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RAWLE'S REPORTS

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PENNSYLVANIA

PREMISES LIABILITY

Defense Verdict in Philadelphia

Franklin C. Love

Rawle & Henderson LLP obtained a defense verdict from a Philadelphia jury on October 12, 2017, in a personal injury case. **Franklin C. Love**, a member of the General Casualty Practice Group in the Philadelphia office, represented defendants Jonathan Steinhouse and Jacqueline Promislo.

Plaintiff Clifford Van Syoc claimed that he was injured while walking on the snow-covered brick sidewalk in front of a residential property located at 238 S. 2nd Street, Philadelphia, Pennsylvania, owned by defendants.

Defendants' primary defense in the case was that the sidewalk did not present a dangerous condition and that defendants acted reasonably in not having their sidewalk cleared at the time of the accident. Defendants also argued that plaintiff contributed to his accident by not choosing other available paths.

Plaintiff left his home a few blocks away from the alleged site of the accident to visit an ATM located at 2nd and Pine Streets. There had been a minor snowstorm that day and the snow had temporarily stopped falling when plaintiff left his home. In total, approximately two inches of snow fell during the entire storm. The snow resumed falling a short time after the accident.

Plaintiff walked on the east side of the street to get to the ATM and arrived safely. When he finished using the ATM, he attempted to return home by walking on the west side of the street where defendants' property was located. Plaintiff claimed that the sidewalk in front of defendants' property was not cleared of snow.

Plaintiff testified at trial that he noticed that the sidewalk on defendants' side of the street was not cleared while he was on his walk to the ATM. He acknowledged that he arrived at the ATM safely. He also testified that when he encountered the snow-covered portion of the sidewalk in front of defendants' property, he considered crossing over to the other side of the street, the side he had used to safely walk to the ATM, but decided to proceed over the snow-covered sidewalk.

He further testified that his foot slipped when he took his first step onto the snow-covered portion of the sidewalk, but he continued on his walk. After another two or three steps, he slipped and fell, injuring his shoulder.

Plaintiffs attempted to advance their case at trial by impeaching defendant Jonathan Steinhouse with his deposition testimony, wherein he testified that during snowstorms he always checked the condition of his sidewalk every half hour. Defendants had no affirmative information that they had cleared their sidewalk that night.

At trial, Rawle & Henderson LLP argued that defendants were not negligent because there was a minimal amount of snow. Additionally, the Philadelphia Code requires homeowners to clear a 36-inch path within six hours of when snow ceases to fall. We argued that based on the circumstances of the snowstorm and the timing of plaintiff's accident, defendants were not negligent for failing to have their sidewalk cleared.

After deliberating for approximately three hours, based upon the direct examinations of the defense witnesses and the cross-examination of plaintiff, the jury determined that both defendants and plaintiff were negligent, but plaintiff was 51% comparatively negligent, thus returning a defense verdict and extinguishing plaintiff's claims.

Clifford Van Syoc v. Jonathan Steinhouse, et al., Court of Common Pleas of Philadelphia County, PA, January Term, 2015, No. 2446.

Franklin C. Love is an associate in our Philadelphia office. He concentrates his practice on the defense of commercial motor vehicle companies, casualty and premises liability matters.

Frank graduated from Pennsylvania State University with a Bachelor of Arts in 1998 and a Juris Doctorate from Temple University James E. Beasley School of Law in 2002.

He is admitted to practice in the state and federal courts of Pennsylvania and New Jersey as well as the U.S. District Court for the Eastern District of Pennsylvania.

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PENNSYLVANIA

Summary Judgment Based On Borrowed Employee Doctrine

This case involved a 19-year-old bicyclist, Michael Preston, who was seriously injured on Frankford Avenue in Philadelphia, Pennsylvania, when he struck a depressed section of the roadway and was thrown from his bicycle.

Plaintiff claimed that he suffered serious and permanent disfigurement from a frontal sinus fracture requiring sutures as well as multiple herniations with radiculopathy as a result of the accident. Plaintiff alleged that the depressed section of the roadway that he struck was under construction hours prior to the accident.

