BURNHAM BROWN

A PROFESSIONAL LAW CORPORATION

SIGNIFICANT CASE RESULT

Burnham Brown prevailed on a Motion for Summary Judgment on behalf of Dollar Tree Stores, Inc., successfully arguing that defendant employer cannot be liable for employee's negligence while driving home from work, under the CA "coming and going" rule and its exceptions.

Court/Venue: Superior Court of California, San Luis Obispo County
Judge: Charles S Crandall
Case Type: Vicarious liability for vehicular negligence of employee
Case Name: Douglas Alan MacDonald v Mason Smith, Brian Majors and Dollar Tree Stores, Inc.
Docket No.: 17CV-0001
Ruling on Summary Judgment: December 8, 2017
Counsel for Defendant Dollar Tree Stores, Inc: Paul Caleo, Lynn Rivera and Katrina R. Durek
Summary: Dollar Tree argued that it cannot be vicariously liable for the negligent driving of its employee, Smith, who crossed the double lines while driving home and caused a motor vehicle accident. The plaintiff driver of the other vehicle sustained serious injuries, including the subsequent amputation of his right leg below the knee with total damages in excess of $10 million
Result: Motion for Summary Judgment granted in full

Plaintiff brought this action against employee driver, Smith, for injuries suffered in a head-on motor vehicle collision. In addition to Smith, plaintiff named as defendants the owners of the vehicle driven by Smith, Brian and Maria Majors, and Smith's employer, Dollar Tree Stores. The defendant employee Smith was coming home from work on the day of the collision when he veered into the other lane, slamming into the plaintiff's vehicle. Plaintiff was air-lifted to Stanford Hospital and ultimately had his right lower leg amputated. There was no dispute that the accident occurred when Smith was driving home after work. Although California has a general rule that an employer cannot be vicariously liable for the acts of its employees when they are "going and coming" from work, plaintiff alleged that Dollar Tree was still liable for Smith's negligent driving under two exceptions to the general rule: the "personal vehicle-use" exception; and the "special risk" exception.

Dollar Tree filed a Motion for Summary Judgment arguing that as a matter of California law it can not be liable for Smith's negligent driving based on the "coming and going rule" and that no exceptions to the rule applied in the circumstances presented by this case. Dollar Tree relied on the deposition testimony of Smith that was taken by the plaintiff's counsel prior to Dollar Tree being added as a Doe Defendant.

In opposition to the motion, Plaintiff relied on testimony from Smith that on four separate occasions Dollar Tree's Store Manager asked Smith to pick up breakfast for him from McDonalds on the way to work. Plaintiff also relied on a declaration from a "work safety" expert witness that Smith's "irregular shiftwork schedule, combined with his extended work hours interacted to make it unsafe for him to drive home from work." Dollar Tree submitted evidence in support of the Motion Summary Judgment (MSJ) that the McDonald's where the employee allegedly obtained breakfast for the Store Manager was in the same shopping center as the Dollar Tree store. Dollar Tree argued that even if the employee's alleged breakfast errands for the Store Manager benefited the retailer, it was a trivial and incidental benefit that was not sufficient enough to justify making Dollar Tree responsible for the risks inherent in the travel. Dollar Tree also argued that the actual evidence demonstrated that Smith never worked more than an 8 hour shift and always took the prescribed breaks. In fact, on the day of the accident, Smith asked to leave work early as he felt tired and the Store Manager allowed him to go home. Smith was not scheduled to work the following day.

The court invited a wide-ranging oral argument at the hearing on the MSJ that thoroughly explored the various exceptions to the "going and coming rule" and after the matter was taken under submission, the court reviewed the relevant legal authorities and conducted its own additional research. On December 8, the court issued its Order granting the motion in its entirety resulting in judgment against the plaintiff on behalf of Dollar Tree.

The matter was heard by and ruled on by Judge Charles Crandall of San Luis Obispo County Superior Court who has a well-known reputation of denying almost all MSJs. In fact, at the initial Case Management Conference when the defense advised Judge Crandall that it intended to file a MSJ, he specifically said that the parties should anticipate that he will deny it. Significantly, none of the other named defendants had any insurance and so Dollar Tree was the only potential tortfeasor that had liability insurance. Judge Crandall mentioned this fact in his ruling.

The parties attended a voluntary mediation while the MSJ was pending. Plaintiff suffered extensive physical injuries as a result of the accident that required multiple surgeries and the loss of his lower right leg. Plaintiff claimed past medical specials of $1.3 million; future medical treatment in excess of $1 million; and lost wages and impaired earning capacity claims of 750,000.00. Plaintiff claimed total damages in excess of $10 million but made an initial settlement demand at mediation of $3 million. Plaintiff's counsel advised Dollar Tree's counsel and his client at the mediation that if the case did not settle and the Motion for Summary Judgment was denied, the settlement demand would go up significantly.

By the end of the mediation, Dollar Tree offered 100,000.00 to settle the case and the plaintiff responded with a final demand of 599,000.00. Further settlement discussions occurred after the formal mediation was concluded. Prior to the hearing on the MSJ, Dollar Tree withdrew its offer of 100,000.00.

Paul Caleo is a partner at Burnham Brown and one of the firm's premier trial lawyers who has extensive experience in complex tort, personal injury and large loss cases involving claims of products liability, premises liability, government and public entity defense, construction site accidents and trucking/motor carrier accidents. He routinely represents retail corporations of all sizes in a wide variety of cases including wrongful death, serious personal injuries, traumatic brain injury (TBI), loss prevention and retail theft cases, and injuries caused by the criminal acts of third parties, in addition to prosecuting and defending contractual indemnity claims and breach of retail lease contract claims.

Katrina Durek is an associate at Burnham Brown and counsels and represents businesses of varying sizes, including large and mid-size restaurant franchises, small businesses, and transportation companies in contract disputes, employment and civil litigation matters. Ms. Durek represents parties in all phases of litigation, including discovery, law and motion, and mediation.

Lynn Rivera is an associate at Burnham Brown and she routinely represents national retail corporations in complex tort, personal injury and large loss cases involving claims of products liability, premises liability and negligence. She specializes in representing the hospitality industry in all phases of litigation, including discovery, law and motion, and trial.

4836-3095-3304, v. 1