

IN THE SUPREME COURT OF THE STATE OF NEVADA

KATHRYN M. HAIN,  
Appellant,  
vs.  
KOLL MANAGEMENT SERVICES  
AND THE EQUITY GROUP, INC.,  
Respondents.

No. 40812

FILED

OCT 05 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Sobel*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from district court order granting summary judgment.  
Eighth Judicial District Court, Clark County, Jeffrey D. Sobel, Judge.

This is an appeal from the district court's order granting summary judgment in favor of respondents Koll Management Services and The Equity Group, Inc. Appellant Kathryn M. Hain contends that summary judgment was improper because issues of fact remain as to whether Koll and Equity were vicariously liable for the negligent acts of H.D. Lounsbury, d/b/a Land Development & Housing, a subcontractor hired to perform construction repairs. Hain also contends that issues of fact remain as to whether Koll and Equity are liable for Hain's injuries based on their own independent acts of negligence.

Our review of the summary judgment order is de novo.<sup>1</sup> When reviewing an order granting summary judgment, we determine whether the district court has correctly perceived and applied the law.<sup>2</sup> Summary judgment is appropriate when there are no genuine issues of material fact,

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<sup>1</sup>Nevada Contract Servs. v. Squirrel Cos., 119 Nev. 157, 160, 68 P.3d 896, 899, (2003).

<sup>2</sup>Id.

and the moving party is entitled to summary judgment as a matter of law.<sup>3</sup> In determining whether summary judgment is warranted, the court must view all evidence and reasonable inferences in the light most favorable to the nonmoving party.<sup>4</sup> If there is the slightest doubt as to the operative facts, the parties are not to be deprived of a trial on the merits.<sup>5</sup>

In granting Hain and Equity's motion for summary judgment, the district court determined that because Lounsbury was an independent contractor at the time of the accident, Koll and Equity could not be held vicariously liable. We agree.

According to the Restatement (Second) of Torts, the general principle as to the liability of an employer for the acts or omissions of a general contractor is that "the employer of an independent contractor is not liable for physical harm caused to another by an act or omission of the contractor or his servants."<sup>6</sup> Over time, however, a large number of exceptions to the general rule have been recognized and codified in sections 410-29 of the Restatement.<sup>7</sup> These exceptions, for the most part,

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<sup>3</sup>Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993); see also NRCP 56(c).

<sup>4</sup>Posadas, 109 Nev. at 452, 851 P.2d at 441-42.

<sup>5</sup>Perez v. Las Vegas Medical Center, 107 Nev. 1, 4, 805 P.2d 589, 590 (1991).

<sup>6</sup>Restatement (Second) of Torts § 409 (1965).

<sup>7</sup>Id. § 409, cmt. b. The rules stated in sections 410-15 rest upon the personal negligence of the employer. The rules stated in sections 416-29 are rules of vicarious liability, making the employer liable irrespective of his fault for the independent contractor's negligence. Restatement (Second) of Torts, Introductory Note to Chapter 15, Topic 2.

identify “special situations where the employer is in the best position to identify, minimize and administer the risks involved in the contractor’s activities.”<sup>8</sup>

Hain relies on the exception set forth in section 416 of the Restatement in order to suggest that liability may be imposed vicariously on Koll and Equity for Lounsbury’s negligence. Restatement section 416 addresses situations of employer liability where the employer has provided for precautions in the contract that the contractor fails to take. In the case at bar, the contract between Koll, Equity, and Lounsbury consisted of a proposal submitted by Lounsbury to which acceptance was indicated by execution. The original proposal/contract identified the work to be performed as “Seal Dimising [sic] Walls on both sides of beauty salon” and indicated a price of \$2,000, with payment terms of 50 percent to start and 50 percent upon completion. The only term added to the contract by Koll and Equity was a notation, “Schedule [with] A Hair Plus Judy Bower [sic] on a Monday.” Neither Koll nor Equity indicated a precaution in the contract that Lounsbury should exercise reasonable care in the erection of the scaffolding within the hair salon. The notation to schedule on Monday is simply not sufficient to meet the requirements necessary to impose liability under section 416 of the Restatement. Therefore, we conclude that this evidence was insufficient to present an issue of fact concerning whether Koll and Equity provided for a precaution in the contract.

We have also considered Hain’s argument regarding liability based on Koll and Equity’s non-delegable duty and determine that the case law upon which Hain relies does not support a finding that Koll and

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<sup>8</sup>Wilson v. Good Humor Corp., 757 F.2d 1293, 1301 (D.C. Cir. 1985).

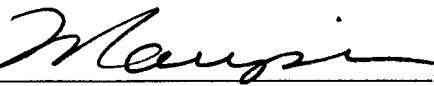
Equity had a non-delegable duty to maintain a safe and hazard-free work area for Hain. Therefore, we conclude that because no genuine issues of material fact exist summary judgment was appropriate.

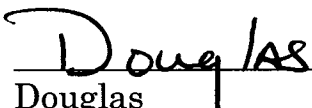
Finally, we have considered Hain's contentions regarding liability based on Koll and Equity's independent acts of negligence, and we conclude that they lack merit.<sup>9</sup> Koll and Equity simply did not retain a sufficient amount of control over the timing of Lounsbury's construction to make them liable to Hain.

Accordingly we,

ORDER the district court's judgment AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Eighth Judicial District Court Dept. 5, District Judge  
Tingey & Tingey  
Cohen, Johnson, Day, Jones & Royal  
Clark County Clerk

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<sup>9</sup>Neither Hain nor Koll and Equity have articulately presented the legal framework for determining whether or not Koll and Equity owed a duty of care to Hain, but Hain does clearly allege that liability is premised upon Koll and Equity's own negligence. Accordingly, this Court reviewed liability under the appropriate Restatement section, section 414, which imposes liability upon those who entrust work to an independent contractor but retain control over the work.