

SECURITY LAW NEWSLETTER

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Court Decisions

Third-Party Crime

Assault

Foreseeability

Property owner and security company not liable for shooting of customer on premises

Hayes v. GGP-Four Seasons L.L.C., Nos. 10-0423, 10-0425 (U.S. District Court for the Middle District of North Carolina Dec. 5, 2011)

SUMMARY

A federal trial court ruled that a customer shot by another customer while in a retail store located in a mall could not recover damages for his injuries from the retail store, the mall owner or the security company that provided security for the mall. The prior instances of violent crimes on the property—six to seven per year in an area of over 1 million square feet—were not numerous enough to establish foreseeability.

FACTS

On Dec. 23, 2006, Charran Hayes was shopping at a clothing store in a shopping mall when he was shot four times by another customer, Vernon Platt. Hayes filed a negligence lawsuit against the owners of both the mall and the store where he was shot, as well as the security company that contracted to provide security for the mall.

Hayes argued that the defendants should be held liable for his injuries because, despite the occurrence of several prior violent crimes at the mall, sufficient security measures were not taken to protect him while shopping at the mall.

The defendants filed a motion for summary judgment and argued that they should not be held liable for Hayes' injuries because they resulted from random criminal actions of a third party. The defendants asserted that they employed several security measures, such as 59 recording surveillance cameras throughout the mall property and a patrolling security guard on premises;

however, the defendants argued that Hayes' injuries were not preventable with any level of security.

DECISION

The district court granted the defendants' motion for summary judgment. A business owner has a general duty to ensure the safety of their customers while on their premises and to exercise ordinary care to keep their premises in a safe condition. Generally, a business owner is not liable for customers who are injured due to the intentional, criminal acts of third persons unless the criminal act was foreseeable. When crimes are foreseeable, the business owner has a duty to warn customers of the possible dangers.

In this case, the district court found that based on the evidence presented by Hayes, there were 20 prior crimes that occurred at the mall—a vast area that caters to a very large population—before his shooting that involved the use or threat of force against another person. The court held that, given the scale of the mall and the number of customers, only 20 prior violent incidents would not give the defendants sufficient notice that a customer would likely be a victim of a crime by a third party. Therefore, the court held that the defendants were not negligent in failing to protect Hayes from the random criminal act of Platt.

IMPLICATIONS

A property owner does not generally have a duty to protect visitors from the crimes committed by a third party unless the crimes were foreseeable. This case illustrates the factors a court may consider in determining whether a third-party crime was foreseeable. In this case, although the plaintiff was able to show the existence of a number of prior violent crimes on the premises, the court found that number relatively small considering the size of the property and the number of visitors it received.

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Contract Security**Assault****Visitor attacked in parking lot
sues security company**

Hammond v. AlliedBarton Sec. Servs. L.L.C., No. 10-02441
(U.S. District Court for District of South Carolina Nov. 16, 2011)

SUMMARY

A federal trial court ruled that a woman who was attacked in the parking lot of a hospital while visiting her daughter could not recover damages from the contract security company hired to provide security for the hospital. The company did not breach a duty arising under its contract with the hospital by failing to escort the woman to her car.

FACTS

On June 11, 2008, Priscilla Hammond took her daughter to the emergency room for treatment. At approximately 1:00 a.m., Hammond realized that she left some medical records in her car which was parked in the emergency room parking lot. Hammond told the security guard in the emergency room that she would be right back and left to retrieve the records. Hammond did not ask the guard to escort her to the car.

When Hammond reached her car, a man approached her and demanded that she give him her keys. The man then began striking Hammond with a pistol and forcibly took her keys. Another woman saw the attack and ran over to help Hammond. The attacker jumped into Hammond's car and sped away. Hammond suffered a concussion, bruising and severe lacerations as a result of the attack.

Hammond filed a negligence lawsuit against the hospital and the security company that employed the hospital's contract security officer. The hospital settled with Hammond for \$150,000.

The security company filed a motion for summary judgment and argued that Hammond's claims against it should be dismissed because the security company did not have a legal duty to protect her from the criminal actions of her attacker while in the hospital's parking lot. In opposition to the security company's motion for summary judgment, Hammond argued that the company inadequately trained the guard, and that it was negligent by not having a guard patrol the parking lot at the time of her attack and by not escorting her to her car.

DECISION

The district court granted the security company's motion for summary judgment. The court noted that while the hospital has a duty to take reasonable actions to protect its business invitees from foreseeable risks of physical harm, the security company only has a duty to provide the security services authorized and contracted for by the hospital.

