FIRST DIVISION
September 5, 2017

No. 1-13-3010

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).

NICK ZAGOROV and DIANA ZAGOROV,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County
	)	
v.	)	No. 09 L 11929
	)	
KRAFT FOODS GLOBAL, INC. and ASSOCIATED	)	
MATERIAL HANDLING INDUSTRIES, INC.,	)	The Honorable
	)	William E. Gomolinski,
Defendants-Appellees.	)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Simon and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff forfeited his claim that Kraft owed him a duty under section 343 of the Restatement (Second) of Torts where plaintiff's amended appellant's brief violated Supreme Court Rule 341. Furthermore, the circuit court properly granted summary judgment to Kraft and Associated where plaintiff failed to establish that neither Kraft nor Associated retained or exercised sufficient control over the operative details of plaintiff's work under section 414 of the Restatement.

¶ 2 Nick Zagorov[1] appeals the entry of summary judgment in favor of Kraft Foods Global, Inc. and Associated Material Handling Industries, Inc. Zagorov alleged that he was injured while working for a subcontractor hired by Associated to provide labor services at a Kraft facility in Champaign, Illinois. On appeal, Zagorov contends that there are genuine issues of material fact

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[1]Diana Zagorov asserted loss of consortium claims in the circuit court, and is referenced in the notice of appeal, but no argument is raised on appeal regarding her loss of consortium claims.

regarding whether Kraft or Associated: (1) retained and exercised sufficient control over the project for the purposes of section 414 of the Restatement (Second) of Torts, and (2) exercised control over the project and contributed to create a dangerous condition or work practice for the purposes of section 343 of the Restatement (Second) of Torts.

¶ 3 We originally dismissed Zagorov's appeal for his failure to comply with Supreme Court Rule 341. *Zagorov v. Kraft Foods Global, Inc.*, 2015 IL App (1st) 133010-U. Our supreme court denied Zagorov's petition for leave to appeal, but in an exercise of its supervisory authority, instructed us to vacate our judgment and permit Zagorov to file an amended and corrected brief. *Zagorov v. Kraft Foods Global, Inc.*, No. 121195 (Nov. 23, 2016) (supervisory order). We vacated our original judgment on January 13, 2017, and allowed Zagorov to file an amended and corrected brief, which he has done. Kraft and Associated elected to stand on their previously-filed appellees' brief. For the following reasons, we affirm the judgment of the circuit court.

¶ 4 BACKGROUND

¶ 5 In November 2008, Kraft contracted with Associated, a commercial racking supplier, to be a general contractor for a project involving the removal and replacement of an old steel racking system in Kraft's refrigerated cheese cooler in Champaign. The written contract between Kraft and Associated stated that Associated would provide "labor, equipment, materials and supervision to complete the demolition and disposal of old rack and installation of new." Kraft maintained general safety rules that required all contractors to comply with federal Occupational Safety and Health Administration standards, all safety, health, and environmental regulations, and all EPA rules. Associated agreed that all of its subcontractors would follow all of Kraft's safety and security requirements while working on Kraft's property. Associated agreed to maintain insurance and to indemnify Kraft against any third-party claims. The contract also

provided that "[e]ach party is an independent contractor, has no authority to bind the other party, and is solely responsible for its respective employees and subcontractors."

¶ 6 Associated did not provide its own work crews, labor, materials, or equipment for a project. Kraft understood that Associated subcontracted all of its labor. Associated acted as a middleman and hired Rackit to perform all of the labor and materials to disassemble the existing racking system and install a new racking system. Associated would typically inform its clients as to which subcontractors would be performing the work. Kraft was familiar with Rackit's work and did not object to Associated subcontracting with Rackit, although it is not clear from the record whether Associated was required to seek Kraft's approval.

¶ 7 Rackit provided all tools and equipment for the job. Rackit hired Zagorov to be part of the crew to disassemble Kraft's racking system. Zagorov had no training or experience in disassembling or assembling steel racking systems.

