

BLOGS

Vicarious Liability

Louisiana Appeals Court Affirms Dismissal of Vicarious Liability Claim

An appellate court in Louisiana recently affirmed summary judgment in favor of a franchisor, dismissing negligence and premises liability claims asserted by a customer who was injured on unauthorized exercise equipment. *Flynn v. Anytime Fitness*, 2022 WL 17982922 (La. App. Dec. 29, 2022).

An appellate court in Louisiana recently affirmed summary judgment in favor of a franchisor, dismissing negligence and premises liability claims asserted by a customer who was injured on unauthorized exercise equipment. *Flynn v. Anytime Fitness*, 2022 WL 17982922 (La. App. Dec. 29, 2022). Plaintiff William Flynn and his wife sued franchisor Anytime Fitness and its franchisee Thornhill Brothers Fitness after Flynn was injured using an inversion table at the franchised gym. The trial court granted Anytime's motion for summary judgment, holding that Anytime could not be liable for negligence or vicarious liability where it did not have control over day-to-day operations or otherwise exercise custody, control, or "garde" over the franchisee or its facilities. The Flynn's appealed, arguing that Anytime exercised certain control through its franchise agreement, which created a duty owed them by Anytime. The franchise agreement required that all equipment, including the inversion table, be purchased new or ordered through a specific vendor. Anytime failed to prevent the franchisee from purchasing the table from Craigslist and failed to discover the unauthorized equipment purchase by inspecting the facilities.

The appellate court affirmed summary judgment, agreeing that Anytime did not control the franchisee's day-to-day procedures or otherwise have custody, control or "garde" of the franchisee's equipment or premises. In fact, according to the court, Louisiana law prevented finding that Anytime had custody of the inversion table unless it exerted day-to-day control over the franchisee's management procedures—in fact, Anytime explicitly disclaimed any such control in the franchise agreement. The court further found that Anytime was not obligated to inspect the facilities during the time Flynn was injured, and held that the control it did exercise over the franchisee was merely that which was necessary to preserve brand standards.

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