According to its security agreement with the hospital, the security company was not required to patrol the parking lot at a specific time each day and was, in fact, ordered to vary the time of its patrols. Furthermore, although the security company informed the hospital that a guard was needed in the parking area, the hospital rejected the company's offer for an extra guard for the hospital parking lot area. Because the security company did not voluntarily undertake the responsibility to monitor the parking lot—to provide service beyond

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what it was paid to provide—the company could not be held liable for Hammond’s injuries.

IMPLICATIONS

A contract security company will generally not be liable for injuries caused by the violent acts of a third party for failing to undertake additional duties outside of the scope of contracted duties. However, in this case, the hospital might have avoided its exposure to liability for the victim’s injuries if it had followed the security company’s recommendation to post a security guard in the parking lot.

Security Guards

Safety

Security guard struck in parking lot by drunk driver sues bowling alley

Arnold v. Clayton Valley Bowl Inc., No. A131228 (California Court of Appeal Nov. 14, 2011) *unpublished*

SUMMARY

A state appellate court held that a bowling alley owner is not liable for injuries suffered by an on-duty security guard who was hit by a car driven by an intoxicated patron. The security guard was not a business invitee and therefore the business owner did not have a duty to protect the security guard from the type of harm he would expect to encounter in the ordinary course of his duties.

FACTS

On Nov. 29, 2006, security guard Michael Arnold was assigned to patrol a shopping center which contained a bowling alley. Arnold worked for a security company hired by the property owner to patrol the shopping center’s parking lot. Arnold’s job duties included monitoring the parking lot to deter theft and ensure that no one loitered in the parking lot. In addition, Arnold sometimes assisted with disturbances in the bowling alley.

On November 29, patron Roger Parkison and a friend became extremely intoxicated in the bowling alley while playing pool. Witnesses noted that Parkison became combative and harassed and assaulted other patrons in the bowling alley. Patrons in the bowling alley threw Parkison and his friend out. Parkison and his friend began damaging cars in the parking lot. Arnold heard Parkison and his friend damaging vehicles in the parking lot and attempted to stop them. Arnold was struck by the pickup truck driven by Parkison in the shopping center parking lot and was injured.

Arnold sued the bowling alley for negligence arguing that he was a business invitee and that the bowling alley breached a duty to protect him from the drunken actions of Parkison and his friend. The bowling alley filed a motion to dismiss Arnold’s complaint. The trial court granted the motion to dismiss, and Arnold appealed.

DECISION

The court of appeal affirmed the trial court’s judgment and held that Arnold’s complaint was properly dismissed. The court held that an on-duty security guard who was assigned to patrol a parking lot was not a business invitee; therefore, the business owner did not have a special duty to protect him from the drunken patron. The appellate court noted that encounters with drunken and unruly patrons were an expected part of Arnold’s duties as a security guard; therefore, there was no reason that there would be a special duty to protect the guard from coming into contact with intoxicated or unruly patrons.

IMPLICATIONS

As this case shows, most courts will not treat an on-duty security guard as a business invitee while he is on the business property that he was hired to safeguard, because to do so would lead to the incongruous result of a property owner having to protect a security guard from the harms the security guard was hired to protect against.

Inadequate Security

Premises Liability

Slip & Fall

Injured tavern patron’s lawsuit dismissed due to failure to show cause of injury

Lombardi v. Pat’s Tavern, No. A-6234-09T1 (New Jersey Superior Court, Appellate Division Dec. 7, 2011) *unpublished*

SUMMARY

A state appeals court affirmed a grant of summary judgment in favor of a tavern in a lawsuit filed by a patron who suffered a head injury after drinking at the tavern. The patron was unable to establish whether his injuries resulted from a fall or an assault and, therefore, the patron could not show any breach by the tavern resulted in his injuries.

FACTS

Gerard Lombardi went to a tavern with his girlfriend and consumed several alcoholic beverages. A short while later, Lombardi left the tavern. Lombardi subsequently suffered a head injury.

It is unclear what transpired while Lombardi was outside of the bar; however, he was found on the ground with a head injury. Witnesses say that Lombardi told the police and medical professionals that he slipped and fell; others said that Lombardi claimed that his money and lottery ticket was missing, inferring that he had been assaulted and robbed. No one saw how Lombardi was injured. After being examined at the hospital, doctors concluded that Lombardi’s injuries could not have resulted solely from a fall.

