

LEXSEE 1996 Fla. App. LEXIS 113

U.S. SECURITY SERVICES CORPORATION, a Florida corporation, and JIMMY LEE GRANT, Appellants, v. RAMADA INN, INC., etc. et al., Appellees.

CASE No. 93-1712

COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

665 So. 2d 268; 1996 Fla. App. LEXIS 113; 21 Fla. L. Weekly D 139

January 10, 1996, Filed

SUBSEQUENT HISTORY:

[**1]

665 So. 2d 268 at 270. Rehearing Denied January 10, 1996. Released for Publication January 10, 1996. Petition for Review Denied May 1, 1996, Reported at: *1996 Fla. LEXIS 883.*

PRIOR HISTORY:

An appeal from the Circuit Court of Dade County, Juan Ramirez, Jr., Judge.

Original Opinion of November 15, 1995, Reported at: *1995 Fla. App. LEXIS 11948.*

CASE SUMMARY

PROCEDURAL POSTURE: Appellee hotel filed a motion for rehearing after appeal from the Circuit Court of Dade County (Florida). Appellee asserted that when it hired appellant private security service to provide required security for its guests, appellee was insulated from liability after appellant guest was injured by third-party criminal attack.

OVERVIEW: The court denied appellee hotel's motion for rehearing and reaffirmed that appellee had non-delegable duty to appellant guest to provide reasonably safe premises, including reasonable protection against third party criminal attacks. The court rejected appellee's argument that when appellee contracted with appellant security service to provide the required security for its guests, appellee was insulated from liability. The court stated that the long-standing rule was that a hotel's duty to provide its business invitees with reasonably safe business premises was a non-delegable duty which it could not contract out of by hiring an independent contractor. The court found that appellee was free to contract out

the performance of its non-delegable duty, but appellee could not contract out of the ultimate responsibility for the proper performance of that duty.

OUTCOME: The court denied appellee hotel's motion for rehearing. The court held that appellant's duty to provide its business invitees with a reasonably safe premises was a non-delegable duty. The court found that, although appellee was free to hire independent contractor to perform that non-delegable duty, appellee could not contract out of the ultimate responsibility for the proper performance of that duty.

CORE TERMS: landowner, independent contractor, duty, reasonably safe, non-delegable, invitee, duty to provide, third party, nondelegable, business invitees, delegated, guest, legally responsible, third parties, breached, injure, hired, vicariously, contractor, hiring

LexisNexis(TM) HEADNOTES- Core Concepts

Torts > Negligence > Duty > Control of Third Parties
Torts > Real Property Torts > General Premises Liability
 [HN1] A hotel's duty to provide its business invitees with reasonably safe business premises, including reasonable protection against third party criminal attacks, is a non-delegable duty which it cannot contract out of by hiring an independent contractor.

Torts > Real Property Torts > General Premises Liability
 [HN2] The law imposes on hotels, apartments, and innkeepers, the duty to keep their buildings, premises and appliances in a condition reasonably safe for the use of their guests, or at least those parts of the buildings and premises to which the guest are invited and may reasonably be expected to use. The duty of maintaining safe premises cannot be delegated to another.

Torts > Real Property Torts > General Premises Liability

[HN3] It is true that a landowner may contract out the performance of his non-delegable duty to an independent contractor, but he cannot contract out of his ultimate legal responsibility for the proper performance of his duty by the independent contractor; the landowner is always responsible for the proper performance of this non-delegable duty, whether performed by himself, an employee, or an independent contractor.

***Torts > Real Property Torts > General Premises Liability
Torts > Negligence > Duty > Duty Generally***

[HN4] The law has always permitted a person to hire an employee or an independent contractor to perform a non-delegable duty owed by that person to third parties, the duty of a landowner to invitees to maintain its premises in a reasonably safe condition; the law only precludes such person from escaping, by that device, vicarious responsibility for the proper performance of that non-delegable duty.

Torts > Negligence > Duty > Duty Generally

[HN5] Holding a particular undertaking to be non-delegable means that responsibility, or ultimate liability, for the proper performance of that undertaking may not be delegated. The term non-delegable does not preclude delegation of the actual performance of the non-delegable task. Non-delegable applies to the liabilities arising from the delegated duties if breached.

***Torts > Real Property Torts > General Premises Liability
Torts > Negligence > Duty > Duty Generally***

[HN6] A landowner is not legally responsible for the negligent discharge of a firearm by a guard of the independent contractor who injures or kills a business invitee of the landowner. This is so because such a shooting in no way constitutes a breach of the landowner's non-delegable duty to provide reasonably safe premises to its business invitees, including reasonable protection against third-party criminal attacks; it is solely a breach of the independent contractor's tort duty to conduct itself in a reasonably safe manner so as not to injure third parties.

***Torts > Real Property Torts > General Premises Liability
Torts > Negligence > Duty > Duty Generally***

[HN7] The general rule against imposing tort liability against a landowner for the torts of an independent contractor hired by the landowner. One of the recognized exceptions to this rule is where the landowner has a legally imposed responsibility which is breached.

COUNSEL:

Perse & Ginsberg and Arnold R. Ginsberg; Jay Rothlein, for appellants.

Brian S. Keif, for appellees.

