

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCReporter@sjc.state.ma.us

SJC-13878

LUIS CONTENTO SUQUILANDA vs. SKYWAY ROOFING, INC.

Berkshire. April 8, 2026. - August 17, 2026.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges,
Dewar, & Wolohojian, JJ.

Negligence, Construction work, Building contractor, Duty to prevent harm. Contract, Construction contract, Subcontractor. State Building Code. Practice, Civil, Summary judgment.

Civil action commenced in the Superior Court Department on February 9, 2023.

The case was heard by Maureen B. Hogan, J., on a motion for summary judgment.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Thomas M. Bond for the plaintiff.
Masha G. Hansford, of the District of Columbia (Joshua A. Altman, of New York, & Michael D. Leedberg also present) for the defendant.

The following submitted briefs for amici curiae:
Paul R. Johnson, Frank J. Bailey, & Gabriela Forero for Pioneer New England Legal Foundation.

Thomas R. Murphy & Luke Rosseel for Massachusetts Academy of Trial Attorneys.

Jason Salgado, Hannah Tanabe, & Stephanie Herron Rice for Massachusetts Worker Centers.

Wystan M. Ackerman & Raymond T. DeMeo for American Property Casualty Insurance Association & others.

Jeffrey J. Pokorak, Elizabeth Moser, & M. Benjamin Parsons for Suffolk University Law School Supreme Court Clinic.

GEORGES, J. On a Hancock rooftop in October 2021, the plaintiff, Luis Contento Suquilanda, fell while replacing shingles and suffered life-threatening injuries. He was employed by MBT Construction Corp., a subcontractor hired by the defendant general contractor, Skyway Roofing, Inc., to do the roofing work at the Jiminy Peak Mountain Resort.

The plaintiff sued the defendant for negligence and negligent hiring. The defendant moved for summary judgment, contending in part that it owed the plaintiff no duty of care and that Massachusetts law does not recognize a negligent hiring claim by a subcontractor's employee against a general contractor. A judge of the Superior Court (motion judge) granted the motion. The plaintiff appealed,¹ and we transferred

¹ Judgment did not enter in the Superior Court, so the appeal is technically premature. See Mass. R. A. P. 4 (a) (1) (A), as appearing in 496 Mass. 1601 (2025) ("notice of appeal . . . shall be filed with the clerk of the lower court . . . within [thirty] days of the date of the entry of the judgment"). Because the defendant has not objected and we discern "no prejudice to either of the parties," we treat the appeal as if judgment had entered. Sarkisian v. Concept Restaurants, Inc., 471 Mass. 679, 681 n.3 (2015).

the case on our own motion. We affirm.²

Background. 1. Factual history. "We summarize the uncontroverted facts in the summary judgment record, along with evidence viewed in the light most favorable to the nonmoving party -- in this case, the plaintiff -- reserving some facts for later discussion." Hill-Junious v. UTP Realty, LLC, 492 Mass. 667, 668 (2023).

The defendant, a New York-incorporated roofing company, contracted with Jiminy Peak Mountain Resort, Inc. (Jiminy Peak), in September 2021 to remove and replace the shingles on a roof at Jiminy Peak's property in the town of Hancock (town). The defendant obtained a building permit from the town. The permit application listed the defendant as the "general contractor" for the project and its employee, Christopher Burroughs, as the "Person Responsible for Construction" and "project manager." The defendant then subcontracted the work to MBT Construction Corp. (MBT). The subcontract required MBT to perform all work for the Jiminy Peak project under the defendant's general

² We acknowledge the amicus briefs submitted in support of the plaintiff by the Massachusetts Academy of Trial Attorneys, the Massachusetts Worker Centers, and the Suffolk University Law School Supreme Court Clinic; and the amicus briefs submitted in support of the defendants by the Pioneer New England Legal Foundation and by the American Property Casualty Insurance Association, Massachusetts and Rhode Island Insurance Federation, Inc., and the American Tort Reform Association.

direction but left to MBT the means and methods of doing so. The subcontract was silent about safety and did not specify who was responsible for providing safety equipment, oversight, or training.