Lombardi sued the tavern for personal injuries based on theories of inadequate security and premises liability. Lombardi argued that the bar was negligent in not providing security outside the business, a failure that allowed him to be possibly assaulted and injured without anyone witnessing what happened. The tavern filed a motion for summary judgment arguing that by his own admission, Lombardi was injured in a fall after drinking alcohol. The trial court granted the tavern's motion for summary judgment. Lombardi appealed.

DECISION

The appellate division affirmed the grant of summary judgment in favor of the tavern. The appellate division held that Lombardi failed to provide sufficient evidence to show that his injuries resulted from the negligence of the tavern. The appellate court noted that the record was void of any evidence that would prove that Lombardi fell or was assaulted due to the tavern's alleged breach of a duty to keep their premises safe and provide sufficient security for patrons on the exterior of their business.

IMPLICATIONS

This case reinforces the importance of causation as a required element in proving damages from injuries based on negligence. In this case, the plaintiff was unable to establish how he suffered his injuries. However, the case also serves as a reminder that businesses that serve alcohol should ensure staff are properly trained to avoid liability for overserving alcohol to intoxicated patrons.

Security Hiring/Firing

Discharge

Employee Misconduct

Loss prevention manager may pursue wrongful termination claim against store

Storm v. Thrifty Payless Inc., No. B228091 (California Court of Appeal Dec. 1, 2011) *unpublished*

SUMMARY

A state court of appeal reversed a trial court's grant of summary judgment to an employer that was sued by a former loss prevention manager alleging wrongful termination. The plaintiff sufficiently claimed he was terminated in response to his investigation into alleged wrongdoing by a store manager.

FACTS

Jeffrey Storm worked as a security guard for a drug store. Storm was promoted to a district loss prevention manager for the retailer and his duties included reviewing time cards to check for fraud and reviewing store shelves to ensure that outdated foods were removed and properly processed out of the store inventory system.

While at one of the stores he monitored, Storm saw that there was a large amount of outdated food merchandise on the shelves.

Storm approached the store manager, Christi Cuara, who stated that a new employee was to blame for the expired food. Storm also reviewed the time cards for the store where Cuara previously worked in response to complaints from employees who felt they were being shorted on their pay checks and alleged Cuara removed overtime from time cards. Storm launched an investigation against Cuara.

Cuara was interviewed by the company's human resources department about the outdated food and the time card issues. During the interview, Cuara stated that she felt that Storm was harassing her, and that he had previously sent her a sexually explicit text message. Cuara stated that she did not report the texts from Storm earlier because she was afraid. When representatives from the company's human resources department confronted Storm about the inappropriate texts to Cuara, he denied sending the messages. Storm was fired a short time later for sending inappropriate texts and for lying during a human resources investigation.

Storm sued the company for wrongful termination, failure to pay wages, infliction of emotional distress, breach of implied contract not to terminate without good cause and for defamation. The company filed a motion for summary judgment and argued that it had a legitimate reason for firing Storm, that Storm did not have a protected right to employment and that there was no basis for his emotional distress claims. The trial court granted the defendant's motion for summary judgment, and Storm appealed.

DECISION

The state court of appeal reversed the trial court's grant of summary judgment and remanded the case for further proceedings. The appeals court held that Storm had sufficiently alleged that he was engaged in a protected activity—reporting possible time card fraud—at the time that he was terminated from his employment. Since Storm's termination occurred soon after he began the investigation into the alleged fraud at Cuara's store, there was an issue of fact as to whether his termination was due to his report of fraud which would maintain his claim for wrongful termination. The appellate court found that all other claims in Storm's complaint were without merit and should be dismissed.

IMPLICATIONS

Federal and state laws may prohibit the termination of individuals in retaliation for engaging in certain protected activities such as reporting labor violations or fraud. To minimize the likelihood that a terminated employee might bring—and prevail in—a wrongful termination claim, employers should take care to fully

document all legitimate reasons for terminating an employee, especially one who has previously reported suspected wrongdoing.

Workplace Violence
Discrimination

Security guard fired after violating employer's workplace violence policy

Van Dusen v. Mem'l Hosp. of S. Bend Inc., No. 10-0255 (U.S. District Court for the Northern District of Indiana Nov. 9, 2011)

SUMMARY

A federal trial court held that a security guard who was terminated after being involved in an altercation with a coworker on the job could not maintain a lawsuit against his employer for racial discrimination. The former guard failed to provide any evidence of discrimination and admitted to violating his employer's anti-violence policy.

