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BLOGS

Vicarious Liability

New York State Court Denies McDonald's Motion for Summary Judgment on Vicarious Liability Claim

In *Solis v. McDonald's Corp.*, 2011 N.Y. Misc. LEXIS 3366 (N.Y. Sup. Ct. July 11, 2011), a New York state court denied McDonald's summary judgment on a vicarious liability claim, concluding that there was a question of fact regarding whether the franchisor exercised sufficient control over its franchisee's day-to-day operations to be held liable for the franchisee's negligent acts. The case arose out of injuries suffered by the plaintiff when he fell on a staircase inside a McDonald's restaurant entrance. The plaintiff sued the franchisee and McDonald's, seeking damages for negligence because the stairs allegedly were improperly maintained and defective.

The court agreed with McDonald's that the mere existence of a franchise agreement was insufficient to impose vicarious liability for its franchisee's acts. In denying summary judgment to McDonald's, the court focused on the language of the franchise agreement, analyzing various provisions to determine whether McDonald's exercised control over the day-to-day operations of its franchisee. The court focused on the fact that McDonald's established requirements relating to its operational standards and policies, advised the franchisee about operational issues and improvements, and issued a manual to the franchisee that "set forth guidelines for maintaining a safe operation" of the restaurant. The court also placed great weight on the fact that the franchise agreement gave McDonald's the right to inspect the premises at all times to ensure compliance with its standards and policies, and noted that a McDonald's operations consultant had performed multiple inspections of the premises. A critical fact in this case was that McDonald's owned the property and had leased it to the franchisee; the franchisee had no right to alter the premises without obtaining the franchisor's prior written approval. The court concluded that the plaintiff "amply" demonstrated that McDonald's "owned the subject premises and maintained substantial control and dominion over the operations of the restaurant." At the very least, the court held, there was a triable issue of fact about whether McDonald's exercised control over the franchisee's day-to-day operations.