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150 and still going strong

Rylands and Fletcher visit Saint Vincent and the Grenadines after 150 years and they brought the 85 year old **Donoghue and Stevenson** to a party with cars, old tyres, non-alcoholic beverage and propane gas.

Background

On 21st April, 2012, there was a fire on Middle Street, Kingstown. Mr. Monty Gill was on Eustace Auto Supplies Limited's property patch welding a metal container that contained tyres. While he was doing so, the container caught fire which eventually escaped onto the neighbouring property owned by Mr. Malcolm Webb and his sister Ms. Vendetha Webb. The fire damaged the Webb's building.

The fire had escaped from the container and onto a shed on Eustace Auto Supplies Limited's property and then onto the Webb's property, where it destroyed two bedrooms and caused extensive damage to the roof and certain sections of ground and first floors of their building. Sgt. Winston Maloney of the Royal Saint Vincent and the Grenadines Police Force was the officer in charge of the investigation. He confirmed that the Webb's property sustained significant damage.

The issue in this case is whether Eustace Auto Supplies Limited or its owner Mr. Eustace Quammie is vicariously or otherwise liable to the Webbs for the damage to their property by fire resulting from the negligence of Monty Gill?

Negligence

Negligence is a tort or civil wrong which is established by proof of breach of a duty to someone which results in damage to that person. As stated in **Donoghue v Stevenson** [1932], negligence arises in situations where:

1. a person who owes a duty of care to another,
2. displays a level of care to that person which is less than what someone of ordinary prudence would have exercised under similar circumstances,
3. thereby causing that person to suffer damage.

Vicarious Liability

The Webbs alleged that while patch welding a metal container, Monty Gill an employee of Eustace Auto Supplies Limited negligently caused a fire that escaped and damaged their property. They contended that Eustace Auto Supplies Limited and its owner Mr. Eustace Quammie are vicariously responsible for Mr. Gill's actions. They seek compensation in the sum of

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\$243,654.90 from the company and its owner. The company and its owner deny all liability because Monty Gill was not the company's employee or agent.

The burden and standard of proof rests on Mr. and Ms. Webb. In order to establish that the company is vicariously liable to them, they must prove on a balance of probabilities that:

1. Mr. Gill was employed by Eustace Auto Supplies Ltd.;
2. while so employed, he was engaged in wrongful conduct which caused them loss; or
3. He was engaged by the company as an independent contractor to carry out activity which was so dangerous that the law imposed a duty on Eustace Auto Supplies Ltd. to ensure that care was taken to ensure that no harm arose from a negligent undertaking of the activity.

Vicarious liability is a legal 'term of art' which characterizes the rule of law by which legal responsibility for wrongful conduct is transferred from an employee to an employer. The wrongful conduct must necessarily occur with the employer's authority and during the course of the employee's employment. In certain cases, 'vicarious liability' may arise under an agency relationship where the level of risk from dangerous activity is so severe that the law imposes a duty of care on the 'employer', as principal in the relationship.

Mr. Gill brought his own equipment to carry out the repairs to the container. If he had been an employee, Eustace Auto Supplies Ltd., as employer, would reasonably have been expected to provide those tools.

Strict liability

The 150 year old case of **Rylands v Fletcher** enunciated the strict liability rule of law by which a cause of action arises and which makes a person liable due to his or her failure to take necessary precautions, and who brings dangerous items onto his property, which escapes onto and causes damage on another property.

This principle of law has since then been applied in many cases here in the Caribbean and the United Kingdom, and has been further refined. In other words, the escape must be of a thing which is naturally dangerous that does not fit within the categories of activities which are naturally carried out on land in that vicinity.

On the basis of **Rylands v Fletcher**, the Webbs pleaded their claim in the tort of negligence. To be successful under this rule, they were required to show:

1. the defendant is:
 - a. the owner or occupier of land;
 - b. has brought, kept or collected an exceptionally dangerous item on his land;
 - c. recognized or ought reasonably to have recognized, that there was an exceptionally high risk
 - d. of danger or mischief if the item escaped, (even if such risk was unlikely);
 - e. his use of the land was extraordinary and unusual, in view of all the circumstances including time and place;
2. the thing escaped from his property into or onto another's property; and
3. the escape caused damage to the other property owner's rights and enjoyment of his/her land.

While it was agreed that the fire started when the metal container caught fire, there was no evidence regarding the probability of how patch welding a container could produce such a

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result. As such, there was insufficient evidence of causation of the fire to translate patch welding in those circumstances to a wrongful or negligent act. More significantly, there is no evidence that fire was brought onto the property. There was no evidence that the tools used by Mr. Gill posed an exceptionally high risk of danger of fire, if used for the purpose of repairing the door on the container; or that the company or Mr. Quammie recognized or ought to have recognized such a risk.

Independent contractor

Mr. Quammie admitted that Mr. Gill was welding a door on the container, on his company's behalf when it caught fire. He acknowledged that he engaged Mr. Gill to do the repairs but denied that Mr. Gill was either his or the company's employee. He described Mr. Gill as an independent contractor who runs his own business from premises located at Randy's Supermarket. He stated that Mr. Gill usually brings his own tools when he is engaged by the company or him, to do welding work and that he did so on the day of the fire.

The Webbs acknowledged that the law is well-established with respect to independent contractors and vicarious liability, and that generally a person will not be found to be vicariously liable for the negligence of an independent contractor that it has engaged to perform some work. They argued that nonetheless there are clear exceptions as in the case where the independent contractor's work involves special danger to another person's premises. They argued that patch welding a hole in a container with tyres is highly likely to involve the risk of fire unless precautions are taken to avoid those risks.

The principle of corporate personality

Based on the principle of corporate personality, as a matter of law, no liability could attach to Mr. Eustace Quammie as the owner of Eustace Auto Supplies Limited. The law makes a clear distinction between a company and its shareholders. They are deemed in law to have separate legal identities and each bears no responsibility for the other's obligations.

Findings

In the end, Madam Justice Esco L. Henry found that the Webbs had not made out a case on any of the principles noted above and ordered their claim be dismissed with costs.

Source: The Saint Vincent and the Grenadines High Court case of *Malcolm E. Webb et al v Eustace Auto Supplies Limited et al* [2017].

Strange but true

San Diego Padre for Life: Team Continues Support for Disabled Former Pitcher

The San Diego Padres drafted the then 18 year old Matt LaChappa for their minor league team in 1993, but then in April 1996, while warming up in the bullpen, LaChappa clutched his chest and collapsed onto the ground. He was having a heart attack and was rushed to the hospital, but he had a second heart attack after he arrived there.

Tests later showed that he had a viral infection around his heart – a condition which had not been visible during a recent physical exam. He survived, but without sufficient oxygen,

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LaChappa suffered brain damage; and for the last 21 years, he's been confined to a wheelchair, and he has difficulty moving and speaking.

Frustration of contract

Under the principle of frustration of contract, since LaChappa was no longer able to fulfill his obligations on the mound the San Diego Padres could have ended their contract with him. Instead, they have continued to sign LaChappa to a Minor League contract each year, for more than 20 years – thus ensuring that he has a small income plus the health insurance he needs.

Source: National Catholic Register - <http://www.ncregister.com/blog/kschiffer/san-diego-padre-for-life-team-continues-support-for-disabled-former-pitcher>

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