The defendant and MBT had a long working relationship. More recently, since 2020, the defendant had subcontracted seventy-two roofing jobs to MBT, and on each of them, including Jiminy Peak, MBT supplied its own fall protection equipment. Neither company trained MBT's workers in fall protection. On other jobs for other companies, MBT had been issued citations from the Occupational Safety and Health Administration (OSHA) for fall protection violations.

MBT crews started work on the Jiminy Peak project in October 2021. They installed anchors and fifty-foot safety lines on the roof. MBT's owner told them to always use fall protection equipment. On the day of the accident, the plaintiff was moving a stack of shingles on the roof when his safety line proved too short to complete the move. He unclipped his harness from that safety line intending to connect to another. Before he could reattach his harness, he slipped and fell from the roof, suffering catastrophic injuries. First responders treated him at the scene, and he was airlifted to a hospital in New York. The plaintiff later filed a workers' compensation claim

through MBT's insurer, administered by the New York State Workers' Compensation Board.

2. Procedural history. The plaintiff sued the defendant in the Superior Court. In his second amended complaint, the plaintiff asserted a common-law negligence claim, alleging that the defendant had failed to plan, supervise, and enforce safety procedures at the worksite. The plaintiff also asserted a negligent hiring claim, alleging that the defendant had hired MBT knowing, or having reason to know, that MBT had previously failed to maintain safe worksites, particularly with respect to fall protection.³

The defendant moved for summary judgment. As relevant here, it argued that it had not retained sufficient control over MBT's work to be liable, and that Massachusetts law does not recognize a negligent hiring claim brought by a subcontractor's employee against a general contractor.

After a hearing, the motion judge granted the motion. The judge concluded that the defendant did not owe the plaintiff a duty of care because it did not "retain the rights to control any aspect of MBT's work." The judge further concluded that, as

³ The plaintiff also brought a claim under New York labor law. The motion judge concluded that Massachusetts law governed and granted summary judgment for the defendant on that count. The plaintiff does not challenge that ruling on appeal.

the employee of the allegedly negligent subcontractor, the plaintiff could not maintain a negligent hiring claim. The plaintiff, the judge reasoned, was not a "third person[]" within the meaning of Restatement (Second) of Torts § 411 (1965) (§ 411), and so could not invoke that section against the defendant.

Discussion. "We review a grant of summary judgment de novo." Tody's Serv., Inc. v. Liberty Mut. Ins. Co., 496 Mass. 197, 199 (2025). "Summary judgment is appropriate where there is no material issue of fact in dispute and the moving party is entitled to judgment as a matter of law" (citation omitted). Doe v. Massachusetts Trial Court, 494 Mass. 408, 411 (2024). The moving party, here the defendant, "may satisfy [its] burden . . . by demonstrating that the opposing party has no reasonable expectation of proving an essential element of [his] case at trial" (citation omitted). Hill-Junious, 492 Mass. at 672. If the defendant does so, the burden shifts to the nonmoving party to set forth admissible evidence showing a genuine issue for trial. Id. Although a judge views the evidence in the nonmoving party's favor, that party "cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgment." LaLonde v. Eissner, 405 Mass. 207, 209 (1989).

Negligence claims, like those asserted here, require the plaintiff to "prove that the defendant owed the plaintiff a duty of reasonable care, that the defendant breached this duty, that damage resulted, and that there was a causal relation between the breach of the duty and the damage." Jupin v. Kask, 447 Mass. 141, 146 (2006). Whether the defendant owed the plaintiff a duty of care "is a question of law, and is thus an appropriate subject of summary judgment." Id.

1. Negligence under Corsetti. In Corsetti v. Stone Co., 396 Mass. 1, 10 (1985), we held that where a general contractor "retains the right to control the work in any of its aspects, including the right to initiate and maintain safety measures and programs," the general contractor is liable for damages caused by its failure to exercise that control with reasonable care. Id. at 10. We drew in part on the Restatement (Second) of Torts § 414 (1965), which provides:

"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."