¶ 8 Kraft also hired CRB Builders, Inc. as a general contractor responsible for ongoing construction projects at the Champaign facility, including roof construction, work on manufacturing lines, and work in the boiler room. Tom Zindars was CRB's onsite construction manager. Zindars met with William DeHaan from Associated and Bob Laley, Kraft's plant project manager, prior to the start of the racking project. Zindars coordinated moving Kraft's products before Rackit began work in any particular area of the cooler, and he checked on Rackit's progress four or five times per day. Kraft's associate safety manager, Randolph McKaufsky, was responsible for overseeing safety at Kraft's facility.

¶ 9 On December 15, 2008, Don Aleksic, the owner of Rackit, arrived at the work site with Rackit's employees: Zagorov, Scott Gaba, and Josh Rennebu. Rackit provided its own tools. Zindars met with them and explained that they could not use torches or gasoline-powered

equipment in the cooler because of the proximity to food products that were to remain in the cooler during the project. Rackit began disassembling the rack on December 16. The workers used various hand tools to dismantle the racking system and then dropped the pieces of steel to the ground. On December 17, 2008, the crew was using hammers to remove a rail from a rack that was approximately 60 to 65 inches off of the ground. Aleksic loosened the first rail, and intentionally dropped it to the ground but it unexpectedly bounced sideways and punctured Zagorov's leg. Aleksic described the incident as "just an accident, a fluke."

¶ 10 On October 7, 2009, Zagorov filed this action. His second amended complaint asserted claims against Kraft and Associated.[2] Relevant to the issues on appeal, Zagorov alleged that Kraft and Associated were careless and negligent in their control of the Kraft facility and the construction project. Specifically, count I alleged that Kraft had a duty to exercise reasonable care "in the control, maintenance, management and supervision of its premises and construction projects," and was negligent (1) by failing to provide a safe working area, (2) in supervising the construction work, and (3) by permitting the work to be done in an unsafe manner. Count II alleged that it was reasonably foreseeable to Kraft that Zagorov "would deliberately encounter *** dangerous condition[s] and continue to perform the work ***." In count VII, Zagorov alleged that Associated had a duty to exercise reasonable care "in the control, maintenance, management and supervision" of the Kraft facility and the construction projects under its management and control, and that Associated was negligent by failing to (1) provide "safe instructions in the demolition and or installation" of the racking system, (2) provide proper supervision of the project and permitting the project to be performed in an unsafe manner, (3) warn "of the dangerous methods of demolition of the existing rails, which [Associated] knew,

[2]Zagorov's second amended complaint also asserted claims against CRB. Those claims were settled, and CRB is not a party to this appeal.

[or] *** should have known were unsafe."

¶ 11 The following facts are taken from the respective individuals' discovery depositions.

¶ 12 Laley stated that Rackit wanted to use a generator to power a grinder, but that Kraft "would not allow a generator [to] be used in the facility." Laley explained that Kraft had "the right to stop any work that is not according to specs, drawings and safety regulations." Laley stated that he "observed a different contract employee attempting to move a scissors lift" in an unsafe manner, that Laley stopped him, and immediately spoke to the employee's supervisor. He further explained that "there are certain [contract] provisions that we frequently have to get involved with. Normally they are around safety."

¶ 13 Zagorov stated that to disassemble the racking system, Rackit used "the method we were told to use by 'Bob' from Kraft," which was "if we couldn't get it out, pound it, hit it, do whatever is necessary to get it out; hammer it, whatever you can." Zagorov believed that Rackit was being rushed by Kraft, and that being rushed made him work unsafely.

¶ 14 Gaba stated that when he started at the Kraft facility, he was given safety orientation that covered "Good Manufacturing Practices," and he was shown a movie that covered Kraft's rules. He stated that Kraft did not offer any instructions as to the particulars of how to perform the demolition of the racks, and that the instructions on how to demolish the racks came from Aleksic.

