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Vicarious Liability

Court Denies Franchisor's Motion for Summary Judgment on Vicarious Liability Claim

In *Hayes v. Jani-King of Jackson*, 2011 U.S. Dist. LEXIS 66736 (S.D. Miss. June 22, 2011), a Mississippi federal district court denied a franchisor's motion for summary judgment on a vicarious liability claim, concluding that under Mississippi law there was a question of fact regarding whether a janitorial cleaning service franchisor exercised sufficient control over its franchisee to be held liable for the franchisee's negligent acts. The case arose out of an injury to the plaintiff who, after entering a restroom recently cleaned by the franchisee, slipped on the wet, recently mopped floor and was hurt. The plaintiff sued the franchisee and the franchisor, seeking damages for negligence because the restroom allegedly had no warning about the wet surface.

In denying summary judgment to the franchisor, the court focused exclusively on the language of the franchise agreement, marching through an analysis of every relevant provision to determine whether the franchisee was the franchisor's independent contractor or whether they essentially were employer and employee. At the outset, the court emphasized that this line of demarcation is, at least under Mississippi law, "a twilight zone filled with shades of gray." The court noted that a provision in the agreement explicitly identifying the franchisee as an "independent contractor" was relevant to the parties' intent, but not enough to resolve the issue. The court focused on the fact that the franchisor approved and standardized the franchisee's workspace, established requirements relating to its policies, practices, and procedures, and provided a comprehensive operational training program. As further evidence of an employer/employee relationship, the court noted the franchisor's right to inspect the franchisee's books and records as well as the actual cleaning work it performed for customers. The numerous bases for termination enumerated in the agreement, the court held, made the franchise agreement appear more like an at-will employment contract. Despite these findings the court counted an equal number of factors in the franchisor's favor, noting the franchisee had sole responsibility for its labor, equipment, and supplies, for setting prices and discounts, and for furnishing means and appliances for the work. The court said its decision was a "close call" but seemed troubled by the fact that, if the franchisee did not perform its tasks "in a good and workmanlike manner," the franchisor had the right to assume a customer contract and service that customer itself. That provision and others like it in the franchise agreement led the court to conclude that the agreement in many ways controlled the franchisee's "physical conduct." In viewing the "conflicting evidence" in the light most favorable to the plaintiff, the court found a material question of fact about whether an employer/employee relationship existed.