

BLOGS

Vicarious Liability

Court Grants Franchisor's Motion for Summary Judgment on Vicarious Liability Claims Brought by Franchisee's Customer

The United States District Court for the Northern District of Alabama has granted summary judgment in favor of franchisor Wintzell's Franchise Company on vicarious liability claims lodged against it by Jose Ruiz, a customer of franchisee Wintzell's Huntsville. *Ruiz v. Wintzell's Huntsville, LLC*, 2017 WL 4305004 (N.D. Ala. Sept. 28, 2017). Ruiz developed a severe infection after eating raw oysters at Wintzell's Oyster House, a restaurant owned and operated by Wintzell's Huntsville under a franchise agreement with Wintzell's Franchise. Ruiz claimed that Wintzell's Franchise was vicariously liable because it failed to implement adequate procedures for storing the raw oysters and for cataloging the date the oysters were harvested. Ruiz also argued that because Wintzell's Franchise was involved in the selection of oyster suppliers for its franchisees, it was liable to Ruiz for negligent selection of those suppliers.

In order to prevail against Wintzell's Franchise under a vicarious liability theory, Ruiz was required to show the existence of a franchise agreement, a reservation by Wintzell's Franchise of the right of control over the manner of its franchisee's performance, and some evidence of the exercise of that control. The court rejected Ruiz's vicarious liability argument because it determined that Wintzell's Franchise was not in control of Wintzell's Huntsville's operations and, therefore, owed Ruiz no duty to ensure that the franchisee's employees were fully trained in storing oysters. The court also rejected Ruiz's argument that Wintzell's Franchise was negligent in its selection of oyster suppliers because Ruiz failed to present any evidence that Wintzell's Franchise was involved in selecting a particular oyster harvester or that it was or should have been aware of any evidence of mishandling by that harvester.

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