to deny summary judgment, summary judgment may be granted for a reason not relied on by the trial court." *Id.* (internal quotation marks omitted) (quoting *Ragin v. Porter Hayden Co.*, 133 Md. App. 116, 134 (2000)).

A. There Are No Genuine Disputes of Material Facts.

Where a defendant moves for summary judgment and "provides the trial court with a prima facie basis in support of the motion for summary judgment, the [plaintiff] is obliged to produce sufficient facts admissible in evidence . . . demonstrating that a genuine dispute as to a material fact or facts exists." *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 162 (2004). "To be sufficient to generate a dispute, the evidence adduced by the non-moving party must be more than mere general allegations which do not show facts in detail and with precision." *Crews v. Hollenbach*, 126 Md. App. 609, 624 (1999) (internal quotation marks omitted). Unsupported statements and conclusions of law are insufficient to demonstrate a dispute of material fact. *Arroyo v. Bd. of Educ. of Howard Cnty.*, 381 Md. 646, 655 (2004). Rather, the evidence must be such that a jury could reasonably find for the plaintiff. *Hamilton v. Kirson*, 439 Md. 501, 523 (2014).

Appellant argues that the circuit court erred in granting summary judgment in favor of Hunter because disputes of material facts exist as to the proximate cause of the injuries. Specifically, Appellant argues that whether Hunter's actions or inactions caused the injuries and whether Moran Jr. himself contributed to his injuries are factual disputes that should have been presented to the jury. Conversely, Hunter argues that there is no genuine

dispute of fact that (1) Hunter's actions did not cause Moran Jr.'s death as it did not control or create the dangerous condition, and (2) Moran Jr.'s own actions proximately caused the accident.

We conclude that there are no genuine disputes of fact as to what caused the unit to fall. To be sure, both parties agree that the unit fell because the nylon strap snapped while the unit was suspended. Multiple eyewitnesses observed Moran Jr. reach his arm under the suspended unit in order to release the ratchet strap, which multiple experts confirmed to be the failure mechanism causing the nylon strap to sever. Appellant argues that placement of Moran Jr.'s hand under the unit is disputed because it is contradicted by both eyewitness and expert testimony. Appellant's contentions are not borne out by the evidence in the record.

First, no witnesses present that day testified that Moran Jr. did not reach his hand under the unit. Rather, the "contradictions" Appellant refers to are witnesses indicating that they did not see what happened, or do not remember. Neither a lack of knowledge of a fact, nor an absence of memory of a fact equate to a contradiction. Second, the expert testimony Appellant cites is insufficient to dispute the deposition testimony that Moran Jr. reached under the unit. Dr. Ross, who was Appellant's forensics pathologist expert, reviewed Moran Jr.'s autopsy and photographs of the scene of the accident. Appellant argues on appeal that Dr. Ross "unequivocally testified that it would have been impossible for Moran [Jr.] to reach underneath the load" and concluded "it is extremely unlikely that Moran [Jr.] reached underneath the unit." However, Dr. Ross testified only that "it doesn't seem as likely that his hand would be under there." Dr. Ross could not rule out that Moran Jr. had

his hand under the unit at the time it fell. Additionally, although Dr. Ross testified that Moran Jr.'s injuries were consistent with him having his back to the modular unit as it fell, he could not say for certain whether Moran Jr. was standing or bending at the time of the accident, and he could not say whether the modular unit struck Moran Jr. before or after it fell. Such testimony does not constitute a dispute as to Moran Jr.'s releasing of the ratchet strap and the subsequent rigging failure.[5]

Appellant argues that the record instead permits an inference that the nylon straps broke because Hunter directed the unit to be moved rightward. He seems to suggest that such movement combined with the unsafe rigging caused the nylon slings to sever. However, even if we accept that Hunter directed any movement to the right, Appellant does not cite any evidence in the record that the rightward movement caused the rigging to fail. Prior to the slings failing, the unit was successfully moved 200–300 feet, and there was no indication the slings were sliding or otherwise at risk of failing. Although we draw inferences in favor of Appellant, any inference that the slings failed because of the rightward motion would rest upon speculation. *See Taylor v. State*, 346 Md. 452, 458 (1997) (noting that permissible inferences may not be founded in speculation). As noted above, the evidence is that the nylon straps severed not because the unit was being moved,

[5] At best, any dispute that arises from Dr. Ross' testimony concerns the span of time between Moran Jr. reaching under the unit and the unit falling. Such a dispute is not material.

but because Moran Jr. released the ratchet strap holding the slings in place. Accordingly, there is no genuine dispute as to the cause of the rigging failure.

