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Christian Hale
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***Seput v. Lacayo*, 122 Nev. Adv. Op. No. 45 (May 25, 2006)¹**

EMPLOYMENT LAW – PREMISES LIABILITY

Summary

Appeal from a district court order granting a motion to dismiss an injured pest control worker's tort action against a homeowner for premises liability.

Disposition/Outcome

Reversed and remanded. The Court held that a pest control service worker is not a homeowner's employee for the purposes of Nevada's workers' compensation statutes because home extermination services are included within the statutory definition of household domestic service, and a homeowner is not immune from a tort action under NRS 616A.110(4).

Factual and Procedural History

Dr. Enrique Lacayo, M.D., contracted with Pestaway to provide extermination services for his residence. The services consisted of "monthly spraying with chemicals for the purpose of controlling insects." On October 21, 2003, Pestaway sent one of its employees, Alexander Seput, to perform extermination services at Dr. Lacayo's home. While performing these services, Seput fell through a hole from the second floor to the first floor of Dr. Lacayo's residence and sustained serious injuries.

Seput sued Dr. Lacayo for negligent maintenance of the premises and failure to warn or maintain adequate safeguards. Dr. Lacayo moved to dismiss the lawsuit based on immunity as a landowner under Nevada's workers' compensation laws. The district court granted Dr. Lacayo's motion. On appeal the Court examined the district court's conclusions of law *de novo*.

Discussion

Under Nevada's workers' compensation scheme, an employee injured on the job can claim workers' compensation from his employer, who receives immunity from any litigation regarding the injury in exchange for participating in the workers' compensation system.² If a person is not immune from liability under the workers' compensation statutes, the injured worker may sue the person to recover damages. The Court had previously addressed the issue of who is a statutory employer for worker's compensation purposes and extended employer immunity in construction cases,³ but has yet to extend the same immunity to employers in non-construction cases. The Court did not address that issue here, finding instead that the issue of whether or not

¹ By Christian Hale.

² See NEV. REV. STAT. § 616A.020(1) (2005).

³ See *e.g.* Harris v. Rio Hotel & Casino, 117 Nev. 482, 495, 25 P.3d 206, 214 (2001).

Dr. Lacayo was a statutory employer could be determined from the language of NRS 616A.110(4)⁴ and NRS 616B.032(3)(a)⁵.

The Court noted that reasonable people could differ as to whether pest control services are included in the definition of "domestic services", thus the meaning of domestic services was ambiguous.⁶ Although the legislative history of NRS 616A.110(4) did not detail the proper scope for determining whether a service is domestic, the Court deduced from the entirety of the workers' compensation scheme statutes, and specifically from NRS 616B.032, that domestic service workers were intended to be excluded from workers' compensation provisions because the legislature had provided for an industrial insurance rider on a homeowner's insurance policy for those homeowners who employ domestic workers.⁷ Further, the list of domestic workers in that statute was not exclusive,⁸ suggesting that the legislature had intended that a broad interpretation be given to its class members.

The Court reasoned that monthly pest control services, like gardening, housekeeping, or hiring a maid, is part of maintaining a home, and that a person providing such services rightly falls within the domestic worker classification. Therefore, as a person providing a household domestic service, Seput is not Dr. Lacayo's employee for purposes of workers' compensation under NRS 616A.110(4). Accordingly, Seput may bring a tort action against Dr. Lacayo for damages, and the district court erred in dismissing the case because Seput had alleged facts sufficient to survive a motion to dismiss.

Conclusion

A person providing monthly pest control services falls within the domestic worker classification of NRS 616B.032(3)(a), and is not a homeowner's employee for the purposes of Nevada's workers' compensation statutes. Accordingly, a domestic worker injured while performing household domestic services may bring a suit against a homeowner for damages.

⁴ "Employee" excludes . . . [a]ny person engaged in household domestic service. NEV. REV. STAT. § 616A.110(4) (2005).

⁵ "Domestic worker" is a person who is engaged exclusively in household or domestic service performed inside or outside of a person's residence. The term includes, without limitation, a cook, housekeeper, maid, companion, babysitter, chauffeur or gardener. NEV. REV. STAT. § 616B.032(3)(a) (2005).

⁶ See also, State v. Kopp, 118 Nev. 199, 202, 43 P.3d 340, 342 (2002).

⁷ See NEV. REV. STAT. § 616B.032.

⁸ *Id.*