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Dec 15 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Edgar Warren Dickson
Circuit Court Judge

Court of Appeals Case No. 2022-000981
Trial Court Case No. 2020-CP-38-00428

Ralph Hooker as Personal Representative of the Estate
of Linda Hooker,

Appellant,

v.

McDonald's Corporation, McDonald's Real Estate
Company, JKS & K, Inc., Pam Hampton, and Proline
Striping Service, Inc., Defendants,

Of which McDonald's Corporation, McDonald's Real
Estate Company, JKS & K, Inc., Pam Hampton are

Respondents.

**INITIAL BRIEF OF RESPONDENT McDONALD'S CORPORATION AND
RESPONDENT McDONALD'S REAL ESTATE COMPANY**

HALL BOOTH SMITH, PC

Respectfully submitted,

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Dated: December 15, 2022

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STATEMENT OF ISSUES ON APPEAL¹

- I. As an additional sustaining ground, neither McDonald's Corporation nor McDonald's Real Estate Company was either the franchisor or the lessor for the independently owned and operated McDonald's restaurant business operated by JKS & K, Inc. in Santee, South Carolina, and, therefore, the trial court's Order granting summary judgment should be affirmed.

- II. As an additional sustaining ground, neither McDonald's Corporation nor McDonald's Real Estate Company had any possession or control of the real property where Linda Hooker's accident occurred and, therefore, the trial court's Order granting summary judgment should be affirmed.

- III. As an additional sustaining ground, neither McDonald's Corporation nor McDonald's Real Estate Company had any control over the day-to-day operations of the restaurant business where Linda Hooker's accident occurred and, therefore, the trial court's Order granting summary judgment should be affirmed.

¹ McDonald's Corporation and McDonald's Real Estate Company adopt and incorporate herein by reference the Statement of Issues on Appeal set forth in JKS & K., Inc. and Pam Hampton's Initial Brief filed contemporaneously herewith. SCACR 208(b)(6).

STATEMENT OF THE CASE

McDonald's Corporation and McDonald's Real Estate Company adopt and incorporate herein by reference the Statement of the Case set forth in JKS & K., Inc. and Pam Hampton's Initial Brief filed contemporaneously herewith. SCACR 208(b)(6).

STANDARD OF REVIEW

McDonald's Corporation and McDonald's Real Estate Company adopt and incorporate herein by reference the Standard of Review set forth in JKS & K., Inc. and Pam Hampton's Initial Brief filed contemporaneously herewith. SCACR 208(b)(6).

FACTS OF THE CASE

McDonald's Corporation and McDonald's Real Estate Company adopt and incorporate herein by reference the Facts of the Case set forth in JKS & K., Inc. and Pam Hampton's Initial Brief filed contemporaneously herewith. SCACR 208(b)(6).

Additionally, the relevant franchise and lease agreements in place at the time of Linda Hooker's accident clearly and unequivocally demonstrated that neither McDonald's Corporation nor McDonald's Real Estate Company was either the franchisor or the landlord to the franchised McDonald's restaurant business, which was independently owned and operated by JKS & K, Inc.² By way of additional history and explanation, a Franchise Agreement for the subject restaurant

² The franchise agreement and lease agreement are considered to be proprietary commercial business records and were marked "Confidential" in accordance with a Consent Protective Confidentiality Order entered in the case on September 16, 2020. Remarkably, Appellant has not designated any of the relevant franchise or lease agreements to be included in the Designation of Matter to be included in the record on appeal.

location demonstrates that it was executed on or about March 6, 2013, by and between McDonald's USA, LLC and the McMillan franchisees. The record demonstrates that the McMillan franchisees and JKS & K, Inc. entered into a Purchase and Sale Agreement on or about October 14, 2016, for the sale/transfer of the subject restaurant business. A subsequent amendment to the Purchase and Sale Agreement executed by the parties on October 28, 2016, changed the closing date to November 30, 2016. By way of an assignment agreement dated December 1, 2016, the McMillan franchisees and McDonald's USA, LLC agreed to the assignment of the McMillan franchisees' rights and obligations under the Franchise Agreement and Operator's Lease to JKS & K, Inc.³ As a result of these commercial transactions, McDonald's USA, LLC was the franchisor of the restaurant business owned and operated by JKS & K, Inc. and lessor of the real property on which JKS & K, Inc. operated its restaurant business on the date of Plaintiff's accident on July 28, 2018.⁴

Remarkably, in the almost two years the case was pending, the only discovery Appellant directed to either McDonald's Corporation or McDonald's Real Estate Company was simple written discovery requests.

