

BLOGS

Vicarious Liability

Tennessee Federal Court Rules Franchisor Lacks Day to Day Control over Franchisee, Defeating Vicarious Liability Claim Against Franchisor

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In another vicarious liability case, a federal court in Tennessee granted summary judgment in favor of Country Inn & Suites By Radisson, dismissing claims that it was liable for the alleged actions of its franchisee's employee. *Faulkner v. Country Inn & Suites By Radisson, Inc.*, 2021 WL 1143856 (M.D. Tenn. Mar. 24, 2021). Lathrop GPM is counsel to Country Inn & Suites (CI&S). The lawsuit alleged Kevin Faulkner was assaulted by an employee of a CI&S franchisee, and sought to hold CI&S directly and vicariously liable for battery, assault, and intentional infliction of emotional distress arising out of the assault.

In considering CI&S's motion for summary judgment, the court concluded that CI&S's License Agreement demonstrated it did not have control over the day-to-day activities of the franchisee's hotel, and therefore, could not be vicariously liable for the franchisee's employees. In an attempt to circumvent these arguments, Faulkner argued CI&S was liable through apparent agency stemming from the use of CI&S's marks at the franchisee's hotel. The court held that the facts, instead, demonstrated merely a franchisee-franchisor relationship between the parties and highlighted a previous observation from the Middle District of Tennessee that if branding could create apparent authority, this "would effectively transform every franchisor-franchisee relationship into an agency relationship" — an unworkable notion. The court further relied on a Tennessee statute explicitly stating employees of franchisees are not employees of franchisors, negating any contention CI&S could be directly liable for the actions of its franchisee's employees.

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