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## BLOGS

Vicarious Liability

# Fourth Circuit Upholds Summary Judgment in Favor of Franchisor Due to Plaintiff's Failure to Establish Direct Liability for Negligence

In *Allen v. Choice Hotels Intern., Inc.*, 2008 WL 1925110 (4th Cir. May 1, 2008), the United States District Court for the District of South Carolina had granted summary judgment in favor of defendant franchisor on a negligence claim asserting both direct and vicarious liability in a case involving a deadly fire at a Comfort Inn and Suites facility. The fire killed six hotel guests and injured twelve others. The plaintiffs filed suit against franchisor, alleging that Choice failed to exercise due care by not requiring the franchisee to retrofit the hotel with sprinklers. The district court granted summary judgment to Choice, concluding that, as a franchisor, Choice was neither directly nor vicariously liable for the alleged negligent acts. The plaintiffs only appealed the district court's ruling as to the franchisor's direct liability.

On appeal, the Fourth Circuit affirmed the trial court's grant of summary judgment. In so doing, the court found certification of particular questions to the Supreme Court of South Carolina unnecessary because sufficient case law existed in South Carolina or other jurisdictions to resolve all the issues in this case. In denying the plaintiffs' negligence claim, the court determined that franchisor did not control franchisee's life safety systems. The court held that the terms of the franchise agreement and franchisor's rules and regulations did not establish Choice's control over franchisee sufficient to create a duty of care, but rather served as mere guidelines to ensure consistency throughout franchisor's system. As to the plaintiffs' argument that the injuries and deaths were foreseeable, the court found that Choice did not owe a common-law duty of care to franchisee's guests as foreseeable persons. Even so, the court determined that Choice did not in any way create a risk or increase the likelihood of injury at the Comfort Inn and Suites. The court also noted that the plaintiffs offered no basis to support the assertion that a hotel franchisor has a duty to require a hotel franchisee to retrofit its building with sprinklers, when the hotel complies with all applicable fire codes. Finally, the court found that the franchisor's acts were not voluntarily undertaken to regulate safety and security issues and created no duty of care owed to franchisee's guests. Rather, the court determined that Choice merely guarded its trademark by assuring uniformity of operation and appearance, including its required fire safety systems and hotel renovations and its recommended installation of sprinklers.