Similarly, there is no genuine factual dispute as to Hunter's role as it related to the rigging. The fact witnesses testified that Maxim was in charge of the rigging, and Moran Jr.'s position as the lead rigger enabled him to make the decisions about the rigging configuration. Hunter's assistance was limited to helping to place the softeners but was otherwise uninvolved in the process. In fact, Appellant does not contend that Hunter placed the nylon slings or the ratchet strap, assisted with the lifting and rigging, or removed the ratchet strap. Rather, Appellant argues that Hunter "oversaw" the rigging and failed to stop the unsafe rigging. Put differently, Appellant asserts that Hunter had a duty to prevent the harm. Such contentions are not factual, but legal. *100 Inv. Ltd. v. Columbia Town Ctr.*, 430 Md. 197, 211 (2013) (the existence of a duty is a matter of law).

Because there exists no genuine dispute of material facts, we move onto whether Hunter is entitled to judgment as a matter of law.

B. Hunter Is Entitled to Judgment As A Matter of Law.

To succeed on a negligence claim, a plaintiff must prove 1) that he was owed a duty by the defendant, 2) that the defendant breached such duty, 3) that the plaintiff was injured, and 4) that the defendant's breach proximately caused the injuries. *Rowhouses, Inc. v. Smith*, 446 Md. 611, 631 (2016). Although proximate cause may ordinarily be a question for the jury, "the trial court may resolve the issue in dispute as a matter of law" where "there is no dispute as to what actually happened and where reasonable minds can draw but one inference." *Owens v. Simon*, 245 Md. 404, 409 (1967).

As previously stated, Appellant contends that the trial court erred in its proximate cause analysis for two reasons. First, he argues the court erred in finding that Hunter's actions and inactions did not proximately cause Moran Jr.'s fatal injuries. Second, he argues the court erred in finding that Moran Jr.'s actions were contributorily negligent. We address each argument in turn.

1. Hunter Did Not Proximately Cause Moran Jr.'s Injuries.

Proximate cause consists of two subparts. To satisfy this element of negligence, the plaintiff must demonstrate that the alleged negligence is "1) a cause in fact of the injury and 2) a legally cognizable cause." *Marrick Homes LLC v. Rutkowski*, 232 Md. App. 689, 712 (2017). The cause-in-fact inquiry is concerned with "whether defendant's conduct actually produced an injury," or whether the injury "would not have occurred 'but-for' an antecedent act of the defendant." *Peterson v. Underwood*, 258 Md. 9, 16–17 (1970). The second subpart subjects proximate cause analyses to "considerations of fairness or social policy," where liability will not be imposed if "the negligence of one person is merely passive and potential, while the negligence of another is the moving and effective cause of the injury." *Id.* at 16.

Based on the facts proffered pursuant to the summary judgment motion, the circuit court properly decided the issue of proximate cause as a matter of law. We agree with the court that "there is simply no evidence that any action or inaction by Hunter caused the modular building to fall." Hunter's role in the process was contractually limited to assistance after the modular unit was placed in the foundation wall. Although Hunter employees assisted with the placement of two softeners, there is no evidence that the

softeners were placed negligently or contributed to the failure of the rigging. Moreover, Maxim was in charge of the rigging, and Moran Jr.'s position as the lead rigger gave him the authority to make the decisions about the rigging configuration. Thus, we cannot say that Hunter's conduct contributed to the injury.

Appellant maintains that Hunter proximately caused the injuries by both not stopping the unsafe rigging, and by directing the unit to be moved to the right. As to the failure to stop the rigging, Appellant states that all Hunter employees had the "authority and ability" to intervene, particularly because they recognized the danger. However, having the "ability and authority" to intervene does not equate to a duty to do so. As we discuss in Section II, Hunter did not owe Moran Jr. a duty for a dangerous condition that Moran Jr. created and controlled. In any event, evidence shows that Hunter employees raised concerns about the rigging with Moran Jr. prior to the lift. Nevertheless, Linder and Maxim determined to proceed with the lift.

Appellant's contention that D. Hunter's directing the crane operator to move the unit to the right caused the accident is similarly misguided. Appellant argues that immediately prior to the accident, D. Hunter had taken over the rigging process and ordered Moran Jr. to give the hand signals to Linder. However, the record reveals Moran Jr. gave the signal to the crane operator to move the unit to the right after D. Hunter and Moran Jr. discussed moving the building to set it down and remove the ratchet strap. Even so, there is no dispute that it was the release of the ratchet strap while the unit was suspended that caused the rigging to fail, not the movement of the unit, and so the person that directed the movement and whether the unit actually moved are of no import. Appellant provides no

evidence that the movement contributed to the failure of the slings, and the unit had in fact been moved successfully prior to the release of the ratchet strap. We are satisfied that the circuit court did not err in ruling that Hunter was not the proximate cause of Moran Jr.'s fatal injuries.