The retained-control question "is [ordinarily] a question of fact for the jury." Corsetti, 396 Mass. at 11. Nevertheless, when the summary judgment record cannot support a finding of retained control as a matter of law, summary judgment is

appropriate. See Lyon v. Morpew, 424 Mass. 828, 834-836 (1997) (affirming summary judgment where record was insufficient to establish retained control).

Here, the motion judge concluded that the defendant did not "exercise any meaningful control over MBT's work, including the safety aspects of the work." The defendant's involvement was limited to delivering roof shingles, a boom lift, and a Dumpster -- none of which contributed to the fall -- and to visiting the site briefly on two occasions before the accident. During those visits, the defendant showed MBT which roof was to be replaced, checked whether additional materials were needed, and sought to ensure that MBT performed the work without damaging the property. On appeal, the plaintiff argues that the defendant retained control over the safety aspects of the work, citing language in the contract between the defendant and Jiminy Peak⁴ and the defendant's building permit application.

Our cases finding sufficient retained control typically rest on express contractual language assigning safety responsibility to the general contractor, concrete actions tied

⁴ The motion judge did not address the contract between the defendant and Jiminy Peak as a basis for finding a duty of care. Because that contract is part of the summary judgment record, we consider it in our de novo review. See Roman v. Trustees of Tufts College, 461 Mass. 707, 711 (2012) (in our de novo review, we may affirm grant of summary judgment "on any ground supported by the record").

to those safety responsibilities, or both. In Corsetti, 396 Mass. at 11, the general contract required the general contractor to "initiate, maintain, and supervise all safety precautions and programs in connection with the Work," and the subcontract gave the general contractor "the authority and control necessary to carry out that responsibility." Id. Additionally, a site supervisor for the general contractor had authority to "direct subcontractors to remedy violations of safety rules and regulations and to stop work if they failed to comply," and he exercised that authority by "checking to see whether scaffolding was properly set" and discussing safety requirements and procedures with the subcontractor's foreman. Id. The supervisor also had actual knowledge that the subcontractor's employees "were not using safety belts while working on the scaffolding." Id.

The pattern repeats in Dilaveris v. W.T. Rich Co., 424 Mass. 9, 12 (1996), where the general contract made the general contractor "solely responsible for all construction means, methods, techniques, sequences, and procedures," and further responsible for any failure to "take all proper precautions to protect persons from injury." Testimony confirmed that part of the general contractor's responsibilities "was to see that subcontractors followed safety procedures." Id.

In Kelly v. Foxboro Realty Assocs., LLC, 454 Mass. 306, 307-309 (2009), a negligence action arising from an accident involving an unsecured gate, the defendant stadium owner had hired an independent contractor to handle security operations at the stadium, including opening the gate in question. Importantly, the defendant "stipulated that it 'established the protocol for how the gate was to be opened and how the gate was to be secured in the open position.'" Id. at 317. That stipulation gave the defendant more than a "general right to order the work stopped, which is insufficient for liability to be imposed," and supported a jury instruction on retained control (quotation and citation omitted). Id.

The cases falling short of retained control share an opposite feature: contractual language that either places safety responsibility on the independent contractor rather than the party who hired the contractor, see Aulson v. Stone, 97 Mass. App. Ct. 702, 708 (2020), or gives the hiring party only "a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations" (citation omitted), McNamara v. Massachusetts Port Auth., 30 Mass. App. Ct. 716, 719 (1991).