FACTS

Larry Van Dusen began working as a security guard at a hospital in August 2001. In 2003, Van Dusen made complaints to his superiors that his supervisor had made racial slurs to him. Van Dusen's supervisor was allowed to continue in his position over Van Dusen and subsequently recommended Van Dusen for a promotion. Van Dusen was promoted and was allowed to carry a firearm on the job. Seven years after Van Dusen was hired, the hospital implemented a strict non-violence policy, and employees were made aware that any threats, harassments or aggression was prohibited.

On Aug. 9, 2008, shortly after the new policy went into effect, Van Dusen was involved in an argument with a coworker. Van Dusen grabbed his coworker by the neck and pushed him up against a wall. Van Dusen admitted his actions to the hospital's labor relations manager and acknowledged that he had violated the hospital's workplace violence policy. After a six-day investigation of the incident, Van Dusen was terminated.

Van Dusen sued the hospital for wrongful termination based on racial discrimination. Van Dusen argued that his supervisor, who was African-American, was disciplined for inappropriate racial and sexual comments on several occasions, which was a violation of their workplace policy, but was not terminated. Van Dusen argued that he was treated less favorably as a similarly situated employee, his supervisor. The hospital filed a motion for summary judgment and argued that Van Dusen was terminated for violating the company's "no workplace violence" policy and for no other reason.

DECISION

The district court granted the hospital's motion for summary judgment. The court held that Van Dusen

failed to provide any evidence to support his allegation that his termination from the hospital was based on racial discrimination. Furthermore, the court noted that Van Dusen admitted to assaulting his coworker, which was a valid basis for his termination under the hospital's no workplace violence policy.

IMPLICATIONS

Typically, a company will not be liable for wrongful termination of an employee based on racial discrimination when the company can show that the employee's termination resulted from a violation of an established company policy or rule, as in this case.

Dram Shop

Respondent Superior
Foreseeability

Bar owner not liable for injuries caused by intoxicated off-duty employee

Caplinger v. Korrzan Rest. Mgmt., No. CA2011-06-099 (Ohio Court of Appeals Nov. 21, 2011)

SUMMARY

A state appeals court affirmed a grant of summary judgment in favor of a bar owner in a suit filed by the mother of a minor passenger seriously injured in a car accident after the intoxicated driver—the minor's father—passed out while driving. The plaintiff failed to present evidence showing that the bar's employees knowingly served an intoxicated person alcohol in violation of the state's dram shop act.

FACTS

On Aug. 28, 2008, John Caplinger, an employee at a sports bar café, stayed after work and drank several alcoholic beverages over the course of several hours and became intoxicated. Caplinger's ex-girlfriend, Sandra Nelson, spoke with Caplinger during this time and noted that he sounded intoxicated and had slurred speech. Caplinger subsequently left the bar and drove to pick up his minor son. During the drive, Caplinger passed out at the wheel and slammed his car into a concrete overpass. Both Caplinger and his son were seriously injured. After testing, it was discovered that Caplinger was severely intoxicated and had also consumed Vicodin and cocaine.

Nelson sued the owner of the sports bar on behalf of her son for damages that resulted from the accident. Nelson claimed that the bartender overserved Caplinger alcohol after he was already intoxicated in violation of the state's dram shop act.

The owner of the sports bar filed a motion for summary judgment, and the trial court granted the motion. Nelson appealed.

DECISION

The state court of appeals affirmed the trial court's grant of summary judgment. Nelson argued that the trial court erred by granting the sports bar's motion for summary judgment because there was an issue as to whether the bar knowingly served Caplinger alcohol while he was intoxicated.

Although evidence was presented that the bartenders served Caplinger two 16-ounce beers and three four-ounce shots of liquor, there was no evidence demonstrating that any employee of the bar had actual knowledge that Caplinger was noticeably intoxicated at the time of service. The bar manager testified that she spoke with Caplinger while he was drinking at the bar and she did not perceive any change in his speech pattern or affect. Therefore, the appeals court held that Nelson failed to provide any evidence that the bar staff knowingly served alcohol to Caplinger when he was noticeably intoxicated; therefore, summary judgment was appropriate in this case.

IMPLICATIONS

Although dram shop acts vary from state to state, this case is a reminder that the mere fact that a person's blood alcohol content is higher than the legal limit after an accident does not prove that an establishment knowingly served alcohol to a visibly intoxicated person.