2. Moran Jr. Was Contributorily Negligent.

Even if all elements of negligence are proven, a plaintiff will be completely barred from recovery if the defendant establishes that the plaintiff was contributorily negligent. *Wooldridge v. Price*, 184 Md. App. 451, 461–62 (2009). "Ordinarily, the question of whether the plaintiff has been contributorily negligent is for the jury, not the judge, to decide." *Marrick Homes LLC v. Rutkowski*, 232 Md. App. 689, 717 (2017) (quoting *Campbell v. Baltimore Gas & Elec. Co.*, 95 Md. App. 86, 93 (1993)). However, a court may withdraw contributory negligence determinations from the jury when the evidence demonstrates "some act so decisively negligent as to leave no room for difference of opinion thereon by reasonable minds." *Id.* (quoting *Heffner v. Admiral Taxi Serv.*, 196 Md. 465, 473 (1950)).

"Contributory negligence is the failure to observe ordinary care for one's own safety. It is the doing of something that a person of ordinary prudence would not do, or the failure to do something that a person of ordinary prudence would do, under the circumstances." *Menish v. Polinger Co.*, 277 Md. 553, 559 (1976) (internal quotation marks omitted). The defendant must demonstrate that the plaintiff "acted, or failed to act, with knowledge and appreciation, either actual or imputed, of the danger of injury which his conduct involves." *Thomas v. Panco Mgmt. of Md., LLC*, 423 Md. 387, 418 (2011)

(quoting *id.* at 560). But, "a plaintiff's negligence is not *ipso facto* contributory negligence unless it is a proximate cause of the accident." *Rosenthal v. Mueller*, 124 Md. App. 170, 175 (1998). To qualify as contributory negligence, the negligence must "actively contribute" to the injury. *Blake v. Chadwick,* 249 Md. App. 696, 704 (2021). Thus, to find contributory negligence, proximate cause is a separate and independent element that must be proven. *Rosenthal,* 124 Md. at 177.

Applying these principles to the case at hand, we are satisfied that Moran Jr.'s actions constituted the proximate cause of his injuries and were "so decisively negligent" that the court was justified in withdrawing the determination from the jury.[6] To be sure, Moran Jr.'s actions were active, contributing causes as opposed to passive acts. *See Blake*, 249 Md. App. at 710–11 (holding that a plaintiff's actions must actively contribute to his injury to constitute contributory negligence, as opposed to negligent acts that "put himself in harm's way."). The undisputed testimony demonstrates that Moran Jr. decided on the rigging configuration, placed the ratchet strap underneath the unit, and dismissed workers' apprehensions about the plan. In addition, Moran Jr. defied the "number one rule" in

[6] Appellant argues that Hunter failed to prove that Moran Jr.'s actions were a superseding or intervening cause of his injuries. However, when the intervening cause is the plaintiff's own actions as opposed to a third party's, proximate cause is the appropriate standard for contributory negligence. *See Kassama v. Magat*, 136 Md. App. 637, 660–61 (2001) (internal citations and quotation marks omitted) ("When the issue is whether a defendant is guilty of primary negligence, a third party's intervening negligence that is a superseding cause absolves a defendant from his or her act of negligence. But recently . . . we held that for purposes of contributory negligence, the issue of whether the defendant's act of primary negligence constitutes an intervening or superseding cause is properly analyzed as a question of proximate causation and foreseeability—not under a superseding cause analysis.").

placing any body part under the suspended load. This act actually and directly contributed to Moran Jr.'s injuries, as the rigging failed because of the release of the ratchet strap. Moreover, any danger was known to Moran Jr. The site superintendent conducted two separate safety meetings, multiple workers warned Moran Jr. of the danger of nylon slings being severed by a 25,000 lb load, D. Hunter and Moran Jr. discussed placing the unit down prior to releasing the ratchet strap, and Moran Jr. had years of experience as a rigger. Any danger associated with putting a body part under a suspended load would be recognized by a reasonable person. Thus, the circuit court did not err in concluding that Moran Jr. was contributorily negligent.

II. THE COURT DID NOT ERR IN DECLINING TO CONDUCT A FULL DUTY ANALYSIS.

Appellant also argues that the court's assumption that Hunter owed Moran Jr. a duty of care was error because, according to Appellant, the court should have conducted a full duty analysis. He contends that the court's assumption was ultimately correct because Hunter personnel were qualified to direct the rigging and were in control of the lift immediately before it failed. He also claims that a duty existed because Maryland case law outlines a duty owed by a subcontractor to other subcontractors, federal and state regulations provide a duty, and an expert in rigging and workplace safety "confirmed" that Hunter owed a duty. Finally, embedded in Appellant's "duty" argument is his contention that Hunter breached such a duty.