¶ 15 Rennebu stated that Rackit "had to do stuff the way Kraft would allow [it] to do it," although he further stated that Aleksic was the one who "figured out what needed to be done" and instructed him as to what needed to be done. Rennebu stated that Zindars never told him how to do his work.

¶ 16 Aleksic stated that Rackit had done work at Kraft's facilities before December 2008, and

that it was typical procedure for Rackit to follow Kraft's Good Manufacturing Practices at Kraft. He testified that Zindars provided Zagorov with a safety orientation in December 2008. Aleksic stated that both Kraft and Associated would direct Rackit on what parts of the job to do first based on scheduling, but that neither Kraft nor Associated would instruct or direct Rackit on the methods it should use to perform the work. He stated that none of Kraft's safety guidelines hindered Rackit's work. He further stated that Rackit was not free to perform its work "utilizing whatever methods [Aleksic] deemed most appropriate," because "if I wanted to bring in an oxygen acetylene tank to cut some stuff, I can't do that." But he also stated that even in other instances where he was able to bring in an oxygen acetylene tank, he would not always bring one in because "[i]f we can use different cutting tools that don't, you know, that aren't so volatile, we would do that." After Zagorov's injury, Aleksic returned to the facility with plasma cutters, which Kraft allowed Rackit to use. Aleksic stated that he was responsible for controlling the safety of Rackit's project and that Zindars assured that the work Rackit was doing was being done safely.

¶ 17 Kraft and Associated moved for summary judgment arguing that neither Kraft nor Associated owed Zagorov a duty under section 414 of the Restatement (Second) of Torts because neither Kraft nor Associated retained control over or directed the means and methods by which Rackit's employees performed their work or managed their safety and that Rackit was contractually responsible for all labor, equipment and worker safety for the job. Kraft also argued that it did not owe Zagorov any duty under section 343 of the Restatement (Second) of Torts because his injury did not result from a condition on the land and Kraft could not have known of the existence of any dangerous condition that caused Zagorov's injury.

¶ 18 Zagorov's response to the summary judgment motions cited no case law and consisted

entirely of excerpts from the discovery depositions of Rennebu, Gaba, Laley, Zindars, McKaufsky, DeHaan, Aleksic, and Zagorov. At the summary judgment hearing, Zagorov's counsel argued that Kraft and Associated essentially "handcuff[ed] [Rackit's workers] as to how they did their job[.]" The circuit court commented that "there's got to be some type of retention over the right of supervision in the way that you exercise some control, some initiation as to whether or not to do the work." A handwritten order entered by the circuit court on December 10, 2012, reflects that "Kraft and Associated's motion for summary judgment is granted. Counts I, II, III, IV, VII and VIII of plaintiff's second amended complaint are dismissed with prejudice for the reasons stated on the record."

¶ 19 Zagorov was granted leave to file a third amended complaint. He repleaded his section 414 and section 343 claims to preserve those claims for appeal. In addition, he asserted "construction negligence" claims and a spoliation claim against both Kraft and Associated. On April 11, 2013, the circuit court dismissed the third amended complaint without prejudice pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)). The circuit court granted Zagorov a "final attempt to amend [his] complaint to plead a 'voluntary undertaking' claim, if one exists[.]"

¶ 20 On May 9, 2013, Zagorov filed his fourth amended complaint, again repleading his section 414 and section 343 claims to preserve those claims for appeal. He additionally asserted construction negligence claims against Kraft and Associated, alleging that Kraft undertook control over planning, safety, and incidental aspects of the racking system project, and that Associated undertook planning obligations. The circuit court dismissed Zagorov's fourth amended complaint on August 20, 2013.

¶ 21 Zagorov filed his notice of appeal on September 19, 2013, identifying the circuit court's

orders of August 20, 2013, April 11, 2013, and December 10, 2012.