Privacy

Surveillance**Respondeat Superior****Suit alleging company violated privacy rights by monitoring phone calls may proceed**

Kight v. CashCall Inc., No. D057440 (California Court of Appeal Nov. 21, 2011)

SUMMARY

A state appeals court held that plaintiffs may proceed with a lawsuit against a company that allegedly monitored and recorded calls to and from customers who were discussing confidential financial and identification information without the callers' consent.

FACTS

A finance company that gives small unsecured loans to customers had software on its telephone system that allowed supervisors to listen to customer calls and enabled the calls to be recorded. Callers were prompted by an automated message to select options to be routed to a representative. Some of the call options gave callers an automated disclosure that stated that their call may be monitored and recorded for quality purposes. However, if callers selected options to speak directly to a representative, they did not hear the automated disclosure, but their calls were still randomly monitored and recorded.

Amanda Kight and several others sued the company for invasion of privacy under California state law and the California Constitution. The plaintiffs argued that while speaking with the company, they provided confidential information to the representatives and supervisors were allowed to eavesdrop on the conversation without warning and without the caller's consent.

The company filed a motion for summary judgment and argued that there was no invasion of privacy because there were only two parties involved in the conversation—the company and the customer—and the state's privacy statute required that the confidential information be heard by a third party.

The trial court agreed and granted the company's motion for summary judgment. The plaintiffs appealed.

DECISION

The state court of appeal reversed the trial court's grant of summary judgment in favor of the company. The appellate court held that the statutory protection of confidential communications protects an individual's right to know who is listening to their telephone conversation, even if the unannounced listener is employed by the same company as the speaker and the monitoring was to evaluate the employee's performance. The appellate court found that there was an issue as to whether the plaintiffs had a reasonable expectation that their telephone conversations with the company would not be monitored without their knowledge or consent.

IMPLICATIONS

State laws protecting the privacy of telephone conversations vary and businesses and employers should be vigilant about complying with the laws of the states in which they conduct business. In this case, the court noted that although a corporation and its employees generally function as a single legal "person" for many tort purposes, they could be considered two parties for the purpose of determining whether the company violated a state statute governing privacy.

Employee Misconduct

Discrimination**Respondeat Superior****Employee sues employer after manager sends sexually explicit photos via email**

Poole-Henry v. Johnson & Johnson Healthcare Sys. Inc., No. 11-2695 (U.S. District Court for the Western District of Tennessee Dec. 13, 2011)

SUMMARY

A federal trial court determined that a female employee could not maintain an action for sexual harassment and infliction of emotional distress against her

employer after her manager allegedly emailed photo's of the employee's boyfriend's genitals as evidence that the manager and boyfriend were having an affair. The court held that the employee failed to support her claim that the employer was liable for the manager's actions.

FACTS

Bridget Poole-Henry was employed by a healthcare provider. Poole-Henry received an email message from her manager containing a picture of Poole-Henry's boyfriend's genitals. It is unclear whether the email was sent from her employer's email system or from the manager's personal email account. Poole-Henry informed her employer about the picture and that the manager had bragged about being involved with her boyfriend to other employees. Poole-Henry alleged that no adverse or disciplinary actions against the manager were taken as a result of the incident.

Poole-Henry filed a discrimination claim against her employer with the EEOC and then sued her employer in federal district court. Poole-Henry sought damages for sexual harassment, retaliation and intentional infliction of emotional distress. Her employer filed a motion to dismiss and argued that it was not liable for the intentional torts of the manager or any other employee. Additionally, the employer argued that if Poole-Henry was injured due to the manager's actions, a claim to the state's workers' compensation benefit fund would be her only remedy.

DECISION

The district court granted the employer's motion to dismiss. The court held there was no evidence that the injury Poole-Henry alleged occurred at the workplace. The complaint did not state whether the email was sent by company email nor were there allegations that the message was sent during working hours.

The district court held that Poole-Henry had not met the requirements to maintain an action for intentional infliction of emotional distress that resulted from workplace conduct. Poole-Henry failed to state any fact that her employer was liable for the manager's conduct. Poole-Henry only alleged that her employer failed to take corrective action. Therefore, the court held that Poole-Henry failed to support her claims of negligence or intentional infliction of emotional distress.

IMPLICATIONS

Although the court in this case did not hold the employer liable for an employee's alleged offensive conduct in the workplace, the case is a reminder of the importance of establishing and enforcing guidelines prohibiting sexual harassment to protect employees and avoid exposure to litigation.