³ Technically, the assignment agreement transferred the McMillan franchisees' interest in the Franchise Agreement and Operator's Lease to James Booth. Subsequently, Booth assigned his interests to JKS & K, Inc.

⁴ As should be readily apparent, McDonald's Real Estate Company was not a party to any of the commercial transactions.

RESPONDENTS' ARGUMENT

McDonald's Corporation and McDonald's Real Estate Company adopt and incorporate herein by reference the Arguments set forth in JKS & K., Inc. and Pam Hampton's Initial Brief filed contemporaneously herewith. SCACR 208(b)(6).

Additionally, neither McDonald's Corporation nor McDonald's Real Estate Company can be held liable for Linda Hooker's accident because there was no evidence that either had any possession or control of the real property or any role in the restaurant business whatsoever at the time of the accident, and neither would be vicariously liable for the accident. Accordingly, McDonald's Corporation and McDonald's Real Estate Company were entitled to summary judgment and this Court may affirm the trial court's Order granting same on these additional sustaining grounds.

- I. As an additional sustaining ground, neither McDonald's Corporation nor McDonald's Real Estate Company was either the franchisor or the lessor for the independently owned and operated McDonald's restaurant business operated by JKS & K, Inc. in Santee, South Carolina, and, therefore, the trial court's Order granting summary judgment should be affirmed.**

It is uncontradicted and undisputed that the McDonald's restaurant business in Santee, South Carolina, was owned and operated by JKS & K, Inc. at the time of Linda Hooker's accident on July 28, 2018. More importantly, the Franchise Agreement in effect on that date clearly and unequivocally states that the franchisor is McDonald's USA, LLC, a Delaware limited liability

company.⁵ McDonald's USA, LLC is not a party to this case and Appellant produced no evidence of the connection between McDonald's Corporation, a Delaware corporation, and McDonald's USA, LLC, a Delaware limited liability company.⁶ In sum, Appellant failed to produce any evidence that McDonald's Corporation or McDonald's Real Estate Company had any connection to the subject property or restaurant business at the time of the accident and, therefore, McDonald's Corporation and McDonald's Real Estate Company are entitled to affirmance of the Order granting summary judgment on these additional sustaining grounds.

Importantly, even if McDonald's USA, LLC may be a subsidiary of McDonald's Corporation it is of no legal consequence in this case. It has long been held that “[t]he mere ownership of the capital stock of one corporation by another does not create an identity of corporate interest between the two companies, or render the holding company the owner of the property of the other, or create the relationship of principal and agent, or representative, or alter ego between the two.” Gordon v. Hollywood-Beaufort Package Corp., 213 S.C. 438, 444, 49 S.E.2d 718, 719 (1948); Carroll v. Smith-Henry, Inc., 281 S.C. 104, 106, 313 S.E.2d 649, 651 (Ct. App. 1984)(“Stock ownership alone ordinarily does not render a parent corporation liable for the contracts of its subsidiary irrespective of whether the subsidiary is wholly owned or only partially

⁵ The Franchise Agreement included an Operator's Lease as Exhibit A. In the Operator's Lease, McDonald's USA, LLC was clearly and unequivocally identified as the “Landlord” for the real property at the time of Plaintiff's accident.

⁶ The only discovery directed to McDonald's Corporation and McDonald's Real Estate Company in the almost two years the case was pending were simple written discovery requests served at the beginning of the case. Appellant never directed any additional discovery efforts to either McDonald's Corporation or McDonald's Real Estate Company.

owned [internal citation omitted]; and the fact that a parent and subsidiary share common officers or directors does not by itself impose liability on the parent for the contracts of its subsidiary.”).

Appellant simply produced no evidence that either McDonald’s Corporation or McDonald’s Real Estate Company should be held legally responsible for anything that happened on the real property where Linda Hooker’s accident occurred on July 28, 2018. Accordingly, McDonald’s Corporation and McDonald’s Real Estate Company were entitled to summary judgment and this Court may affirm the trial court’s Order granting same on these additional sustaining grounds.

II. As an additional sustaining ground, neither McDonald's Corporation nor McDonald's Real Estate Company had any possession or control of the real property where Linda Hooker's accident occurred and, therefore, the trial court's Order granting summary judgment should be affirmed.