¶ 22 ANALYSIS

¶ 23 On appeal, Zagorov argues that the circuit court erred in granting summary judgment because there are questions of fact regarding whether (1) Kraft and Associated retained and exercised sufficient control over the project for the purposes of section 414 liability, and (2) Kraft exercised control over the project and contributed to create a dangerous condition or work practice for the purposes of landowner liability under section 343. We address these arguments in turn.[3]

¶ 24 Despite having been afforded another opportunity to adequately present his arguments, Zagorov's amended and corrected appellant's brief is still deficient under our supreme court's rules. First, Zagorov's statement of facts contains serious violations of Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016). There are multiple instances where Zagorov's citation to the record does not support a purported fact. For example, Zagorov asserts that Laley "would be present to observe the work on the project at least once a day, and had an office approximately 150 feet away from where [Rackit's] work was being done." His citation to Laley's deposition transcript, however, does not support Zagorov's claims regarding the frequency with which Laley visited Rackit's project, or the proximity of Laley's office to the project. Zagorov also appears to misrepresent Laley's testimony regarding an instance where Laley stopped someone's work for a perceived safety violation. In Zagorov's statement of facts he asserts that, "[a]t one point during the project, Mr. Laley witnessed a co-worker of [Zagorov] attempt to move a scissor lift - in an unsafe fashion." Zagorov provides a citation to Laley's deposition transcript where Laley was asked, "In what sorts of situations safety-wise would you be stopping work?" Laley responded:

[3]We note that Kraft and Associated also address the dismissal of Zagorov's voluntary undertaking and spoliation claims. Zagorov, however, did not pursue any argument on appeal with respect to the circuit court's dismissal of those claims.

> "As an example, I observed a different contract employee attempting to move a scissors lift, of which Mr. Zagorov's company, or Mr. Aleksic's company had utilized in this. When he started to move it from a location, he climbed to outside of the cage to try to move it. I stopped him immediately because that was a very serious safety situation potential. Stopped him. Got him off. Got his supervisor and corrected the situation. That's the type of situation I would get engaged in."

Laley did not specify whether the "contract employee" he observed moving the scissor lift was a Rackit employee. And no other witness in this case mentioned a situation in which Laley stopped Rackit's work. Thus, without any factual support to the contrary, this "example" of Kraft's retention of control demonstrates nothing more than the ordinary, customary actions of the general contractor engaging in matters usually retained by the general contractor. Zagorov's failure to accurately state the facts of this case violates Rule 341(h)(6).

¶ 25 Zagorov's brief also runs afoul of Rule 341(h)(7), which states that the argument section of an appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities *and the pages of the record relied on*." (Emphasis added.) Ill. S. Ct. R. 341(h)(7). The argument section of Zagorov's amended and corrected brief does not contain any citations to the record. On appeal, Zagorov contends that there are facts in the record that preclude the entry of summary judgment in favor of Kraft and Associated, but he fails to provide any citations to the record in support of his assertions. This is unacceptable appellate practice, and we caution Zagorov's counsel that disregarding our supreme court's rules in future appeals will not be tolerated.

¶ 26 Despite these critical violations, we reach the merits of some of Zagorov's arguments. We find, however, that he has failed to advance any argument in his appellant's brief regarding

whether Associated retained and exercised sufficient control over the racking system project for the purposes of section 414 liability. He has thus forfeited any argument regarding section 414 as it relates to Associated. Ill. S. Ct. R. 341(h)(7) ("Points not argued are waived ***."). We therefore affirm the grant of summary judgment in favor of Associated finding no liability under section 414.

¶ 27 We also find that Zagorov has forfeited his argument that Kraft owed him a duty of care under section 343 because he has failed to accurately provide us with relevant facts, and to direct our attention to the portions of the record that contain those facts, establishing a duty toward Zagorov. To determine whether Kraft owed Zagorov a duty as a matter of law under section 343 requires determining whether Kraft and Zagorov stood in such a relationship to one another that the law imposes on Kraft an obligation of reasonable conduct for the benefit of Zagorov. *Lefever v. Kemlite Co.*, 185 Ill. 2d 380, 388-89 (1998) (citing *Ward v. K Mart Corp.*, 136 Ill. 2d 132, 140 (1990)). In determining whether a landowner owes an invitee a duty under section 343, a core issue is whether the landowner (Kraft) "knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees[.]" Restatement (Second) of Torts § 343(a) (1965).

