Weekly Law Resume

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Edited by David Blinn and Mark Hazelwood

WEEKLY LAW RESUME™
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Respondeat Superior: Liability For Employee's Operation Of Personal Vehicle

Augustus Vogt, et al. v. Herron Construction, Inc.
Court of Appeal, Fourth District (November 1, 2011)

This case arose from a construction site injury that occurred on October 31, 2007. Plaintiff Vogt was an employee of a concrete subcontractor, Performance Concrete ("Performance.") Defendant Herron Construction ("Herron") was the framing contractor on the project. Cruz, an employee of Herron, parked his personal vehicle next to the location where Performance was about to pour cement, prompting Vogt to ask Cruz to move his vehicle. Cruz complied, but ran over Vogt as he moved the vehicle.

Vogt sued Herron for his injuries, asserting causes of action based on a theory of vicarious liability, or *respondeat superior*. Herron moved for summary judgment on the grounds that Cruz was not acting in the course and scope of his employment because the vehicle was Cruz's personal vehicle, and he moved it for the non-work-related purpose of preventing damage to his (personal) vehicle.

The Court of Appeal reversed, recognizing several legal principles articulated in California decisional law regarding the doctrine of *respondeat superior*: (1) employers are vicariously liable for their employees' torts committed during the "course and scope" of employment; (2) the "nexus" required to connect the tort with the employment "is to be distinguished from 'but for' causation. That the employment brought the tortfeasor and victim together is not enough"; (3) the injury must be a "generally foreseeable occurrence" in the context of the employee's conduct and the employer's "enterprise"; and (4) California cases have established a "general rule of liability" with a few exceptions

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in situations where the employee has "substantially deviated from his duties for personal purposes," for example, where the employee's tort was motivated by his or her own personal malice.

Applying these principles, the Court of Appeal determined that a factual question existed as to whether Herron was liable under a *respondeat superior* theory for Vogt's injuries. The Court reasoned that it was, at the least, "inferable," that Cruz moved his truck to facilitate the pouring of cement and thus to advance his employer's enterprise of completing the construction project. The Court also determined that an accident was a foreseeable result of Cruz's moving of his vehicle. In light of these factors, there was an issue of fact as to whether Cruz's moving of the vehicle arose from the course and scope of his employment with Herron to trigger Herron's liability under a *respondeat superior* theory. Therefore, summary judgment was improper.

COMMENT

This case expands the type of situation where a work-related accident could fall within the "course and scope" of employment for purposes of *respondeat superior* liability. Consequently, it may be more difficult for an employer defendant in a *respondeat superior* case to prevail on summary judgment absent clear evidence that the employee acted out of personal malice.

For a copy of the complete decision see:

HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/E052434.PDF

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