Sexual Assault

Workplace Violence

Employer not liable for sexual harassment after male employee grabs female coworker

Davis v. Charlottesville Sch. Bd., 11-0026 (U.S. District Court for the Western District of Virginia Dec. 1, 2011)

SUMMARY

A federal trial court ruled that a school district is not liable under federal law for sexual harassment in a lawsuit alleging a male school employee grabbed a female coworker's breast. The employee's conduct was not severe or pervasive enough to establish a hostile work environment under federal civil rights law.

FACTS

Sheila Davis was a female employee at a public elementary school. Davis alleged that on Dec. 11, 2009, while in the school cafeteria, Davis was approached by a male coworker, Warren Mawyer, who tried to grab her breast and asked her if her breasts were real. Davis was very upset and told the school's assistant principal about the incident. The assistant principal did not take any action against Mawyer.

Soon after, Mawyer again approached Davis in the cafeteria. On the second encounter, Mawyer grabbed Davis' right breast against her will. Davis believed that she was about to be raped, and she struck Mawyer after he grabbed her. Davis reported the second incident with Mawyer to the assistant principal. The assistant principal informed the school principal, and Mawyer was transferred to a high school in the school district.

Mawyer pled guilty to criminal charges arising from the incident and was ordered to stay away from Davis. After Mawyer's conviction, Davis sued the school board and others for sexual harassment and for maintaining a hostile work environment. Davis also raised claims for battery, assault and infliction of emotional distress. Davis argued that she reported Mawyer's actions to the assistant principal, and no actions were taken to fire him, which led to her assault. Similarly, Davis complained to the superintendent that it was wrong to simply transfer Mawyer near high school girls after he had assaulted her.

The school district filed a motion to dismiss Davis' claim. The school district argued that Mawyer's conduct did not constitute sexual harassment as defined under Title VII of the Civil Rights Act of 1964.

DECISION

The district court granted the defendant's motion to dismiss Davis' sexual harassment claim. The court concluded that the school district did not create an abusive working environment for Davis. While it was true that Mawyer's conduct was crude and criminal, Davis did not show that her working environment was altered or compromised based on gender bias. The district court

noted that the first reported incident between Davis and Mawyer only involved inappropriate comments, and though no swift action was taken after Davis reported it, the school board took speedy action when Davis reported the second incident which involved her being touched inappropriately. Therefore, the court held that the conduct alleged did not reach the requisite level of severity or persuasiveness to constitute sexual harassment under Title VII.

IMPLICATIONS

This case illustrates what is required to establish a federal claim for sexual harassment based on a hostile workplace. Plaintiffs who assert claims for hostile work environment must prove that their working conditions were altered and compromised on account of a severe gender bias. The fact that a coworker engaged in crude or sexually inappropriate behavior is not enough to subject an employer to liability for sexual harassment.

Investigations

Search

Information Security

Woman sues reporting service for false criminal history on background report

Taylor v. Tenant Tracker Inc., No. 10-0282 (U.S. District Court for the Eastern District of Arkansas Nov. 4, 2011)

SUMMARY

A federal trial court ruled that a prospective tenant could not sue the company that provided incorrect criminal background information about her to a federal housing agency.

FACTS

Catherine Taylor and her husband applied for housing through a federal housing program. Taylor was informed that she would have to complete a background check before she could receive housing. Taylor provided her personal identification information to a case-worker and signed release forms authorizing the screening. The agency submitted Taylor's information to a private screening company that conducts searches of public records and reports the results to clients.

The case manager who received the background report for the Taylors noted that there were entries for "Chantel Taylor," who used "Catherine Taylor" as an alias. The report contained several criminal offenses including drug violations and felony child abuse. The report noted that the person convicted under the name "Catherine Taylor" had a tattoo on her ankle.

The case manager realized that Taylor was not the same person described in the report, but questioned her concerning the convictions to confirm that she was not

"Chantel Taylor." Taylor became upset and stated that this was the third time that she had been confused with "Chantel Taylor" after a background check.

Taylor sued the screening company in federal court alleging violations of the Fair Credit Reporting Act as a result of the negative information contained in her background report that was reported to companies conducting a background check. The screening company filed a motion for summary judgment and argued that it was not liable because all the information contained in the background report was true.

DECISION

The district court granted the screening company's motion for summary judgment. The court held that the company had made an accurate report of court records for Taylor's name. Though the report provided by the company was technically inaccurate, the court found that Taylor did not prove that the company was negligent in preparing or reporting the criminal information associated with her common name.

