

# Is Property Developer Liable for Worker's Injuries?



## SITUATION

A property developer buys and begins converting a building into condos. It hires another company as principal contractor to manage the construction site and oversee the workers. A worker for a subcontractor is walking on the icy roof of the site when he slips and falls through plywood covering a hole that had been cut for a skylight. He's rendered a paraplegic and sues the property developer for violating a law that requires 'occupiers' of property to take reasonable care for the safety of those on the property. The occupiers' liability law does have an exception that protects the occupier from liability if it uses reasonable care to select an independent contractor to manage the site and it was reasonable to have contracted with that contractor to do this work. The worker also accuses the developer of negligently supervising the project. The developer selected this particular principal contractor, which was acting as an independent contractor, to manage the project because it had worked with the contractor before and knew the contractor to be competent with a good safety record.

## QUESTION

**Is the developer liable for the worker's injuries'**

- A. Yes, because it owns the site.
- B. Yes, because it violated its duties under the OHS law.
- C. No, because it wasn't the worker's employer and so owed him no duties.
- D. No, because it hired a competent contractor to manage the project.

## ANSWER

**D. The developer isn't liable for the worker's injuries because it hired a competent contractor to manage the project and thus satisfied its obligation to the worker.**

## EXPLANATION

This hypothetical is based on an Alberta court decision in which the court ruled that a property developer wasn't liable for a worker's fall at its property. The paralyzed worker claimed the developer negligently developed and supervised the project and violated its duty of care under the *Occupier's Liability Act*. The court ruled that the OHS law didn't impose a duty on the developer other than to use reasonable care in choosing a competent contractor to manage the project. The developer owed that same duty under the *Occupier's Liability Act*. The developer had hired an independent contractor to serve as primary contractor and manage the construction project. The court found that the developer had worked with the principal contractor before and believed it provided competent work and maintained a good safety record. Therefore, the court concluded that the developer acted reasonably in selecting the principal contractor.

## WHY THE WRONG ANSWERS ARE WRONG

**A is wrong** because the owner of property isn't automatically liable for injuries occurring on its property. Occupier's liability law does impose an obligation on an owner or occupier of property to make that property reasonably safe. But an exception exonerates an owner/occupier for liability if it exercised reasonable care in selecting an independent contractor to work on the premises and it was reasonable to have contracted with the independent contractor to do the work it was doing. In this case, the developer reasonably hired the independent contractor to manage and supervise the construction project. The developer knew the contractor to be competent and to have a good safety record from having worked with the company before. Thus, the developer meets the exception to liability under that law.

**B is wrong** because the developer didn't violate its duties under the OHS laws. At multiple-employer worksites in most jurisdictions, it's the principal or prime contractor (sometimes called 'constructor') who directs the activity of workers at the site and thus is responsible under the OHS law for ensuring compliance with the safety requirements. The owner of the property or project typically only has a duty under the OHS laws to select a competent contractor to carry out the duties of the principal or prime contractor. In this case, the developer wasn't acting as principal contractor for the construction project and, in fact, hired another company to fill this role and manage the work at the site. And it exercised reasonable care in selecting this contractor for that job. So the developer isn't liable under OHS law.

**Insider Says:** For more on principal or prime contractors, including 12 dos and don'ts for dealing with contractors, go to the Contractors Compliance Centre.

**C is wrong** because the developer did owe *some* duty to the worker's a duty to reasonably select a competent manager for its construction project. Primary responsibility for a worker's safety does fall on his employer. But other parties also have some safety duties to non-employees. For example, a worker has a duty not to endanger other workers. And as explained above, property owners may have a duty under the OHS laws to select a competent contractor to act as the principal or prime contractor. Here, the manager of the construction project was the principal contractor and the developer chose this contractor because it had already worked with the contractor on other jobs and knew firsthand that the contractor was competent and safe. Therefore, the developer escapes

liability'but not because it owed no duty at all but rather because it satisfied the duty it did owe.

**SHOW YOUR LAWYER**

*Heikkila v. Apex Land Corp.*, [2014] ABQB 589 (CanLII), Sept. 26, 2014