

SUPREME COURT OF THE STATE OF IDAHO

Forbush v. Sagecrest Multi Family Property Owners' Ass'n

162 Idaho 317 (2017) · No. 44053 · Decided June 20, 2017

SUMMARY

The Idaho Supreme Court reviewed summary judgment in a negligence action arising from carbon monoxide poisoning at an apartment complex that killed one guest and injured another. The Court held that the property owners' association could not be subject to a premises-liability duty because it neither owned nor occupied the unit, but held that factual issues remained concerning voluntary undertakings and related claims. The judgment was affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Court of the State of Idaho
WRITING FOR THE COURT	Burdick, Chief Justice; Eismann, Justice; Jones, Justice; Horton, Justice; Brody, Justice
JURISDICTION	Idaho
DECIDED	June 20, 2017
DOCKET	44053
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed the Ada County District Court's order granting summary judgment to the Sagecrest Multifamily Property Owners' Association and John Kalsbeek in a tort action arising from carbon monoxide poisoning. The Idaho Supreme Court affirmed in part, reversed in part, and remanded.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard used by the district court. It is proper when the pleadings, depositions, admissions, and affidavits show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Disputed facts and reasonable inferences are construed in favor of the nonmoving party. Whether a duty exists is generally a question of law, but becomes a question of fact when it depends on disputed facts.
PRECEDENTIAL VALUE	Published Idaho Supreme Court opinion; precedential.
PARTIES	Travis Forbush, Gretchen Hymas, Breanna Halowell v. Sagecrest Multi Family Property Owners' Association, Inc., John Kalsbeek

TOPICS

premises liability

negligence

vicarious liability

summary judgment

appellate procedure

PRACTICE AREAS

Torts

Premises Liability

Negligence

Civil Procedure

Real Estate

QUESTIONS PRESENTED

1. Whether the property owners' association could owe a premises-liability-based duty of care despite neither owning nor occupying the affected unit.
2. Whether triable issues of fact existed regarding whether the property owners' association voluntarily undertook safety-related services, whether First Rate Property Management relied on those undertakings, and whether the resulting harm was foreseeable.
3. Whether triable issues of fact existed regarding whether the property owners' association was vicariously liable for the conduct of First Rate Property Management based on an agency relationship and actual control.
4. Whether John Kalsbeek could be personally liable for tortious conduct arising from his personal participation in the alleged voluntary undertakings.
5. Whether the respondents were entitled to attorney fees on appeal.

HOLDINGS

1. Under Idaho law, a premises-liability-based duty of care may be imposed only on owners or occupiers of land and their agents. Because the property owners' association neither owned nor occupied the affected unit, summary judgment was proper on the premises-liability theory.
2. A voluntary-undertaking duty arises when a party undertakes a safety-related service, others rely on its continued performance, and legally recognized harm from failure to perform is reasonably foreseeable. The evidence created triable issues of fact regarding the association's undertakings to control hard-wired carbon monoxide alarm installation, preventative maintenance, and certain carbon monoxide warnings.
3. Triable issues of fact existed regarding whether the property owners' association exercised actual control over First Rate Property Management sufficient to establish an agency relationship and possible vicarious liability, notwithstanding contractual provisions assigning unit-interior responsibilities to unit owners.
4. A corporate officer who personally participates in a tort may be personally liable even if the corporation is also vicariously liable. Because Kalsbeek personally directed or participated in the challenged undertakings and the evidence created factual disputes regarding those undertakings, summary judgment for Kalsbeek was improper.
5. The respondents were not entitled to attorney fees on appeal. Kalsbeek was not the prevailing party, and the association's successful premises-liability argument was not pursued against the appellants frivolously, unreasonably, or without foundation.

KEY QUOTATIONS

“Thus, we reject Appellants’ premises liability argument and reaffirm our case law holding that a premises liability-based duty of care may be imposed only on owners or occupiers of land and their agents.” (162 Idaho at 326)

“This Court has recognized that if “one voluntarily undertakes to perform an act, having no prior duty to do so, the duty arises to perform the act in a non-negligent manner.”” (162 Idaho at 327)

“Here, like Baccus, a jury could reasonably find that the POA induced FRPM’s reliance with regard to hard-wired carbon monoxide alarms, preventative maintenance, and carbon monoxide warnings, all of which were matters with the potential to increase the risk of harm to Sagecrest tenants and guests.” (162 Idaho at 330)

“Consequently, we cannot say as a matter of law that no agency relationship existed as a result of actual control.” (162 Idaho at 332)

FACTUAL BACKGROUND

A clogged water-heater vent emitted hazardous carbon monoxide into an apartment at the Sagecrest complex on November 10, 2012, killing eighteen-year-old McQuen Forbush and injuring Breanna Halowell, who were overnight guests of the tenant. Carbon monoxide concerns had been reported at the complex since 2011, and professional inspections identified defective venting systems and recommended corrective action. Although the property owners' association knew of the problem and directed complex-wide testing and procedures concerning carbon monoxide alarms, the water heater in the affected unit was not replaced and a hard-wired alarm had not been installed. The association and its president also allegedly controlled or intervened in property-management decisions concerning alarm installation, preventative maintenance, and warnings.