IMPLICATIONS

When a consumer reporting agency prepares a consumer report that contains credit or criminal history, the agency must follow reasonable procedures to ensure that the information provided in the report is as accurate as possible.

Premises Liability

Safety

Respondeat Superior

Injured motocross participant's lawsuit against track operator may proceed

J.T. v. Monster Mountain L.L.C., No. 09-0643 (U.S. District Court for the Middle District of Alabama Dec. 14, 2011)

SUMMARY

A federal district court held that a contestant injured on a motocross track could maintain his lawsuit alleging employees implied that the track was ready by taking entry documents and having the track gate open. The question of whether the actions of the employees were grossly negligent was a question for a jury to decide.

FACTS

On Jan. 29, 2009, minor J.T. went to a motocross track to compete in a dirt bike competition. Before J.T. arrived, employees started to groom the racetrack, but failed to complete the grooming process. An employee knew that the track was not completely groomed, yet he began to take entry documents and competition fees. J.T.'s coach gave the track employee J.T.'s entry papers and fees, and asked whether the track was open. The track employee

did not respond directly. J.T. took his bike to the track and entered through an open gate. After driving around one section of the track at a high rate of speed, J.T. collided with a tractor. The driver of the tractor was finishing grooming the track. J.T. was seriously injured.

J.T. sued the owners of the track for premises liability, negligence and wantonness, and argued that the track owner was liable because of the gross negligence of its employees in not informing entrants that grooming equipment was on the track. J.T. alleged this negligence resulted in his injury.

The track owners filed a motion for summary judgment on the wantonness claim and argued that its employee did not intentionally create a dangerous condition by leaving the gate open or failing to tell J.T. that the course was closed. Additionally, the defendant argued that J.T. should have been accompanied by a parent or guardian while riding, and that the tractor on the track was an open and obvious danger.

DECISION

The district court denied the track owner's motion for summary judgment on the wantonness claim. The court held that the employee who took entry documents and fees implied that the track was open to contestants even though he knew that there was additional grooming to be completed. Further, the employee who was grooming the track saw riders on motorcycles and continued to operate the tractor. Through deposition, the employees stated that they knew that there was a possibility that someone could be hurt due to the operation of equipment while they were on the track. Therefore, the court held that a jury should decide the issue of wantonness. (For an earlier decision in this case, see 31 SLN 9, January 2011.)

IMPLICATIONS

This case illustrates how employees' actions and negligence may subject their employer to liability for wantonness. Wantonness is defined as conduct which is carried on with a reckless or conscious disregard of the rights or safety of others. Courts have found that plaintiffs do not have to prove that employees possessed an actual intent to injure at the time that they engaged in the extremely negligent behavior that supports a claim of wantonness.

ant who was struck in the parking lot of the business by another motorist while returning a rental car.

FACTS

Keith Watson was returning a rental car to the designated return area of a rental car lot. After parking the car, Watson went to the back of the car to retrieve items from the trunk of the rental car. Watson was struck from behind by another motorist who was returning her rental car. Watson suffered severe injuries to his knee and legs.

Watson filed a lawsuit against the rental car company asserting negligence and premises liability claims. Watson argued that the rental company was liable for his injuries for negligently entrusting its rental vehicle to the driver that hit him. Additionally, Watson argued that the rental car company failed to maintain its premises in a safe manner because it did not provide guards, warn motorists in the return zone of the dangers of being struck or provide buffers that would prevent other motorists from colliding with pedestrians in the return area.

The rental car company filed a motion for summary judgment and argued that they cannot be held liable for Watson's injuries under the Graves Amendment, a federal statute which prohibits injured parties from suing rental car providers in the event of an accident. Further, the rental car company argued that they were not liable for premises liability because there were no defects or unreasonably dangerous conditions on their property.

DECISION

The district court granted the rental car company's motion for summary judgment. The court agreed that the federal statute cited by the rental car company barred Watson's claims. Furthermore, the court held that Watson's claims for premises liability were without merit. There was no evidence of prior similar accidents in the rental car return area which would have given the company notice that a dangerous condition existed. The court also found that the rental company had complied with the standards for safety, and that the lack of guards, barriers and warning signs did not constitute an unreasonably defective condition.

IMPLICATIONS

A rental car company cannot generally be held liable for injuries sustained by a customer who is struck by another customer while returning rental cars because claims based on negligent entrustment or premises liability will fail due to a federal statute that shields rental car owners and operators from liability for harms caused by drivers of their vehicles.