Again, it is uncontradicted and undisputed that the McDonald’s restaurant business in Santee, South Carolina, where Plaintiff’s accident occurred was owned and operated by JKS & K, Inc. at the time of the accident on July 28, 2018. As discussed hereinabove, it is also uncontradicted and undisputed that neither McDonald’s Corporation nor McDonald’s Real Estate Company was either the franchisor of JKS & K, Inc. or the lessor of the real property to JKS & K, Inc. at the time of the accident. Accordingly, neither McDonald’s Corporation nor McDonald’s Real Estate Company had any right of possession or control over the premises and, therefore, they were entitled to summary judgment.

To be sure, the liability of an owner or occupant of real estate in reference to injuries caused by a dangerous or defective condition of the premises generally depends on the control of the

property. Dunbar v. Charleston & W. C. Ry. Co., 211 S.C. 209, 216, 44 S.E.2d 314, 317 (1947). “In fact, such liability depends upon control, rather than ownership, of the premises. As a general rule, liability for injuries caused by dangerous instrumentalities terminates with a cessation of control thereover; and the liability of a landowner, likewise, is terminated ordinarily when he parts with possession of the premises in question.” Id.

“One who controls the use of property has a duty of care not to harm others by its use. Conversely, one who has no control owes no duty.” Charleston Elec. Servs., Inc. v. Rahall, 427 S.C. 317, 323, 831 S.E.2d 122, 125 (Ct. App. 2019) (citing Miller v. City of Camden, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997)). Accordingly, McDonald’s Corporation owed no duty to Linda Hooker at the time of the accident as a matter of law because it did not have control or possession of the property. See id., (affirming the lower court in finding the owner who had exclusive possession and control of the property where the injury occurred was the only party who owed a duty to the injured party).

The Court of Appeals previously addressed whether an owner could be held liable for actions occurring on its property when it does not have possession or control. In Nesbitt v. Lewis, 335 S.C. 441, 446, 517 S.E.2d 11, 14 (Ct. App. 1999) the plaintiffs sought to recover damages from three property owners following a dog bite on their property. The owner, Gloria, lived on the premises, and her son and daughter also had ownership interests in the premises that they inherited upon the death of their father. Nesbitt, 335 S.C. at 444, 517 S.E.2d at 13. The son was on the premises at the time of the incident while the daughter did not live on the property at the time of the incident and she was not present on the day of the incident. 335 S.C. at 446, 517 S.E.2d at 14.

In assessing liability of the owners, the Court of Appeals found as a matter of law that the daughter did not owe a duty to the plaintiffs because she lacked possession and control over the premises.

Id.

Here, upon execution of the Franchise Agreement and Operator's Lease with McDonald's USA, LLC, JKS & K, Inc. assumed control and possession over the property. Byerly v. Connor, 307 S.C. 441, 443–44, 415 S.E.2d 796, 798 (1992). (When land is occupied by a lessee, as in this case, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee). Since neither McDonald's Corporation nor McDonald's Real Estate Company was either the franchisor or the lessor and neither had possession or control over the property at the time of the accident, neither owed any duty to Appellant as a matter of law. Nesbitt, supra. Therefore, McDonald's Corporation and McDonald's Real Estate Company were entitled to summary judgment and this Court may affirm the trial court's Order granting same on these additional sustaining grounds.

III. As an additional sustaining ground, neither McDonald's Corporation nor McDonald's Real Estate Company had any control over the day-to-day operations of the restaurant business where Linda Hooker's accident occurred and, therefore, the trial court's Order granting summary judgment should be affirmed.

Appellant failed to produce any evidence that either McDonald's Corporation or McDonald's Real Estate Company had any role or interest in the day-to-day operations of the

restaurant business owned and operated by JKS & K, Inc. at the time of Linda Hooker's accident.⁷ For liability to be assessed against a franchisor, "there must be evidence [the franchisor] asserted sufficient control over the [franchisee's] *daily operations*." Bass v. Gopal, Inc., 384 S.C. 238, 248, 680 S.E.2d 917, 922 (Ct. App. 2009)(emphasis added), aff'd, 395 S.C. 129, 716 S.E.2d 910 (2011) (citing Allen v. Greenville Hotel Partners, Inc., 409 F.Supp.2d 672, 679 (D.S.C. 2006)). Here, Appellant failed to produce even a scintilla of evidence that either McDonald's Corporation or McDonald's Real Estate Company exercised any control over the daily operations of the restaurant business owned and operated by JKS & K, Inc. and, therefore, both were entitled to summary judgment.

