A homeowner was injured when he slipped and fell in a puddle of water on his sunroom floor; the water had accumulated on the floor during a rainstorm because of leaks in the roof. The roof's manufacturer had supplied nondefective materials to the installer, who was a franchisee (and not an employee) of the manufacturer. The leaks resulted from the carelessness of the installer during the installation of the roof.

The installer's truck, which had been parked in front of the homeowner's house during the roof installation, bore the manufacturer's logo. The manufacturer was aware that the truck and the literature supplied by the installer both displayed the manufacturer's logo.

Is there any basis for a claim by the homeowner against the manufacturer?

A. No, because a franchisor has no duty to supervise the conduct of a franchisee.

B. No, under the rule that a manufacturer is liable only for defects in a product that existed at the time the product left the hands of the manufacturer.

C. Yes, because the installer was a franchisee of the manufacturer.

D. Yes, under the rule of apparent agency.

Explanation:

A defendant may be **vicariously liable** for a third party's torts if an **agency relationship** existed between them—ie, when the third party agreed to act on the defendant's behalf and subject to the defendant's control. Since a franchisor does not control a franchisee's day-to-day operations (no agency relationship), the franchisor is generally not vicariously liable for the franchisee's torts. But under the **rule of apparent agency** (ie, apparent authority), **vicarious liability can be imposed** if:

the plaintiff **reasonably believed** that the third party was acting within the **scope of an agency relationship** with the defendant *and*

that belief was **traceable to the defendant's manifestations** (ie, words or conduct).

Here, the manufacturer (franchisor) would generally not be vicariously liable for the installer's (franchisee's) conduct **(Choice C)**. But the homeowner could have reasonably believed that the installer was acting as the manufacturer's agent since the installer's truck and literature displayed the manufacturer's logo. And since the manufacturer knew about this and permitted the installer to do so, that belief was traceable to the manufacturer's manifestations. Therefore, the homeowner has a basis for a claim against the manufacturer under the rule of apparent agency.

(Choice A) Although a franchisor is not *directly* liable for a franchisee's conduct (since the franchisor has no duty to supervise the franchisee), a franchisor can still be *vicariously* liable for a franchisee's torts under the rule of apparent agency.

(Choice B) Under strict products liability, a manufacturer is only liable for product defects that existed when the product left the manufacturer's hands. Here, the manufacturer supplied *nondefective* materials to the installer so there is no basis for a strict products liability claim.

Educational objective:

Under the rule of apparent agency, a defendant may be vicariously liable for a third party's torts if (1) the plaintiff reasonably believed that the third party was acting within the scope of an agency relationship with the defendant and (2) that belief was traceable to the defendant's manifestations.

References

Restatement (Third) of Agency § 1.01 (Am. Law Inst. 2006) (definition of agency).

Restatement (Third) of Agency § 2.03 (Am. Law Inst. 2006) (apparent agency).

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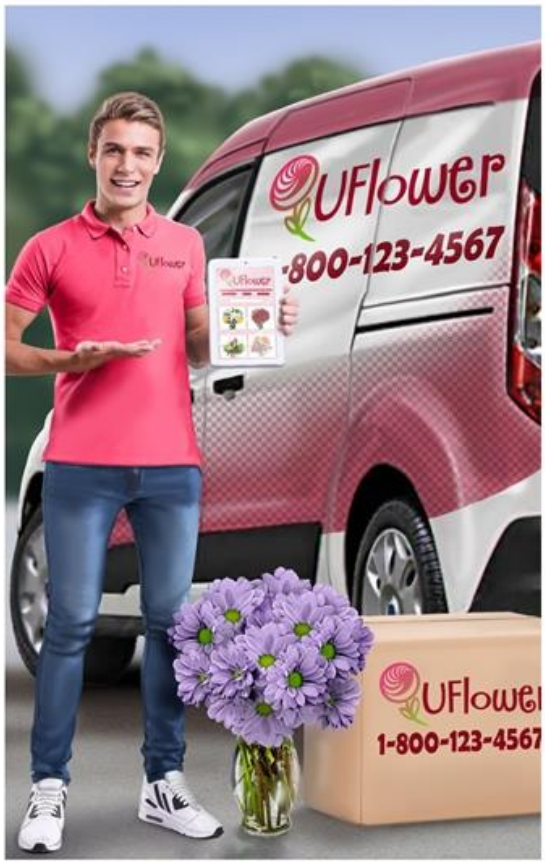
Apparent agency

Reasonable belief of agency relationship + Traceable to defendant's manifestations



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