¶ 28 Zagorov has not provided us with an adequate factual understanding about the relationship between Kraft and Zagorov for us to conclude that a duty of care existed. He argues on appeal that Kraft had actual or constructive notice that Rackit's use of sledgehammers and practice of dropping large steel beams to the ground constituted a dangerous condition that posed an unreasonable risk of harm to Zagorov because Laley was present at the Kraft facility at the time that Zagorov was injured. Other than claiming a Kraft employee was on site, he does not substantiate his argument with any citations to actual facts in the record that might arguably

establish whether Kraft, through its employees, actually knew or through reasonable care, should have known about the dangerous conditions created by Rackit's method of disassembling the racking system when Zagorov was injured.

¶ 29 As a court of review, we are entitled to have the issues on appeal clearly presented. *Holmstrum v. Kunis*, 221 Ill. App. 3d 317, 325 (1991). "Reviewing courts will not search the record for purposes of finding error in order to reverse [a] judgment when an appellant has made no good-faith effort to comply with the supreme court rules governing the contents of briefs." *In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 47. It is not our duty to scour the record in an effort to understand an appellant's case when the appellant fails to adequately describe the proceedings below. Therefore, we find that Zagorov's failure to adequately develop a legal argument based on the underlying facts of this case results in forfeiture of his argument that Kraft owed him a duty under section 343. The gist of Zagorov's claim is that he was injured when his co-workers purposely dropped the beam and it bounced and struck him. We find nothing pled or argued that remotely supports the notion that some condition of the premises caused his injury or that a dangerous condition was known or should have been known by the landowner. Because he has not presented us with an adequate basis for reversing the circuit court's judgment, we affirm the circuit court's order granting summary judgment in favor of Kraft that it did not owe Zagorov a duty under section 343.

¶ 30 We now turn to Zagorov's argument that there is a genuine issue of material fact regarding whether Kraft retained and exercised sufficient control over the racking system project to impose liability under section 414. He contends that Kraft (1) instructed Rackit that it could not use certain cutting tools, (2) required its subcontractors to undergo a training orientation

regarding Kraft's safety regulations, (3) retained the right to stop work if it was being done in an unsafe manner, and (4) was involved in directing the order of projects at its facility.

¶ 31 Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). The purpose of summary judgment is to determine whether there are triable issues of fact. *Hartz Construction Co. v. Village of Western Springs*, 2012 IL App (1st) 103108, ¶ 23. A party moving for summary judgment bears the initial burden of production and may satisfy it by either showing that some element of the case must be resolved in its favor or that there is an absence of evidence to support the nonmoving party's case. *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007). Once the moving party satisfies that initial burden, the burden shifts to the nonmoving party to come forward with some factual basis that would entitle it to a favorable judgment. *Id.* A circuit court's ruling on summary judgment is reviewed *de novo*. *Standard Mutual Insurance Co. v. Lay*, 2013 IL 114617, ¶ 15.

¶ 32 In order for a plaintiff to recover based on a defendant's alleged negligence, the plaintiff must plead and prove the existence of a duty owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately resulting from the breach. *Carney v. Union Pacific R.R. Co.*, 2016 IL 118984, ¶ 26. Whether a duty exists is a question of law appropriate for summary judgment. *Id.*

¶ 33 Under the common law, one who employs an independent contractor is generally not liable for any harm caused by the independent contractor's acts or omissions, (*id.* ¶ 31), but this immunity is not absolute (*id.* ¶ 33). Under section 414 of the Restatement (Second) of Torts:

> "One who entrusts work to an independent contractor, but who retains 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).