The test to determine whether the master and servant relationship exists is whether the "purported master has the right or power to direct and control the servant in the performance of his work and in the manner in which the work is to be done." Jamison v. Morris, 385 S.C. 215, 221, 684 S.E.2d 168, 171 (2009). Regarding the franchisor/franchisee relationship specifically, franchisors are not vicariously liable for torts committed at an independent business unless a plaintiff can show that the franchisor exercised more control over the franchisee than was necessary to ensure "uniformity of appearance and quality of services among its franchisees." Jamison, at 222-23, 172. Further, it has been established that quality standards, operational standards, and inspection rights contained in a franchise agreement do not establish a franchisor's

⁷ It has been established in the record and herein that the franchisor and lessor at the time of the accident was McDonald's USA, LLC. However, assuming *arguendo* that somehow there is evidence to the contrary, this argument is advanced for both McDonald's Corporation and McDonald's Real Estate Company.

control or right of control over a franchisee sufficient to support a claim for vicarious liability. Bass v. Gopal, Inc., 384 S.C. 238, 248, 680 S.E.2d 917, 922 (Ct. App. 2009), aff'd, 395 S.C. 129, 716 S.E.2d 910 (2011) (citing Allen v. Greenville Hotel Partners, Inc., 409 F.Supp.2d 672, 679 (D.S.C. 2006)).

Importantly, to assess liability against the franchisor, a plaintiff must produce evidence of a master-servant relationship “between the wrongdoer and the person sought to be charged for the result for the wrong *at the time and in respect to the very transaction out of which the injury arose.*” Richitelli v. Motiva Enterprises, LLC, 389 S.C. 184, 188-89, 697 S.E.2d 667, 670 (Ct. App. 2010) (emphasis in original) (finding in a personal injury case that a retailer/wrecker company's use of Texaco's signs, logos, products, advertising, and the presence of a marketing agreement which allowed Texaco the right to control the type of fuel sold, the manner it was delivered, the way retailers maintained their facilities, and the way the retailers' employees interacted with customers was not sufficient evidence to create a jury issue regarding the plaintiffs' argument that Texaco had the right to control the operation of the retailer's wrecker service). Here, there was no evidence that any individual or entity other than JKS & K, Inc. was responsible for the maintenance, inspection and care of the parking lot on the date of Linda Hooker's accident.

In Bass v. Gopal, Inc., 384 S.C. 238, 249, 680 S.E.2d 917, 923 (Ct. App. 2009), aff'd, 395 S.C. 129, 716 S.E.2d 910 (2011), the Court of Appeals affirmed the trial court's grant of summary judgement to the franchisor, Super 8 Motels, Inc., finding it did not control the daily operations of the franchisee motel owner and did not breach any duty of care to the plaintiff. The court held that there must be evidence that the franchisor asserted sufficient control over the franchisee's daily

operations in order to find that the franchisor “operated” or controlled the motel. Id., at 248, 922. The franchisor, Super 8 Motels, Inc., had a franchise agreement with the franchisee motel owner, which required the motel owner to handle daily management of the motel operations, obtain liability insurance, allow the franchisor to right to inspect the premises on a regular basis, attend a training seminar, and pay Super 8 Motels, Inc. 8% of the profits from the motel’s operation. Id. at 249, 922. The court found that the plaintiff presented no probative evidence that established that the franchisor controlled the motel’s daily operations despite the franchise agreement’s provisions. Id. Conversely, the court found that the franchise agreement’s provisions set in place certain standards for the motel owner to follow to protect the franchisor’s "good will" while the motel owner controlled the daily operation of the motel to implement the franchisor’s standards. Bass, at 249, 922-23.

Here, Appellant failed to produce even a scintilla of evidence that either McDonald’s Corporation or McDonald’s Real Estate Company exercised any control over JKS & K, Inc.’s daily operations sufficient to subject either to liability for the accident that occurred on July 28, 2018. Accordingly, McDonald’s Corporation and McDonald’s Real Estate Company were entitled to summary judgment and this Court may affirm the trial court’s Order granting same on these additional sustaining grounds.

CONCLUSION

Based on the foregoing, and the arguments advanced by Respondents JKS & K, Inc. and Pam Hampton in their Initial Brief filed contemporaneously herewith, McDonald’s Corporation

and McDonald's Real Estate Company respectfully request this Court affirm the trial court's Order granting summary judgment to them.

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Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent McDonald's Corporation and Respondent McDonald's Real Estate Company upon Appellant by way of email and U.S. Mail, stamped First Class delivery, on December 15, 2022, addressed to Appellant's attorneys of record as follows:

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