Assault

Parking

Rental car company not liable after one customer strikes another in parking lot

Watson v. Majewski, No. 10-12910 (U.S. District Court for the Eastern District of Michigan Nov. 3, 2011)

SUMMARY

A federal trial court ruled that a federal statute prohibited recovery from a rental car company by a claim-

News & Filings

Hotel sued after guest secretly videotapes sportscaster

Sports broadcaster Erin Andrews has filed a lawsuit against Marriott International and West End Hotel Partners as the result of secret videos that showed her changing clothes in her hotel room.

Andrews alleges that Michael David Barrett took the videos in September 2008 while she was staying at the Nashville Marriott on assignment. The lawsuit claims that Barrett contacted the hotel and asked if he could have a room next to Andrews' room.

The suit alleges that the hotel was negligent in granting Barrett's request without Andrews' consent. Barrett allegedly took the videos through an altered peephole in the door to Andrews' room. The videos were subsequently posted on the Internet. The lawsuit seeks \$2 million in damages from the hotel.

Andrews v. Marriott Int'l Inc., No. 11C4831 (Tenn. Cir. Ct., Davidson County *complaint filed* Dec. 1, 2011)

Jewelry store claims ADT alarm failure resulted in \$2.4 million theft

A New York jewelry store has filed a lawsuit alleging that its ADT alarm system did not work properly on the night of a burglary that resulted in \$2.4 million in losses.

Nirvana International purchased a security system from ADT that should have transmitted a signal to ADT's monitoring center if an alarm was triggered. ADT personnel then would have called the police and Nirvana to report the alarm trigger. The lawsuit claims that no signal was transmitted after ADT's security sensors were triggered on the night of the burglary.

The lawsuit also claims that after the burglary, ADT forged a document limiting Nirvana's claims to \$1,000. Nirvana alleges that it never agreed to such a limitation on damages and seeks the full \$2.4 million in the lawsuit.

Nirvana Int'l Inc. v. ADT Sec. Servs. Inc., No. 11-8738 (S.D.N.Y. *complaint filed* Dec. 1, 2011)

Man claims false imprisonment on United Airlines flight

A Pennsylvania man alleges that he was the victim of false imprisonment and defamation while aboard a United Airlines flight in March 2011.

According to the lawsuit, Clifford Press left his seat and attempted to discard an empty salad container when a flight attendant confronted him and ordered him to return to his seat. Press claims he left the salad container

in the aisle after the flight attendant refused to tell him where a trash receptacle was located.

The lawsuit alleges this exchange escalated the confrontation, and airline personnel initiated security threat protocol against Press. Press alleges that he was falsely detained and suffered humiliation and emotional distress as a result of the incident.

Press v. United Airlines Inc., No. 11-2265 (M.D. Pa. *complaint filed* Dec. 7, 2011)

Student files \$5 million lawsuit against college after campus rape

A student at Southwestern Oregon Community College alleges that she was raped on campus due to the negligence of the school and campus security.

The suit alleges that the school required students to live on campus and was aware that students drank alcohol and used drugs and sometimes engaged in criminal activity. The lawsuit alleges that on Oct. 22, 2011, Cody Dornbirer was intoxicated when he entered Kalley Saunders' room, dragged her to his car, drove her to his room in another residence hall and raped her.

The lawsuit alleges that this incident occurred near where campus security was supposed to be stationed. However, the lawsuit claims that the person scheduled to be on duty that night was absent. The lawsuit blames the school for failing to provide adequate security on the night of the incident and seeks \$5 million in damages.

Saunders v. Sw. Or. Cmty. Coll., No. 11-06391 (D. Or. *complaint filed* Dec. 2, 2011)

Family alleges theft by DIRECTV contractor during satellite installation

A Kentucky family has filed a lawsuit alleging that a DIRECTV contractor stole undergarments during what should have been a routine satellite installation.

Joseph McCaleb worked for Multiband EC Corp., which DIRECTV contracted with to perform installation work for customers. The lawsuit claims McCaleb had a known history of deviant and criminal behavior.

The lawsuit alleges that when McCaleb went to the home of Melissa Berling to install her satellite service, he took undergarments belonging to her and her minor daughter. He also took photos of their undergarments. The lawsuit alleges DIRECTV and Multiband failed to perform an adequate background check and are liable for McCaleb's conduct.

Berling v. Multiband EC Corp., No. 11-CI-3070 (Ky. Cir. Ct., Kenton District *complaint filed* Dec. 2, 2011)

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