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Summary of San Juan v. PSC Industrial Outsourcing, 126 Nev. Adv. Op. 35

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TORTS- THIRD PARTY LIABILITY

Summary

The Supreme Court affirmed the district court's summary judgment ruling in favor of PSC as to third party vicarious liability for the torts of an independent contractor. Specifically, the court held PSC, as hirer of independent contractor DTI, was not liable under the peculiar risk doctrine regardless of whether the independent contractor was incompetent or insolvent.

Factual and Procedural History

Appellants, San Juan, are individuals who worked for Depressurized Technologies, Inc. (DTI), sorting and decanting aerosol cans. Respondent Philip Services Corporation (PSC) treats and recycles industrial waste. PSC contracted with DTI to decant aerosol cans.

In general, aerosol cans create a risk of fire or explosion if mixed with oxygen and exposed to a spark or open flame. Instead of using their specially designed machine to automatically decant aerosol cans, DTI developed a manual system to decant aerosol cans because it was faster than the automated system. The manual process did not comport with environmental or worker safety regulations and took place in a hidden shipping container. When the Nevada Department of Environmental Protection (NDEP), or PSC inspected DTI's plant, DTI only showed them the automated process. In fact, when PSC inspected the plant, DTI halted the manual decanting work, hid materials used to complete the manual process, and locked the container's doors.

Subsequently, an explosion occurred while DTI employees were manually decanting aerosol cans. A forklift engine caused a spark that ignited inadequately ventilated gasses in the shipping container, injuring five workers and killing one. The San Juan appellants received benefits from the Nevada worker's compensation system.

Thereafter, San Juan sued PSC for violating the "peculiar risk doctrine,"² alleging PSC was liable for DTI's negligence because DTI was incompetent and/or insolvent. After discovery, PSC moved for summary judgment and San Juan filed a counter-motion for partial summary judgment.

Ultimately, the district court granted summary judgment in favor of PSC and the Nevada Supreme Court affirmed. In particular, because PSC and DTI did not share common ownership and PSC did not know about DTI's rogue manual decanting program, the Supreme Court found no evidence of active negligence or breach of affirmative duty by PSC.

Discussion

History of the Peculiar Risk Doctrine

The peculiar risk doctrine began as an exception to the general rule of tort law that employers of an independent contractor are not liable for the torts of the independent contractor. The court recognized peculiar risk liability derived from sections 416-429 of the Restatement

¹ By Jonathan Winn

² RESTATEMENT (SECOND) OF TORTS §§ 416-429 (1965).

because those sections focused specifically on rules of vicarious liability. In particular, section 416 subjects a hirer of an independent contractor to vicarious liability if the hirer should recognize the work as likely to create “a peculiar risk of physical harm to others unless special precautions are taken...”³ Moreover, section 427 provides that a hirer is vicariously liable to an injured third party if the hirer knows or has reason to know of an inherent risk and “did not take reasonable precautions against such danger.”⁴ As an example of peculiar risk liability, section 416 cites a situation where an independent contractor hired to haul giant logs failed to take special precautions to anchor the logs to the truck, resulting in injuries to a third party.⁵

Issue of Insolvency or Incompetence

Both parties and the Court assumed that decanting aerosol cans involved a “peculiar risk” within the meaning of sections 416 and 427 of the Restatement of Torts. Thus, the issue was who could sue the hirer when an independent contractor performing the peculiarly risky work is insolvent or incompetent.

In *Sierra Pacific Power Co. v. Rinehart*, the Court held hirers were not vicariously liable for injury to independent contractor’s employees.⁶ However, in dictum, the Court left open the possibility that the hirer could be liable if the hirer possessed superior competence and knowledge of the risks associated with the work and/or if the independent contractor was insolvent.⁷

The court concluded *Sierra* did not establish a competency or insolvency exception. The majority distinguished the *Sierra* holding from its dictum, stating that the holding actually supported PSC and did not provide a cause of action against the hirer. Moreover, the Court emphasized what once was a “split of authority” on the peculiar risk doctrine is now an “overwhelming majority,” which agrees a hirer of an independent contractor is not liable to the contractors employees under the peculiar risk provisions of the Restatement.

In so holding, the Court reasoned its opinion was a return to tort fundamentals. The court emphasized that, absent control, negligent hiring, or other basis for direct liability, a hirer should not be liable for the torts of independent contractors. In particular, the Court held the public policy justifications for the peculiar risk doctrine do not apply when the injured parties are remunerated by workers compensation. As a result, the Court held solvency of an independent contractor is no longer a factor because workers compensation benefits do not depend on the solvency of the independent contractor. Moreover, the Court reasoned PSC’s alleged superior knowledge of the risks did not justify vicarious liability because it would be illogical and unfair to force PSC to have greater liability for the negligence of DTI than DTI itself. Such a rule would create an incentive for a hirer like PSC to only use its own employees, even if a company like DTI could perform the work more safely and efficiently.

³ RESTATEMENT (SECOND) OF TORTS § 416.

⁴ RESTATEMENT (SECOND) OF TORTS § 427.

⁵ RESTATEMENT (SECOND) OF TORTS § 416.

⁶ *Sierra Pac. Power Co. v. Rinehart*, 99 Nev. 557, 562-63, 665 P.2d 270, 273-74 (1983).

⁷ *Id.*

Conclusion

The workers compensation system has largely replaced the peculiar risk doctrine, regardless of whether the independent contractor is incompetent or insolvent. Without negligence on the part of the hirer, the hirer will not be liable for the torts of independent contractors against their employees.