JUDGES:

Before HUBBART and BASKIN and GODERICH, JJ.

OPINION:

[*270] ON REHEARING

PER CURIAM.

Ramada has filed a motion for rehearing in which it takes issue with the statement in our opinion that (1) Ramada had a non-delegable duty to the plaintiff, as Ramada's business invitee, to provide the plaintiff with reasonably safe premises, including reasonable protection against third party criminal attacks; and (2) Ramada could contract, as it did, with an independent contractor (USS) to provide the required security for its guests, but was still vicariously responsible for any negligence of the independent contractor (USS) in providing such security services. Although Ramada concedes that it had a duty to the plaintiff, as its business invitee, to provide the plaintiff with reasonably safe premises, including reasonable protection against third party criminal attacks, it urges, in effect, that this was a delegable duty which it could [**2] contract out of by hiring an independent contractor to provide the required security services – and thereby insulate itself from any liability to its business invitees such as the plaintiff when, as here, the independent contractor does not provide adequate security services for the invitee. We disagree and deny the motion for rehearing.

The central flaw in Ramada's reasoning is that [HN1] its duty to provide its business invitees with reasonably safe business premises, including reasonable protection against third party criminal attacks, is a non-delegable duty which it cannot contract out of by hiring an independent contractor. Indeed, this has long been the law of Florida:

"[HN2] The law imposes on hotels, apartments, inkeepers, etc., the duty to keep their buildings, premises and appliances in a condition reasonably safe for the use of their guests, or at least those parts of the buildings and premises to which the guest are invited and may reasonably be expected to use. The duty of maintaining safe premises cannot be delegated to another."

Goldin v. Lipkind, 49 So. 2d 539, 541 (Fla. 1950)(emphasis added).

Moreover, this is a well-established principle [**3] of law recognized throughout the country. W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 71, at 511–12 (5th ed. 1984).

[HN3] It is true, of course, that a landowner may contract out the performance of his non-delegable duty to an

independent contractor, but he cannot contract out of his ultimate legal responsibility for the proper performance of his duty by the independent contractor; the landowner is always responsible for the proper performance of this non-delegable duty, whether performed by himself, an employee, or an independent contractor. This is also the established law of Florida:

"[HN4] The law has always permitted a person to hire an employee or an independent contractor to perform a non-delegable duty owed by that person to third parties [i.e. the duty of a landowner to invitees to maintain its premises in a reasonably safe condition]; the law only precludes such person from escaping, by that device, vicarious responsibility for the proper performance of that nondelegable duty."

Mortgage Guarantee Ins. Corp. v. Stewart, 427 So. 2d 776, 780 (Fla. 3d DCA), rev. denied, [*271] 436 So. 2d 101 (Fla. 1983)(emphasis added).

"[HN5] Holding [**4] a particular undertaking to be non-delegable means that responsibility, i.e., ultimate liability, for the proper performance of that undertaking may not be delegated. The term nondelegable does not preclude delegation of the actual performance of the [nondelegable] task. 'Nondelegable' applies to the liabilities arising from the delegated duties if breached."

Atlantic Coast Dev. Corp. v. Napoleon Steel Contractors, Inc., 385 So. 2d 676, 679 (Fla. 3d DCA 1980).

It is important to understand, however, that a landowner in these circumstances is not vicariously responsible for all torts committed by the independent contractor [whom the landowner has hired to carry out the landowner's non-delegable duty to provide reasonably safe premises for its business invitees]; the landowner is only liable for the independent contractor's breach of the landowner's non-delegable duty to provide reason-

ably safe premises for its invitees. Accordingly, we have held that [HN6] a landowner is not legally responsible for the negligent discharge of a firearm by a guard of the independent contractor who injures or kills a business invitee of the landowner. This is so because such a [**5] shooting in no way constitutes a breach of the landowner's non-delegable duty to provide reasonably safe premises to its business invitees, including reasonable protection against third-party criminal attacks; it is solely a breach of the independent contractor's tort duty to conduct itself in a reasonably safe manner so as not to injure third parties. *Williams v. Wometco Enters.*, 287 So. 2d 353 (Fla. 3d DCA 1973), cert. denied, 294 So. 2d 93 (Fla. 1974); *Brien v. 18925 Collins Avenue Corp.*, 233 So. 2d 847 (Fla. 3d DCA 1970).

In the instant case, however, Ramada has quite properly been held legally responsible for the independent contractor USS's negligent failure to protect the plaintiff from a criminal attack by a third party on Ramada's premises. This is so because such failure clearly constituted a breach of Ramada's non-delegable duty to provide the plaintiff with reasonably safe business premises, including reasonable protection against third party criminal attacks. Based on this analysis, Ramada's reliance on the *Williams* and *Brien* cases is entirely misplaced as these decisions are entirely consistent with the result we reach in this case.

Nor can Ramada [**6] gain any comfort from [HN7] the general rule against imposing tort liability against a landowner for the torts of an independent contractor hired by the landowner. One of the recognized exceptions to this rule is where the landowner, as here, has a legally imposed responsibility which is breached. *Webb v. Priest*, 413 So. 2d 43, 47 n.2 (Fla. 3d DCA 1982). Ramada's motion for rehearing is, therefore, in all respects,

Denied.