Plaintiff filed suit against the owners of the property, the general contractor, the City, the Commonwealth, the Department of Transportation, an engineering firm as well as Rawle & Henderson LLP's client, Gen Con, an excavator hired by the general contractor for this construction. Plaintiff alleged that the repair, and particularly the excavation, was improper. Plaintiffs also alleged that backfill material and grade was not compliant with both the City and the Commonwealth's regulations. Liability was contested by all of the defendants.

At the conclusion of discovery, **Amy Gampico** filed a Motion for Summary Judgment on behalf of Rawle & Henderson LLP's client Gen Con, the excavator, arguing that it had no liability for the accident as it was the "borrowed employee" of the general contractor. Under the borrowed employee doctrine, when an employee of one entity is furnished to another entity, the employee referred to as a "borrowed" employee is relieved of liability during the period of transferred control for the employee's job-related torts.

Amy N. Gampico

The general rule in Pennsylvania is that an employer is vicariously liable for negligent acts of its employees that cause injuries to a third party, "provided that such acts were committed during the course of and within the scope of the employment." *Valles v. Albert Einstein Medical Center*, 2000 PA Super 243, 758 A.2d 1238, 1244 (Pa.Super. 2000). Where an employee of one entity is furnished to another entity, the employee is sometimes referred to as a "borrowed" employee. In such situations an issue may arise as to whether vicarious liability for torts of the employee remains with the first employer or passes to the second employer. *Id.*

A servant is the employee of the person who has the right of controlling the manner of his performance of the work, irrespective of whether he exercises that control or not. *Mature*, at 97 A.2d at 60 (emphasis in original) (internal citations omitted); *see also Wilkinson v. K-Mart*, 412 Pa. Super. 434, 603 A.2d 659 (Pa. Super. 1992). In *Mature v. Angelo*, 373 Pa. 593, 97 A.2d 59 (Pa. 1953), the Pennsylvania Supreme Court held that, under the borrowed servant doctrine:

> *"The crucial test in determining whether a servant furnished by one person to another becomes the*

> *employee of the person to whom he is loaned is whether he passes under the latter's right of control with regard not only to the work to be done but also to the manner of performing it."*

In our Brief in support of our Motion for Summary Judgment, Rawle & Henderson LLP argued that our client met the necessary requirements to be considered "under the control of the general contractor" as it performed all of its duties under the sole direction, guidance and control of the general contractor. We cited to admissions from the general contractor that it supervised and directed our client's performance, paid for its work on a per diem basis, and had no written contract with it supporting that it was an independent contractor as opposed to an employee. We argued that the evidence was undisputed that when Gen Con was furnished to the general contractor, it did so under the general contractor's complete control with regard not only to the work to be done, but also to the manner of performing it.

On June 6, 2017, counsel for Plaintiff timely filed written opposition to the Motion for Summary Judgment. Plaintiff argued that the evidence supported that our client was hired for its expertise in excavation and that there were issues of fact concerning the excavation and backfill procedure establishing that our client was not a borrowed employee; but rather an independent contractor. On June 8, 2017, The Honorable Ellen Ceisler granted defendant's Motion for Summary Judgment.

Preston v. Gen Con, et al., Philadelphia Court of Common Pleas No. 02075, January 2016 Term.

Amy N. Gampico is an associate in our Philadelphia office. She has 15 years of trial and arbitration experience. Amy concentrates her practice on premises liability, commercial motor vehicle defense, construction litigation, insurance coverage, and product liability cases. She also represents various child care and recreational centers in Pennsylvania and New Jersey.

Amy earned her J.D. from Widener University School of Law in 2001. While attending law school, she was a legal intern for Delaware Volunteer Legal Services. She received her B.A. in English, with a minor degree in Spanish, from Widener University in 1998.

She has represented major healthcare systems, hospitals, and physicians in the Philadelphia region. Amy has also served as lead trial counsel for a national insurance company. She has been a National Institute of Trial Advocacy certified trial attorney since 2007 and often serves as an Arbitrator for the Philadelphia County Court of Common Pleas. Amy is admitted to practice in Pennsylvania and New Jersey.

Amy can be reached directly at (215) 575-4361 • agampico@rawle.com

Rawle's Reports is a monthly client newsletter of Rawle & Henderson LLP with recent case law updates. If you would like hard copies of past issues, or would like to request PDF copies from us, please email info@rawle.com. Past issues are also available and downloadable from our website, www.rawle.com.