In *Carney*, our supreme court explained that section 414 only applies to a hiring entity's direct liability for its own negligence. *Carney*, 2016 IL 118984, ¶ 38. A hiring entity may be held directly liable if it "negligently exercises or fails to exercise its retained control." *Gerasi v. Gilbane Building Co., Inc.*, 2017 IL App (1st) 133000, ¶ 42. Comment c to section 414 provides:

> "In order for the rule stated in this Section to apply, the employer must have retained at least some degree of control over the manner in which the work is done. It is not enough that he has merely 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. Such a general right is usually reserved to employers, but it does not mean that the contractor is controlled as to his methods of work, or as to operative detail. There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way." Restatement (Second) of Torts § 414 cmt. c (1965).

¶ 34 The issue of retained control "may be decided as a matter of law where the evidence is insufficient to create a factual question." *Carney*, 2016 IL 118984, ¶ 41 (citing *O'Gorman v. F.H. Paschen, S.N. Nielsen, Inc.*, 2015 IL App (1st) 133472, ¶ 89). "The best indicator of whether the defendant retained control sufficient to trigger the potential for liability under section 414 is the written agreement between the defendant and the contractor." *Carney*, 2016 IL 118984, ¶ 41 (citing *Cain v. Joe Contarino, Inc.*, 2014 IL App (2d) 130482, ¶ 76). Control may

also be demonstrated by evidence of the hiring entity's conduct at variance with the written agreement. *Cain*, 2014 IL App (2d) 130482, ¶¶ 84, 86.

¶ 35 We find that the circuit court properly granted summary judgment in favor of Kraft because Kraft did not retain or exercise sufficient control over Rackit's work for the purposes of liability under section 414.

¶ 36 First, Zagorov makes no argument that Kraft retained control over Rackit's work through any written contract with Associated or any agreement with Rackit. Kraft and Associated agreed that Associated would provide "labor, equipment, materials and supervision to complete the demolition and disposal of old rack and installation of new." Kraft required Associated's subcontractors to comply with its general safety practices, including Occupational Safety and Health Administration standards, all safety, health, and environmental regulations, and all EPA rules. Here, Zagorov does not identify any provision of any written agreement addressing or defining the scope of Kraft's retention of control over the manner in which Rackit was to perform its work.

¶ 37 Second, Zagorov does not point to any conduct by Kraft that could potentially support a finding of retained control for the purposes of section 414. He argues that there is evidence in the record that establishes that "Kraft would not allow [Rackit] to use certain cutting tools," and that Laley "admitted in his deposition that Rackit requested to use certain tools, and that [Laley] denied that request because it violated their safety regulations." He then concludes that Kraft retained control over Rackit's performance of the job for the purposes of section 414 because Rackit "was not allowed to independently determine the best manner in which to complete the demolition job." But a hiring entity's retention of a general right to enforce safety does not, on its own, amount to retained control under section 414. *Joyce v. Mastri*, 371 Ill. App. 3d 64, 74

(2007). "The mere existence of a safety program, safety manual, or safety director is insufficient to trigger [section 414]." *Madden v. F.H. Paschen/S.N. Nielson, Inc.*, 395 Ill. App. 3d 362, 382 (2009). There is no dispute that Kraft did not provide the tools used by Rackit to complete the racking project, and there is no evidence that Kraft ever instructed Rackit to stop using a particular tool or to use one method in favor of another. In context, Kraft's refusal to allow certain cutting tools was related to food safety and refrigeration, not to safe demolition techniques. Nor does Zagorov attempt to explain how "certain cutting tools" relates to the undisputed cause of his injury: the purposeful dropping of a disassembled beam. We find that, as a matter of law, this argument is not persuasive to show that Kraft retained or exercised sufficient control over Rackit such that Zagorov was not entirely free to do the work in his own way, and therefore Kraft cannot be held liable for Zagorov's injury under section 414.

