

Supreme Court of Texas

No. 24-0846

JMI Contractors, LLC,
Petitioner,

v.

Jose Manuel Medellin,
Respondent

On Petition for Review from the
Court of Appeals for the Fourth District of Texas

JUSTICE BUSBY, concurring.

Our premises defect and negligent activity cases define the duties of reasonable care that people and entities owe because they own, occupy, or control land. I agree with the Court that this independent contractor's negligence suit against a general contractor in control of the premises for a roofing project involves an activity that only became dangerous because of a premises condition. Accordingly, we look to our premises liability cases (not our cases addressing negligent activity on the premises) to define the duty that the general contractor owed with respect to that condition. I agree that no such duty was owed here

because the dangerous condition—an unguarded roof edge—was open and obvious.

But the same person or entity can owe additional duties that spring from sources other than their occupation of land.¹ I do not understand the Court’s opinion to alter the scope of the separate duty owed by one who retains control over the work of an independent contractor, which is to exercise that control with reasonable care.² Many of our cases addressing this duty have nothing to do with ownership or occupation of land.³ But in cases like *Lee Lewis Construction, Inc. v. Harrison*, 70 S.W.3d 778, 783 (Tex. 2001), we recognized that those who occupy or control land and also retain control over work owe this

¹ See *Austin v. Kroger Tex., L.P.*, 465 S.W.3d 193, 215-17 (Tex. 2015); *Coastal Marine Serv. of Tex., Inc. v. Lawrence*, 988 S.W.2d 223, 225-26 (Tex. 1999). In addition to the duty to reasonably exercise retained control of work, which I discuss here, other examples of separate duties that occupiers of land can owe include the duty to exercise reasonable care in undertaking to render services necessary for another’s protection, e.g., *Nall v. Plunkett*, 404 S.W.3d 552, 555-56 (Tex. 2013); see *Elephant Ins. Co. v. Kenyon*, 644 S.W.3d 137, 151 (Tex. 2022), and the safety-related duties that employers owe employees, see, e.g., *Austin*, 465 S.W.3d at 215-17.

² The Restatement (Second) of Torts explains these duties and their different sources in detail. We have recognized the duty of a premises owner or occupier to carry out its activities on the premises with reasonable care, which is addressed in Sections 341 and 341A of the Restatement. See, e.g., *Austin*, 465 S.W.3d at 215. Our cases addressing the duty of one who retains control over the work of an independent contractor to exercise that control with reasonable care draw on Section 414 of the Restatement. See, e.g., *Lee Lewis Constr., Inc. v. Harrison*, 70 S.W.3d 778, 783 (Tex. 2001).

³ E.g., *Massage Heights Franchising, LLC v. Hagman*, 712 S.W.3d 615, 620-23 (Tex. 2025); *Gonzalez v. Ramirez*, 463 S.W.3d 499, 506 (Tex. 2015); *D. Houston, Inc. v. Love*, 92 S.W.3d 450, 452 & n.1, 454 (Tex. 2002); *Standard Ins. Co. v. McKee*, 205 S.W.2d 362, 364-65 (Tex. 1947).

additional duty.⁴ We have never suggested that this separate duty differs when the party owing it also occupies or controls the premises, so our cases addressing the duty outside the premises context are also informative here.

As we reiterated just last year, retained control over work can support liability only if it “relate[s] directly to the injury caused by the negligence.” *Massage Heights Franchising, LLC v. Hagman*, 712 S.W.3d 615, 622 (Tex. 2025). I agree with the Court that in this case the record does not show that the general contractor retained control over the independent contractor’s work activity that led to the injury or that the general contractor increased the risk of injury. Because the Court does not modify our retained-control precedents in reaching this conclusion but simply applies them, I join its opinion.

J. Brett Busby
Justice

OPINION FILED: June 26, 2026

⁴ See also, e.g., *Gen. Elec. Co. v. Moritz*, 257 S.W.3d 211, 214-15 (Tex. 2008); *Dow Chem. Co. v. Bright*, 89 S.W.3d 602, 605-07 (Tex. 2002); *Koch Refin. Co. v. Chapa*, 11 S.W.3d 153, 155-56 (Tex. 1999); *Clayton W. Williams, Jr., Inc. v. Olivo*, 952 S.W.2d 523, 527-28 (Tex. 1997); *Redinger v. Living, Inc.*, 689 S.W.2d 415, 418 (Tex. 1985).