PROCEDURAL HISTORY

After a carbon monoxide incident killed McQuen Forbush and injured Breanna Halowell, the plaintiffs filed tort claims against multiple defendants, including the Sagecrest property owners' association and its president, John Kalsbeek. The district court granted summary judgment to those respondents. The Idaho Supreme Court affirmed summary judgment on the premises-liability theory, reversed summary judgment on voluntary-undertaking and vicarious-liability theories, reversed the judgment for Kalsbeek on the voluntary-undertaking theory, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings on whether the property owners' association and Kalsbeek acquired duties through voluntary undertakings and whether the association is vicariously liable for First Rate Property Management's conduct. The court should also address any unresolved immunity issue concerning Kalsbeek. Summary judgment remains affirmed on the premises-liability theory.

CASES CITED

- Kolln v. Saint Luke's Regional Medical Center, 130 Idaho 323, 327, 940 P.2d 1142, 1146 (1997)
- Major v. Security Equipment Corp., 155 Idaho 199, 202, 307 P.3d 1225, 1228 (2013)
- Mitchell v. State, 160 Idaho 81, 84, 369 P.3d 299, 302 (2016)
- Grabicki v. City of Lewiston, 154 Idaho 686, 691, 302 P.3d 26, 31 (2013)
- Gagnon v. Western Building Maintenance, Inc., 155 Idaho 112, 115, 306 P.3d 197, 200 (2013)
- Coghlan v. Beta Theta Pi Fraternity, 133 Idaho 388, 400, 402, 982 P.2d 300, 312, 314 (1999)
- Beers v. Corp. of Pres. of Church of Jesus Christ of Latter-Day Saints, 155 Idaho 680, 688, 316 P.3d 92, 100 (2013)
- Jones v. Starnes, 150 Idaho 257, 261, 245 P.3d 1009, 1013 (2011)
- Heath v. Honker's Mini-Mart, Inc., 134 Idaho 711, 713-14, 8 P.3d 1254, 1256-57 (Ct. App. 2000)
- Rountree v. Boise Baseball, LLC, 154 Idaho 167, 171, 296 P.3d 373, 377 (2013)
- Stem v. Prouty, 152 Idaho 590, 591-92, 272 P.3d 562, 563-64 (2012)
- Harrison v. Taylor, 115 Idaho 588, 595, 768 P.2d 1321, 1328 (1989)
- Stiles v. Amundson, 160 Idaho 530, 531-34, 376 P.3d 734, 735-38 (2016)
- Otts v. Brough, 90 Idaho 124, 131-36, 409 P.2d 95, 98-102 (1965), superseded on other grounds by Idaho Code § 6-801
- McDevitt v. Sportsman's Warehouse, Inc., 151 Idaho 280, 281, 285-86, 255 P.3d 1166, 1167, 1171-72 (2011)
- Baccus v. Ameripride Services, Inc., 145 Idaho 346, 351-52, 179 P.3d 309, 314-15 (2008)
- Stoddart v. Pocatello School District No. 25, 149 Idaho 679, 686, 239 P.3d 784, 791 (2010)
- Sharp v. W.H. Moore, Inc., 118 Idaho 297, 303, 796 P.2d 506, 512 (1990)
- Humphries v. Becker, 159 Idaho 728, 735 & n.2, 366 P.3d 1088, 1095 & n.2 (2016)
- Koch v. Elkins, 71 Idaho 50, 57, 225 P.2d 457, 462 (1950)
- Eliopulos v. Knox, 123 Idaho 400, 404, 848 P.2d 984, 988 (Ct. App. 1992)
- Boise Tower Associates, LLC v. Hogland, 147 Idaho 774, 784, 215 P.3d 494, 504 (2009)
- Gorton v. Doty, 57 Idaho 792, 798, 69 P.2d 136, 139 (1937)
- Worth v. Eugene Gentile Builders, 697 So. 2d 945 (Fla. Dist. Ct. App. 1997)
- Brown v. Delta Tau Delta, 2015 ME 75, 118 A.3d 789 (2015)