Here, the plaintiff points to a single sentence in the Jiminy Peak contract requiring the defendant to "[m]aintain the premises in a safe, orderly and workmanlike manner." That language, at most, establishes a "general duty to provide a reasonably safe worksite," Corsetti, 396 Mass. at 9;⁵ it does not show that MBT lacked the freedom to "work in [its] own way" with respect to the specific actions at issue here that caused the injury. Restatement (Second) of Torts § 414 comment c (1965). MBT indisputably chose the means and methods of its own work. Nothing in the record would permit a jury to find that the defendant retained or exercised control over the placement or adequacy of the safety lines, the use of harnesses, the training of MBT workers on fall protection, or the manner in which MBT performed the roofing work. Contrast Ku v. Framingham, 53 Mass. App. Ct. 727, 730 (2002) (triable question on retained control where town supervisors were present on roads, supervised town employees and independent contractors, and controlled method by which operators plowed roads).

The subcontract's requirement that MBT perform its work under the "general direction" of the defendant does not change the analysis. A general contractual right to direct work does not, by itself, satisfy Corsetti's retained-control standard.

⁵ The plaintiff does not contend that the conditions of the worksite itself caused his injury.

See Lyon, 424 Mass. at 835 (general right to direct and stop work, or order correction of safety violations, insufficient to establish retained control). That standard requires the general contractor to retain control over safety practices on site. See, e.g., Corsetti, 396 Mass. at 11 (contract and actions tied to safety precautions). The record discloses no such retained right.

The plaintiff's second argument is that the State building code (code) supplied the necessary control. He relies on a provision requiring a general contractor for construction services to "[e]xecut[e] and control . . . all means and methods of construction in a safe . . . manner." 780 Code Mass. Regs. § 107.6.3.1 (2024). According to the plaintiff, the defendant assumed control over safety of the means and methods of the work by listing itself as the general contractor on the building permit application.

This argument fails at its premise. "A duty of care must already exist before a plaintiff can use a defendant's statutory violation to support a claim of tort liability." Juliano v. Simpson, 461 Mass. 527, 532 (2012). The code may bear on breach where a common-law duty already exists, but it cannot manufacture one. Id. Nor does signing the building permit application as the general contractor establish, on its own, that the defendant took operational control over MBT's work

practices or safety measures, or directed the way MBT installed anchors, placed safety lines, trained its workers, or moved materials on the roof. Alone or in combination with the contract language already discussed, the building permit application was not sufficient to create a duty and does not supply sufficient evidence of retained control under Corsetti.

On this record, no genuine dispute of material fact exists as to a duty of care under a theory of retained control.⁶

2. Negligent hiring. The plaintiff next argues that the motion judge erred by granting summary judgment in favor of the defendant on the plaintiff's negligent hiring claim. The theory is that the defendant chose MBT to perform the roofing work knowing, or having reason to know, that MBT had a record of failing to maintain safe worksites, in particular with respect to inadequate fall protection. There is evidence in the summary judgment record of the defendant's awareness that, as discussed above, MBT was issued OSHA citations for fall protection violations on prior jobs. Nonetheless, we hold that the defendant owed no independent negligent hiring duty to the

⁶ Because the plaintiff has not established a duty of care under the retained-control theory, we do not reach the parties' arguments concerning breach, causation, and comparative negligence.

plaintiff.⁷ Where the plaintiff is the subcontractor's own employee, and the general contractor neither retained nor exercised control over the injury-producing condition, and the injury arises from the subcontractor's performance of its own work, Massachusetts law does not recognize an independent negligent hiring claim against the general contractor. Cf. Hancock v. Mayor & City Council of Baltimore, 480 Md. 588, 613-622 (2022) (declining to recognize duty owed by one who hires independent contractor to contractor's own employee for injuries arising from contractor's performance of its work). This limitation follows from ordinary duty principles.