A. Hunter Owed No Duty to Protect Moran Jr. From the Dangerous Condition He Created and Controlled, and Thus There Was No Breach.

We initially note that none of the bases Appellant provides give rise to a duty in this case. First, whether Hunter was *qualified to direct* the rigging is irrelevant because Hunter did not *actually direct* the rigging—Moran Jr. did. In fact, after Hunter workers relayed concerns to Moran Jr. and were dismissed, Hunter directed its workers to take no part in the rigging. In addition, the expert testimony that Appellant cites for his proposition is devoid of any detail about the scope of Hunter's duty. The cited portion contains only the expert's testimony that, in his view, Hunter was the "lift director" and was responsible for "rigging." Even if Hunter were responsible for rigging, this testimony does not sufficiently define the duty owed to Moran Jr.[7]

As to the state and federal regulations, Appellant argues that the Maryland Occupational Safety and Health Act ("MOSHA"), Md. Code, Labor and Employment Article § 5-104 (2016 Repl.), and the Federal Occupational Safety and Health Act ("OSHA"), 29 U.S.C. § 654, create a statutory duty. He concedes that Hunter was not the employer of Moran Jr. but argues that the "multi-employer worksite" doctrine and the "creating employer" doctrine require Hunter to comply with MOSHA and OSHA. In *C&M Builders, LLC v. Strub*, 420 Md. 268, 289 (2011), the Court of Appeals held that where a

[7] Appellant argues the testimony at minimum shows that "[a]s the entity in control of the lift at the time the unit fell, Hunter was responsible for safety, including the safety of nearby personnel." And "Hunter violated the applicable worksite and craning safety standards of care when it permitted the lift to proceed without the unit being properly rigged and balanced." Appellant has not offered any basis for us to find that Hunter was under the duty to stop the lift from proceeding when Maxim was expressly hired to rig and lift the units.

worker was injured on a construction site, he could not use MOSHA or OSHA to demonstrate a non-employer owed a statutory duty. The Court further held that the "creating employer" and "multi-employer worksite" doctrines did not apply absent evidence that the employer both created the condition, and "exercise[d] continuing control" at the time of the accident. *Id*.

Similarly here, Appellant cannot rely on either statute to create a statutory duty. First, the general provisions of OSHA and MOSHA are inapplicable because, as Appellant concedes, Hunter was not Moran Jr.'s employer. Hunter was a subcontractor with contractual duties separate from the rigging of the unit. *See id.* at 278–79 (holding that the general duty provisions of MOSHA and OSHA do not apply to a non-employee: the duty to maintain a safe workplace "is a general duty that, by statute, runs only to an employer's own employees."). In addition, Hunter did not create the condition that caused the rigging to fail because as noted, the rigging configuration was within Moran Jr.'s discretion. Hunter likewise had no control over the rigging, as demonstrated by the fact that Hunter's contract limited its duties to after the rigging was complete, and the fact that Maxim exercised continuous control over the rigging. Thus, neither MOSHA nor OSHA give rise to a duty.

Finally, Maryland case law does not support Appellant's contentions that Hunter owed a duty or breached its duty. As Appellant notes, this Court held in *Maryland Sales & Service Corp. v. Howell* that "[a] subcontractor on a construction job owes a duty to the employees of other contractors" to exercise due care, which includes "the duty to warn employees of any unreasonable risk[.]" 19 Md. App. 352, 357 (1973). However, there is

no duty "to warn of dangers which are so apparent and obvious that an employee acting as a reasonable man could have discovered them." *Id.*

The risks associated with using nylon straps, incorrect size spreader beams, a ratchet strap with the release below the unit, as well as with placing a body part underneath a suspended unit, are "apparent and obvious," such that a reasonable person—and certainly an experienced rigger—would have recognized them. Moreover, even if such risks were not obvious, the record demonstrates that Hunter did in fact warn Moran Jr. on numerous occasions of the conditions it believed to be unsafe.

B. The Court Did Not Err in Assuming a Duty Existed.

Last, we have not found, nor does Appellant cite, any law that requires a court to conduct a full duty analysis where it determines that a negligence claim fails on a different element. Rather, the burden is on the plaintiff to prove every element of a negligence claim. *See Vito v. Sargis & Jones, Ltd.*, 108 Md. App. 408, 417 (1996) ("In a negligence action, plaintiff, of course, has the burden of proving defendant's negligence."). If a plaintiff is unable to prove any one element of negligence, his claim will fail, irrespective of his ability to prove the other elements. Thus, because Appellant's negligence claim failed on the causation element, the court was not required to conduct a full duty analysis, and it did not err in declining to do so.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.