

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Parker v. Joe Lujan Enterprises, Inc.

848 F.2d 118 (9th Cir. 1988) · Decided May 31, 1988

SUMMARY

The Ninth Circuit affirmed summary judgment for Joe Lujan Enterprises and its insurer in an action arising from an employee’s fall from a bosun’s chair during communications-tower repair work in Guam. The court held that the winch operator was a borrowed servant of the plaintiff’s employer because that employer exercised authoritative direction and control over the operator at the work site. The court also affirmed denial of leave to amend because the proposed amendment was untimely, insufficiently justified, and substantially prejudicial to the defendants.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Cynthia Holcomb Hall; Beezer; Hall; Schroeder
JURISDICTION	Federal
DECIDED	May 31, 1988
DISPOSITION	affirmed
PROCEDURAL POSTURE	Parker appealed the district court's grant of summary judgment for Joe Lujan Enterprises, Inc. and Chung Kuo Insurance Co. and denial of his motion for leave to amend the complaint. Lujan and Chung Kuo had also filed a third-party contribution claim against ECCG.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same standard applied by the trial court under Federal Rule of Civil Procedure 56(c). Denial of leave to amend after a responsive pleading has been filed is reviewed for abuse of discretion. Under that standard, reversal requires a definite and firm conviction that the district court committed a clear error of judgment.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Charles Parker v. Joe Lujan Enterprises, Inc., Chung Kuo Insurance Co.

TOPICS

- negligence
- vicarious liability
- summary judgment
- motion to amend
- appellate procedure

PRACTICE AREAS

torts

civil procedure

construction law

appellate procedure

QUESTIONS PRESENTED

1. Whether the undisputed facts established that Lujan's winch operator was ECCG's borrowed servant, thereby precluding Parker's recovery against Lujan and its insurer under the borrowed servant doctrine.
2. Whether the district court abused its discretion by denying Parker leave to amend his complaint to assert a defective-winch-equipment theory.
3. Whether Lujan's third-party contribution claim against ECCG remained justiciable after summary judgment was affirmed for Lujan.

HOLDINGS

1. The undisputed facts established as a matter of law that Lujan's winch operator was a borrowed servant of ECCG because ECCG possessed authoritative direction and control over the operator at the work site. Summary judgment for Lujan and Chung Kuo was therefore proper.
2. The district court did not abuse its discretion in denying Parker leave to amend because the motion was untimely, Parker failed to justify the delay in asserting an entirely new and inconsistent theory, and amendment would have substantially prejudiced the appellees.
3. Lujan's third-party complaint for contribution against ECCG was moot because the court affirmed summary judgment against Parker and in favor of Lujan.

KEY QUOTATIONS

"When one person puts his servant at the disposal and under the control of another for the performance of a particular service for the latter, the servant, in respect of his acts in that service, is to be dealt with as the servant of the latter and not of the former." (848 F.2d at 119-20)

"The winch truck operator apparently utilized no independent judgment; his sole responsibility was to follow the instructions of ECCG's supervisor and the man in the bosun's chair." (848 F.2d at 120)

"On these facts, we hold that the winch operator was a borrowed servant of ECCG and affirm the district court's grant of summary judgment." (848 F.2d at 120)

FACTUAL BACKGROUND

ECCG hired Parker to repair communications towers in Barrigada, Guam and contracted with Lujan to provide a winch truck and operator to raise and lower Parker in a bosun's chair. ECCG positioned the truck, designed and prepared the tower rigging, and directed the operator's actions through its personnel. When a cable connection at the base of the tower broke, Parker fell approximately sixty feet and suffered serious injuries. The parties agreed for purposes of summary judgment that the accident resulted from the winch operator's negligence and inattentiveness.

PROCEDURAL HISTORY

Parker sued Lujan for injuries allegedly caused by the negligence and inattentiveness of Lujan's winch operator. The district court granted summary judgment for Lujan and Chung Kuo under the borrowed servant doctrine, denied Parker leave to amend to assert a defective-equipment theory, and denied ECCG's motion for summary judgment on the contribution claim. The Ninth Circuit affirmed the rulings challenged by Parker and held that Lujan's third-party contribution complaint against ECCG was moot.

DISPOSITION

affirmed

CASES CITED

- Darring v. Kincheloe, 783 F.2d 874, 876 (9th Cir. 1986)
- Denton v. Yazoo & M. Valley R. Co., 284 U.S. 305, 308, 52 S. Ct. 141, 76 L. Ed. 310 (1932)
- United States v. Bissett-Berman Corp., 481 F.2d 764, 772 (9th Cir. 1973)
- McCollum v. Smith, 339 F.2d 348, 351-52 (9th Cir. 1964)
- Standard Oil v. Anderson, 212 U.S. 215, 222, 29 S. Ct. 252, 254, 53 L. Ed. 480 (1909)
- United States v. N.A. Degerstrom, 408 F.2d 1130, 1133 (9th Cir. 1969)
- Klamath-Lake Pharm. v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1292 (9th Cir.), cert. denied, 464 U.S. 822 (1983)
- Gabrielson v. Montgomery Ward & Co., 785 F.2d 762, 765 (9th Cir. 1986)
- Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962)
- Fjelstad v. American Honda Motor Co., 762 F.2d 1334, 1337 (9th Cir. 1985)