

SUPREME COURT OF TEXAS

Fifth Club, Inc. and David A. West v. Roberto Ramirez

Fifth Club · No. 04-0550 · Decided June 30, 2006

SUMMARY

The Supreme Court of Texas held that Texas does not recognize a personal-character exception imposing vicarious liability on a business owner for the tortious acts of an independent-contractor security guard. The Court concluded that Fifth Club did not retain sufficient control over the guard’s work and that the evidence was legally insufficient to support negligence and malice findings against the club. The Court reversed and rendered judgment for Fifth Club while affirming the future mental-anguish damages award against the independent contractor.

CASE DETAILS

|                       |                                                                                                                                                                                                                                    |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Texas                                                                                                                                                                                                             |
| WRITING FOR THE COURT | Justice Paul W. Green; Chief Justice Jefferson; Justice O’Neill; Justice Brister; Justice Medina; Justice Hecht; Justice Wainwright; Justice Johnson; Justice Willett                                                              |
| JURISDICTION          | Texas                                                                                                                                                                                                                              |
| DECIDED               | June 30, 2006                                                                                                                                                                                                                      |
| DOCKET                | 04-0550                                                                                                                                                                                                                            |
| DISPOSITION           | reversed                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Petition for review of a judgment of the Texas Court of Appeals affirming a jury verdict imposing vicarious liability, negligence, malice, and damages against Fifth Club and awarding future mental anguish damages against West. |
| STANDARD OF REVIEW    | Legal-sufficiency review of the evidence supporting jury findings and damages awards.                                                                                                                                              |
| PRECEDENTIAL VALUE    | Published Texas Supreme Court opinion; binding precedent in Texas, subject to the stated partial concurrence and dissent.                                                                                                          |
| PARTIES               | Fifth Club, Inc., David A. West v. Roberto Ramirez                                                                                                                                                                                 |

TOPICS

- vicarious liability
- negligence
- premises liability
- personal injury
- damages

## PRACTICE AREAS

torts

negligence

premises liability

damages

commercial litigation

## QUESTIONS PRESENTED

1. Whether Fifth Club retained sufficient control over West's security activities to be vicariously liable for his conduct.
2. Whether Texas recognizes a personal-character exception making a business owner vicariously liable for the tortious acts of an independent-contractor security guard.
3. Whether legally sufficient evidence supported the jury's findings that Fifth Club was negligent or malicious in hiring or retaining West.
4. Whether legally sufficient evidence supported the award of future mental anguish damages against West.

## HOLDINGS

1. An employer is not vicariously liable for an independent contractor's tortious conduct unless it retains control over the details or methods of the work to the extent that the contractor is not free to perform the work in its own manner. Fifth Club's direction that West remove Ramirez from the premises did not constitute sufficient control over how West performed that task.
2. Texas does not recognize a personal-character exception that makes a business owner vicariously liable for the tortious acts of an independent-contractor security guard merely because the guard performs security work.
3. The evidence was legally insufficient to support findings that Fifth Club negligently or maliciously hired or retained West.
4. Legally sufficient evidence supported Ramirez's award of future mental anguish damages against West.

## KEY QUOTATIONS

*"We decline to recognize a personal character exception to the rule that an employer is generally insulated from liability for the tortious acts of its independent contractors." (Part II.B)*

*"We hold that there is no personal character exception to the general rule shielding an employer from liability for tortious acts of its independent contractors." (Part II.B)*

*"The evidence shows the nature of Ramirez's mental anguish, its lasting duration, and the severity of his injuries, and is therefore legally sufficient to support future mental anguish damages." (Part IV)*

## FACTUAL BACKGROUND

Fifth Club operated the Club Rodéo nightclub and hired David West, a certified peace officer, as an independent contractor to provide security. After Roberto Ramirez and his brother were denied admission, a Fifth Club doorman directed West and another security officer to escort them away; West allegedly slammed Ramirez's head against a concrete wall, struck him several times, and handcuffed him. Ramirez suffered significant

injuries, including a fractured skull, and later testified with his wife about continuing depression, humiliation, sleep problems, headaches, nightmares, anger, and disruption of daily activities and family relationships.

## PROCEDURAL HISTORY

Ramirez sued Fifth Club and West after West, an independent-contractor security officer, allegedly beat and injured him at Club Rodéo. A jury found Fifth Club vicariously liable for West's conduct and negligent and malicious in hiring West, and awarded actual and exemplary damages; it also awarded future mental anguish damages against West. The court of appeals affirmed. The Texas Supreme Court reversed the judgment against Fifth Club and rendered a take-nothing judgment in its favor, while affirming the judgment against West for future mental anguish damages.

## DISPOSITION

reversed

## CASES CITED

- Lee Lewis Constr., Inc. v. Harrison, 70 S.W.3d 778 (Tex. 2001)
- Redinger v. Living, Inc., 689 S.W.2d 415 (Tex. 1985)
- Coastal Marine Serv. of Tex., Inc. v. Lawrence, 988 S.W.2d 223 (Tex. 1999)
- Koch Refining Co. v. Chapa, 11 S.W.3d 153 (Tex. 1999)
- Dupree v. Piggly Wiggly Shop Rite Foods, Inc., 542 S.W.2d 882 (Tex. Civ. App.—Corpus Christi 1976, writ ref'd n.r.e.)
- Duran v. Furr's Supermarkets, Inc., 921 S.W.2d 778 (Tex. App.—El Paso 1996, writ denied)
- Doe v. Boys Club of Greater Dallas, Inc., 907 S.W.2d 472 (Tex. 1995)
- Parkway Co. v. Woodruff, 901 S.W.2d 434 (Tex. 1995)
- Saenz v. Fid. & Guar. Ins. Underwriters, 925 S.W.2d 607 (Tex. 1996)

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