Whether a duty exists is a question of law informed by foreseeability, the relationship of the parties, existing social

⁷ As previously noted, the motion judge concluded in part that the plaintiff was not a "third person[]" within the meaning of Restatement (Second) of Torts § 411. Section 411 provides that "[a]n employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor." Id. We need not decide whether to adopt § 411 or whether its reference to "third persons" categorically excludes employees of the hired contractor. Many of the same practical concerns that have led other courts to reject such claims under § 411 also inform our common-law duty analysis. See, e.g., Camargo v. Tjaarda Dairy, 25 Cal. 4th 1235, 1244-1245 (2001); Urena v. Capano Homes, Inc., 930 A.2d 877, 880 (Del. 2007). We resolve only the narrower question whether, on these facts, Massachusetts common law recognizes an independent negligent hiring duty owed by a general contractor to the subcontractor's own employee for injuries arising from the subcontractor's performance of its work, where the general contractor did not retain or exercise control over the injury-producing condition.

values, and public policy. See Jupin, 447 Mass. at 146-151 (foreseeability, social values, and public policy); Remy v. MacDonald, 440 Mass. 675, 677 (2004) (relationship of parties). Foreseeability alone does not create a duty. See Jupin, supra at 146 (duty determined by "sum total of . . . considerations of policy which lead the law to say that the plaintiff is entitled to protection," including foreseeability). Several considerations drive our conclusion here.

Our negligent hiring cases ordinarily involve injuries to members of the public, patients, customers, or others exposed to the tortfeasor because of the defendant's hiring or retention decision. See, e.g., Theisz v. Massachusetts Bay Transp. Auth., 495 Mass. 507, 517-519 (2025) (members of public); Roe No. 1 v. Children's Hosp. Med. Ctr., 469 Mass. 710, 714 (2014) (patients); Foster v. The Loft, Inc., 26 Mass. App. Ct. 289, 291 (1988) (customers). This case is different. The plaintiff's exposure to MBT did not flow from the defendant's hiring decision. MBT, not the defendant, hired the plaintiff, directed his day-to-day work, supplied the fall protection equipment, and controlled the manner in which that equipment was used. See Hancock, 480 Md. at 610. To treat the defendant's selection of MBT as the legal source of a duty to MBT's own employees would collapse the line between a duty to protect persons foreseeably exposed to a contractor's negligence and a duty to protect the

contractor's own employees from risks inherent in the work itself.

Moreover, the plaintiff is not left without a remedy for his injuries. He filed a workers' compensation claim through MBT's insurer, administered by the New York State Workers' Compensation Board. See Carney v. Union Pac. R.R. Co., 2016 IL 118984, ¶ 84 (receipt of workers' compensation benefits assures remedy to injured person). Workers' compensation laws reflect a legislative compromise. They provide compensation for workplace injuries without requiring proof of fault, see Wright's Case, 486 Mass. 98, 114 (2020), but they also require employees to give up their common-law rights to recover against their employer, see G. L. c. 152, § 24.⁸

Although the defendant was not the plaintiff's employer, recognizing a duty here would put the common law in tension with the exclusivity of workers' compensation. That is particularly true where, as here, the subcontract contains an indemnification provision requiring the subcontractor to compensate the general contractor for its loss arising from the subcontractor's work.

⁸ The plaintiff received workers' compensation benefits under New York law. Like Massachusetts, New York provides compensation for workplace injuries without requiring proof of fault, see N.Y. Workers' Comp. Law § 10(1), and generally bars an employee from separately recovering from the employer in tort for the same injury, see N.Y. Workers' Comp. Law § 11(1).

Any recovery the plaintiff obtains against the defendant for negligent hiring would therefore run back to MBT, exposing MBT to liability to the plaintiff twice and circumventing the workers' compensation scheme. Cf. Vertentes v. Barletta Co., 392 Mass. 165, 171 (1984) (declining to impose vicarious liability in this context in part because "employers of independent contractors who perform inherently dangerous work may demand indemnity from those contractors for any recovery obtained by the contractor's employees," thus "expos[ing] independent contractors to potential liability far greater than that of other employers"). To recognize a negligent hiring duty on these facts would unsettle the Legislature's balance of interests and rework the allocation of responsibility among general contractors, subcontractors, employees, workers' compensation insurers, and liability insurers. Cf. Guzman v. MRM/Elgin, 409 Mass. 563, 570 (1991) ("These are issues of broad public policy . . . which the Legislature is better equipped to resolve").

Conclusion. For these reasons, we affirm the order allowing summary judgment for the defendant.

So ordered.