¶ 38 Zagorov relies on *Wilkerson v. Paul H. Schwendener, Inc.*, 379 Ill. App. 3d 491 (2008), *Bokodi v. Foster Wheeler Robins, Inc.*, 312 Ill. App. 3d 1051 (2000), *Aguirre v. Turner Construction Co.*, 501 F.3d 825 (7th Cir. 2007), and *Lederer v. Executive Construction, Inc.*, 2014 IL App (1st) 123170, as support for his claim that there are genuine issues of material fact as to Kraft's retention of control. The argument section of Zagorov's corrected and amended brief makes little effort to analogize the facts of those cases to the facts before us. However, we have considered those cases and find them distinguishable because each of those cases involved general contractors that retained or exercised sufficient control over the work of their subcontractors to impose section 414 liability that is present here.

¶ 39 *Wilkerson* involved a plaintiff who fell from a nine-foot wall without fall protection. We reversed the circuit court's entry of summary judgment in favor of the general contractor because the facts suggested that the general contractor retained and exercised control over the plaintiff's

work, as evidenced by a strongly-worded letter it sent to the plaintiff's employer regarding its failure to use fall protection and threatened to shut down the entire project if repeated. *Id.* at 497. There was also evidence that the general contractor required the subcontractor to attend regular safety meetings, to comply with the general contractor's 21 safety regulations, and to submit for its approval a site-specific safety plan and copies of minutes from the subcontractor's own weekly safety meetings. *Id.*

¶ 40 In *Bokodi,* the plaintiff was injured while using a device to lift sheet metal siding. We reversed the summary judgment order in favor of the general contractor, finding that the general contractor owed plaintiff a duty under section 414. Specifically, the general contractor had established a safety program and appointed an individual whose sole function was to seek out safety hazards and to check for safety compliance. *Id.* at 1062-63. We also observed that the general contractor imposed 29 safety measures and procedures on its subcontractors, and the subcontractors were required to conduct weekly safety training meetings for their employees, which the general contractor had the right to monitor. *Id.* at 1063.

¶ 41 In *Aguirre*, the plaintiff was injured when he fell from a scaffold while working for a masonry subcontractor. The district court granted summary judgment in favor of the general contractor, but the court of appeals reversed. There, the general contractor required its subcontractor to follow 23 specific rules that applied to scaffold construction, inspected the scaffolds used by the subcontractor, and imposed specific alternative design requirements on the scaffold from which the plaintiff fell. The *Aguirre* court concluded that the general contractor "retained sufficient control over the safety of the scaffolding design and construction to give rise to a duty of reasonable care under section 414[.]" *Aguirre*, 501 F.3d at 831.

¶ 42 In *Lederer*, a drywall taper was injured while using stilts when he tripped over an electrical conduit. 2014 IL App (1st) 123170, ¶ 3. The circuit court granted summary judgment in favor of the general contractor, finding that it did not retain sufficient control under section 414. *Id.* ¶ 42. We reversed. We observed that the general contractor had appointed a project superintendent responsible for implementing and enforcing the general contractor's safety program, and that subcontractors were required to hold their own safety meetings. *Id.* ¶ 56. Furthermore, we found it significant that the general contractor's own safety manual prohibited the use of stilts. *Id.* ¶ 57. We also noted that, at the time of the injury, the subcontractor's foreman was on his way to inform the general contractor of the hazardous practice, which demonstrated the scope of the general contractor's supervisory control over the workplace. *Id.* ¶ 59.

