Client Alert
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WIGGIN AND DANA

Connecticut Appellate Court Holds that Franchisor is Not Vicariously Liable for Torts of Its Franchisee

If you have questions about this Client Alert, please contact:

Erika L. Amarante
203.498.4493
eamarante@wiggin.com

Joseph C. Merschman
203.498.4323
jmerschman@wiggin.com

The Connecticut Appellate Court recently issued an important decision regarding the limits of franchisor vicarious liability. In *L and V Contractors, LLC v. Heritage Warranty Insurance Risk Retention Group, Inc., et al.,* AC 33099, 2012 Conn. App. LEXIS 328 (Conn. App. Ct. July 10, 2012), the Appellate Court overturned a judgment against AAMCO Transmissions, Inc., a franchisor of automotive repair centers. The court held that AAMCO was not vicariously liable for torts allegedly committed by an independently owned and operated AAMCO repair center under theories of agency or apparent authority. The plaintiff had failed to prove that the repair center was AAMCO's agent, the court held, and, under Connecticut law, "the doctrine of apparent authority cannot be used to hold a principal liable for the tortious actions of its alleged agent." *Id.* at *14. The Appellate Court directed that judgment be entered for AAMCO.

The lawsuit stemmed from a dispute between Drive Train Unlimited, LLC, which operated an AAMCO repair center in East Hartford, Connecticut, and a Drive Train customer. The customer alleged that Drive Train, which had been asked to repair the customer's van, had instead driven the van for personal use and refused to return it. AAMCO had no dealings with the customer and knew nothing about the dispute. The customer sued Drive Train and the customer's warranty company in 2008 and added AAMCO as a defendant through an amended complaint. The customer asserted claims against Drive Train and AAMCO for statutory theft, conversion, violation of the Connecticut Unfair Trade Practices Act, and fraudulent and negligent misrepresentation. The sole basis for the claims against AAMCO was an allegation that Drive Train was AAMCO's "agent, servant and/or employee" and "was acting within the scope of its agency and/or employment" when it committed the torts. *Id.* at *6. Following a bench trial, the trial court found both Drive Train and AAMCO liable, concluding that AAMCO was vicariously liable for Drive Train's alleged actions.

AAMCO appealed, and the Appellate Court reversed the judgment against AAMCO. Turning first to the question of whether there was an agency relationship between AAMCO and Drive Train, the court concluded that the plaintiff had failed to prove the existence of an agency relationship. "A necessary element of demonstrating that there is a principal and agent relationship is to show that the principal is in control." *Id.* at *10. "The plaintiff introduced no evidence that demonstrated that AAMCO controlled any part of the business of Drive Train," the court noted. *Id.* "The only evidence presented that relates to the relationship between AAMCO and Drive Train is that Drive Train and AAMCO have an agreement, whereby, in exchange for the use of AAMCO's name, Drive Train pays approximately 7 percent of its sales to AAMCO for advertisements." *Id.* That alone, the court held, was not enough to establish an agency relationship. "The mere fact that there was an agreement that allowed for Drive Train to use AAMCO's name is not evidence that it exercised any control over Drive Train's operations." *Id.*

The Appellate Court next turned to the issue of apparent authority. Under that doctrine, "[a] party can be held liable to a third party if its actions caused a third party to believe that there was a principal and agent relationship between it and another." *Id.* at *12. Although other

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states have applied the doctrine to tort claims, the Appellate Court noted that "Connecticut, nevertheless, has yet to apply the doctrine of apparent authority to allow for a principal to be held liable to a third person who was harmed by the tortious conduct of a person held out as the principal's agent." *Id.* at *12-13. Citing two prior Appellate Court cases, *Mullen v. Horton*, 46 Conn. App. 759, 771 (1997), and *Davies v. General Tours, Inc.*, 63 Conn. App. 17, 31 (2001), the court concluded "that apparent authority 'is not a viable ground on which to premise liability against a [principal] sued for the torts of an alleged agent.'" *L and V Contractors, LLC*, 2012 Conn. App. LEXIS 328 at *13-14 (quoting *Davies*, 63 Conn. App. at 31) (alteration in original). "Because this court has held that the doctrine of apparent authority cannot be used to hold a principal liable for the tortious actions of its alleged agent, we conclude that the trial court erred in determining that Drive Train had apparent authority to bind AAMCO." *Id.* at *14. Finally, in a footnote, the Appellate Court noted that, even if there had been evidence of agency or apparent authority, it still would have reversed the trial court's judgment against AAMCO because the alleged torts did not fall within the scope of that purported relationship. *Id.* at *14-15 n. 8.

The Appellate Court's decision is significant for two reasons. First, the decision reiterates that a plaintiff cannot prove the existence of an agency relationship without establishing that the alleged principal controlled the alleged agent and that the alleged torts were committed within the scope of the alleged relationship. Second, and more importantly, the decision holds that a party cannot be held liable under a theory of apparent authority for the torts of an alleged agent. This decision is an important victory for franchisors seeking to avoid vicarious liability for the alleged torts of a franchisee, especially given the inherently branded nature of business format franchising and the apparent authority claims that all-too-frequently can result.

Wiggin and Dana attorneys Erika L. Amarante and Joseph C. Merschman represented AAMCO in this appeal.

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