Jeewarat v Warner Bros. Entertainment

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Respondeat Superior; Special Errand Doctrine

Marc Brandon worked for Warner Brothers. His company did not provide him a car or gas allowance, and he was not reimbursed for mileage. He attended a three day business seminar, and his employer paid for his airfare, hotel and parking. When he returned to the Burbank Airport, he did not go to the office, but instead, drove home. On the way he was involved in an accident with another car and three pedestrians, one of whom was fatally injured.

Plaintiffs sued Brandon, the other driver, and Warner Brothers. A summary judgment was filed by Warner, arguing the "special errand" doctrine does not apply to cases involving commercial travel. Plaintiffs argued Brandon was in the course and scope of his employment, and the special errand doctrine did apply. The trial court heard oral argument and denied the motion. A writ petition followed and the trial court was ordered to vacate its order and grant the summary judgment. Plaintiffs appealed following entry of judgment as to Warner.

The doctrine of ***respondeat superior*** imposes vicarious liability on an employer for the torts of an employee acting within the scope of his or her employment, whether or not the employer is negligent or has control over the employee. As a matter of policy it is considered fair to allocate to the costs of doing business a loss resulting from a risk that arises in the context of the employment enterprise. The employer's liability extends beyond his actual or possible control of the employee to include risks inherent in or created by the enterprise. (*Baptist v Robinson* (2006) 143 Cal.App.4th 151)

The fact that an employee is not engaged in the ultimate object of his employment at the time of his wrongful act does not preclude attribution of liability to an employer. (*Farmers Ins. Group v County of Santa Clara* (1995) 11 Cal.4th 992) An essential element of ***respondeat superior*** is a causal nexus or reasonable relationship between the duties of employment

and the conduct causing injury. The incident leading to the injury must be an outgrowth of the employment; the risk of tortuous injury must be inherent in the working environment or typical of or broadly incidental to the enterprise the employer has undertaken. (*Baptist*, at p. 161)

An offshoot of the doctrine is the so-called "**going and coming rule**." Under this rule, an employee is not regarded as acting within the scope of employment while going to or coming from the workplace. Exceptions will be made to the rule where the trip involves an incidental benefit to the employer, not common to commute trips by ordinary members of the work force. (*Hinman v Westinghouse Elec. Co*. (1970) 2 Cal.3d 956) When an employee is engaged in a special errand or a special mission for the employer it will negate the going and coming rule. (*Ducey v Argo Sales Co*. (1979) 25 Cal.3d 707)

An employee coming from his home or returning to it on a special errand either as part of his regular duties or at a specific order or request of his employer is considered to be in the scope of his employment from the time that he starts on the errand until he has returned or until he deviates therefrom for personal reasons. (*Felix v Asai* (1987) 192 Cal.App.3d 926)

Plaintiffs contended an employee's attendance at an out-of-town business conference authorized and paid for by the employer may be a special errand for the benefit of the employer under the special errand doctrine. Warner asserts the doctrine does not apply to commercial travel. The Second DCA turned to the case of *Kephart v Genuity, Inc*. (2006) 136 Cal.App.4th 280)

In that case, the defendant's employee was driving to the airport for a business trip when he forced a car off the road, injuring the plaintiffs. The court stated that prior to the incident with plaintiffs the employee left his home to do errands, meet his family for dinner and then go to the airport for dinner, before leaving for the airport. He did not intend to return home before going to the airport, and he was on the same route he would have taken had he gone straight to the airport. Thus, the place in which the accident occurred was consistent with his being on a special errand

business trip. Despite this finding, the court concluded in that case that the jury could reasonably find the employee's conduct (road rage) was motivated completely by personal malice and did not occur within the course and scope of his employment.

The ***commercial traveler's doctrine***, raised by Warner does not apply to third party tort cases, and is limited to the workers compensation setting. (*Sunderland v Lockheed Martin Aeronautical Systems Support Co.* (2005) 130 Cal.App.4th 1) The employee in that case was engaged in a purely personal activity at the time of the accident and was not in the course and scope.

A special errand continues for the entirety of the trip. Brandon remained in the course and scope until he returned home. The special errand doctrine applies to the business trip in this case. Warner failed to show there were no triable issues of material fact as to whether Brandon was acting within the course and scope of his employment at the time of the accident. The summary judgment motion must be denied. Accordingly the judgment is reversed. The trial court is directed to enter a new and different order denying the summary judgment. Appellants are awarded their costs.

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