¶ 43 Here, although it is undisputed that Rackit was required to comply with Kraft's safety program, that Kraft had the right and discretion to stop Rackit's work, and that Kraft had a safety supervisor and had hired a general contractor that was generally responsible for managing the project, these are incidental rights that generally belong to a hiring entity. Without more, these are insufficient to impose liability on a hiring entity under section 414. *Madden*, 395 Ill. App. 3d at 382; *Joyce*, 371 Ill. App. 3d at 74. Here, Kraft did not retain or exert as much control over the operative details of Rackit's work as the general contractors did in *Wilkerson*, *Bokodi*, *Aguirre*, and *Lederer*. There is no evidence that Kraft required Rackit to attend regular safety meetings or conduct its own safety meetings. There is no evidence that Kraft hired a supervisor that was solely responsible for monitoring Rackit's work and enforcing Kraft's safety rules. There is no evidence that Kraft required Rackit to complete its work in accord with Kraft's specifications for disassembling the racking system or that Kraft prescribed the methods that Rackit used to

disassemble the racking system. In short, Rackit was in control of the method and means of performing the job and there has been no showing that Kraft retained anything other than those rights customarily retained by the employing entity.

¶ 44 We find unpersuasive Zagorov's argument that Kraft's prohibition of a gasoline-powered generator raises a question of fact regarding Kraft's retained control over the operative details of Rackit's work. Laley testified that Rackit employees wanted to use a gasoline-powered generator to power a grinder, and that Kraft refused to allow the use of the generator in the facility. But there is no evidence that Kraft told Rackit what tools it could and could not use to disassemble the racking system, other than broadly prohibiting the use of tools that required a gasoline-powered generator. Zagorov fails to demonstrate how the use or failure to use a gas generator relates to his injury or that using a gas-powered grinder was a method that Rackit sought to employ in disassembling Kraft's racking system. Aleksic stated in his deposition that "if I wanted to bring in an oxygen acetylene tank to cut some stuff, I can't do that," and further stated that even when he was able to bring in an oxygen acetylene tank, he would not always bring one in because, "If we can use different cutting tools that don't, you know, that aren't so volatile, we would do that." Zagorov contends that Kraft permitted the use of plasma cutters after Zagorov was injured, which he argues is evidence of Kraft's control over the details of Rackit's work. But the record is devoid of any evidence that Kraft or Associated prohibited Rackit from using plasma cutters prior to Zagorov's injury and the evidence shows that Rackit never sought to use plasma cutters before the accident. Simply put, the fact that Kraft broadly prohibited the use of gasoline-powered cutting tools that Rackit never intended to use, along with the fact that Kraft subsequently allowed Rackit to use plasma cutters that it originally chose not to use, are not

sufficient evidence of Kraft's retained control over the operative details or methods to disassemble the racking system.

¶ 45 Lastly, although Zagorov does not contend on appeal that his own deposition testimony creates a question of fact regarding Kraft's retention or exercise of control, we will briefly address his deposition testimony without evaluating Zagorov's credibility. He stated in his deposition that the method Rackit used to disassemble the racking system was the method prescribed by Kraft, and that it was either "Bob" or "Tom" who told him what to do, ostensibly referring to Bob Laley and Tom Zindars. When asked what Laley or Zindars told him regarding how to perform the job, Zagorov stated he was told to " '[g]et [the beams] out of there quick. Pound them out, get them out however you can. Lay them down and get out here.' " When asked whether Laley or Zindars ever gave him instructions on how to safely do his work, Zagorov responded, "No. They just told me it needs to get done, that's all." When pressed on any particulars as to what Laley said with respect to what to do or what tools to use, Zagorov stated, "You know, he told Don [Aleksic], then, you know, he told us. *** If he tells my boss something, my boss will relate it to me, which was Don." Zagorov did not recall any specific statements or instructions from either Laley or Zindars, made to either him or Aleksic. Viewing all of Zagorov's testimony in a light most favorable to him and drawing all reasonable inferences from his testimony in favor Zagorov, his testimony does not demonstrate that there is a genuine issue of material fact as to whether Kraft retained sufficient control over the details of how Rackit was to perform its work.

¶ 46 In sum, we find that the circuit court properly granted summary judgment in favor of Kraft with respect to Zagorov's claims under section 414 because there are insufficient facts in

the record to establish that Kraft retained or exercised control over the operative details of Rackit's work.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 49 Affirmed.