

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-20141  
Summary Calendar

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JOSE M. MARTINEZ,  
Plaintiff-Appellant,

VERSUS

DOW CHEMICAL COMPANY,  
Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA-H-91-2532)

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(September 27, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:\*

Plaintiff Jose Martinez, injured in a fall on the job, appeals a summary judgment in favor of the premises owner, defendant Dow Chemical Company ("Dow"), in this diversity suit alleging premises defects. On November 19, 1993, the district court entered a comprehensive opinion, entitled "Order of Summary Judgment," explaining its reasons for granting judgment. We affirm,

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\* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

essentially for the reasons stated therein.

The summary judgment record reflects unequivocally that Martinez was solely under the control and supervision of his employer, Ortiz Brothers Insulation Inc. ("Ortiz"). In his brief, Martinez carefully avoids mentioning that the contract between Dow and Ortiz provided that Ortiz was an independent contractor and that "any provisions in this contract which may appear to give [Dow] the right to direct [Ortiz] as to the details of doing work herein covered or to exercise a measure of control over the work shall be deemed to mean that [Ortiz] shall follow the desires of [Dow] in the results of the work only."

As the district court stated, citing Shell Chem. Co. v. Lamb, 493 S.W.2d 742 (Tex. 1973), and Shell Oil Co. v. Songer, 710 S.W.2d 615 (Tex. App.) Houston [1st Dist.] 1986, writ ref'd n.r.e.), "The owner or occupier of land who engages an independent contractor is not required to protect that contractor's employees from dangers related to the work that the independent contractor was hired to perform." The district court further noted, where, as here, the "dangerous condition was peculiar to a technical specialty for which the subcontractor was employed . . . [,] the subcontractor [has] a duty to perform its work safely and [is] in a superior position to prevent the existence of, to inspect for, and to eliminate or warn its employees of the hazard. Lamb, 493 S.W.2d at 747.

In summary, as the district court reasoned, "it was the failure of Ortiz to train [Martinez] in the use of equipment es-

sential to the job for which it had hired itself out and the failure of [Martinez], as the subcontractor's employee, to know how to use the safety device that, along with the weather, created the dangerous condition that gave rise to the accident." The summary judgment, accordingly, is AFFIRMED.