BLOGS

Vicarious Liability

Appellate Court Affirms That Franchisor is Not Vicariously Liable for Franchisee's Acts

The Kentucky Court of Appeals recently affirmed the dismissal of a complaint against six Domino's Pizza entities on a motion for summary judgment. *Johnson v. Seagle Pizza, Inc.*, 2016 WL 4410705 (Ky. Ct. App. Aug. 16, 2016). The case arose from a robbery at a Domino's franchise in Kentucky. At the time of the armed robbery, Crystal Roberts, an employee of the franchise, was on break behind the store, talking on the phone with her boyfriend, who lived a block away. The robber forced Roberts back into the store and demanded money. As the assailant was fleeing, he shot and killed Roberts' boyfriend who had run to the store after becoming aware of the situation. The victim's son, who claimed to have witnessed the shooting, brought suit against the franchisee, the building's lessor, Roberts, and Domino's for wrongful death and negligent infliction of emotional distress. The complaint alleged that Domino's was vicariously liable for the franchisee's negligent actions because it controlled the store's security procedures, procedures relating to the handling of cash, and its choice of very late operating hours. The lower court dismissed the complaint against Domino's on a motion for summary judgment, and the plaintiff appealed.

The appeals court affirmed the lower court's decision holding that Domino's could not be held vicariously liable because it did not control or have the right to control the daily operation of the specific aspects of the franchisee's business that caused the harm. The court held that Domino's did not have control over the third-party's criminal acts, nor did it have control over Roberts' actions in propping the door open, the store being open late, or the store operating primarily in cash. In doing so, the court explained that the primary question was not whether Domino's established ubiquitous franchise standards, but whether it retained control over the implementation of those standards.

The court held that Domino's did not retain control over the implementation of those standards because the Domino's operations manual clearly explains that the procedures contained therein are minimum operating standards which exist to protect the Domino's trademark, and the franchisee alone was responsible for signing its lease, supervising its employees, and maintaining its own security. In making its ruling, the court relied on, and reaffirmed, the seminal franchisor vicarious liability case in Kentucky, *Papa John's International, Inc. v. McCoy*, 244 S.W.3d 44 (Ky. 2008).

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