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BLOGS

Vicarious Liability

Franchisor Not Vicariously Liable for Workplace Injury to Franchisee's Employee

In *Schreyer v. Bandag, Inc.*, No. 05-CV-1235 (D. Minn. Dec. 5, 2007), the employee, Schreyer, was injured while working for the franchisee, Tire Associates, when a tire being retreaded on a piece of equipment exploded because the equipment was not functioning properly. Schreyer, prevented by Minnesota worker's compensation law from suing the franchisee-employer, brought a claim of negligence against Bandag, the franchisor. Bandag, in turn, brought a third-party complaint for contribution or indemnity against franchisee Tire Associates, the employer. The federal district court in Minnesota granted Bandag's motion for summary judgment finding that there was no evidence that the franchisor was liable for Schreyer's injury. Specifically, the court found that the Bandag did not owe a general duty of care to Schreyer, nor did Bandag voluntarily assume a specific duty of care to Schreyer by conducting safety inspections.

Schreyer argued that because the franchise agreement gave Bandag the right to inspect Tire Associates for safety violations, and to insist that Tire Associates correct them, that Bandag retained control of Tire Associates' work. The court held that Bandag was not liable because it did not exercise "detailed control" over the "operative detail" of the day-to-day work done at Tire Associates. The court cited numerous cases supporting its conclusion that the right to conduct periodic inspections and require the replacement of defective equipment is not the same as having "detailed control" over the "operative detail" of day-to-day work.

Further, Schreyer argued that even if Bandag did not retain a sufficient degree of control over Tire Associates to give rise to a general duty of care, that Bandag voluntarily assumed a specific duty of care to Tire Associates' employees by conducting safety inspections. The court disagreed, finding that Schreyer could not demonstrate any of the factors relevant to establish whether an inspection creates a voluntarily assumed duty of care. Notably, there was nothing that Bandag's inspector could have done to induce Tire Associates to fail to check or fail to monitor the defective equipment. Even though Tire Associates' employees may have relied on Bandag's safety inspections generally, the legal standard required Bandag to have taken specific actions or made specific representations that caused Tire Associates not to take its own measures to ensure that its equipment was working properly. There was no evidence of any such actions or representations by Bandag, thus no specific duty of care existed.

This case further supports the premise that a franchisor's contractual right to conduct safety inspections does not typically create a general or specific duty of care to a franchisee's employees.