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BLOGS

Vicarious Liability

Franchisor Not Vicariously Liable for Death Caused by Disease Outbreak at Franchisee's Hotel

In *Braucher v. Swagat Group, LLC*, 2010 U.S. Dist. LEXIS 26294 (C.D. Ill. Mar. 19, 2010), the court granted summary judgment to Choice Hotels on a claim brought by a guest of one of its franchised hotels. The plaintiffs had visited a franchised hotel at which they contracted Legionnaires disease from the pool, which proved fatal to one of the named plaintiffs. The plaintiffs brought suit against both the franchisee and the franchisor, claiming that the franchisor was negligent and was liable under the doctrine of *res ipsa loquitur*, and that the franchisee acted as the franchisor's agent in operating the hotel.

The court granted Choice Hotels' motion for summary judgment, finding that Choice Hotels could not be held responsible for the acts of its franchisee and the franchisee was not the franchisor's agent. Although the court noted that Choice Hotels exercised sufficient control over its franchisee to protect its trademark rights, that did not give rise to the type of day-to-day control necessary for a franchisor to be found vicariously liable for the acts or omissions of its franchisee. Choice Hotels inspected the pool area only twice a year, at most, and retained the right to close the pool if the water was cloudy. But Choice Hotels did this to minimize the risk of drowning, not to prevent infections. Accordingly, the court granted summary judgment to Choice Hotels.