

A young woman who attended a rock concert at a nightclub was injured when the band opened its performance with illegal fireworks that ignited foam insulation in the club's ceiling and walls. The young woman sued the radio station that sponsored the performance. The radio station has moved for summary judgment, claiming that it owed no duty to audience members.

The evidence has established the following facts: The station advertised its sponsorship on the radio and in print, distributed free tickets to the concert, staffed the event with the station's interns to assist with crowd control, and provided a station disc jockey to serve as master of ceremonies. The master of ceremonies had the authority to stop or delay the performance at any time on the basis of any safety concern. The station knew or should have known that the band routinely used unlicensed, illegal fireworks in its performances.

Should the court grant the radio station's motion for summary judgment?

- A. No, because there is sufficient evidence of knowledge and control on the part of the station to impose on it a duty of care to audience members.
- B. No, because under respondeat superior, the radio station is vicariously liable for the negligent actions of the band.
- C. Yes, because it is the band and the nightclub owners who owed audience members a duty of care.
- D. Yes, because the conduct of the band in setting off illegal fireworks was criminal and was a superseding cause as a matter of law.

Explanation:

A defendant's motion for summary judgment should be granted when there is insufficient evidence to support one or more elements of the plaintiff's claim. Therefore, summary judgment for the defendant is warranted on a **negligence** claim when there is no evidence that the defendant:

owed the plaintiff a **duty to use reasonable care**

breached that duty *or*

caused the plaintiff harm.

When the defendant is a **land possessor** (ie, one who **occupies and controls** the land), the defendant owes a **duty** to use reasonable care to **identify and mitigate** any **foreseeable risk of harm** to land entrants.

Here, the radio station was a land possessor because it staffed the event (occupation) and provided a disc jockey who had the authority to stop the concert for any safety concern (control). And since the station knew or should have known that the band routinely used illegal fireworks in its performances, the risk of a fire was foreseeable. Therefore, there is sufficient evidence that the station owed audience members a duty to use reasonable care to identify and mitigate that risk, so the station's motion for summary judgment should be denied.

(Choice B) The doctrine of respondeat superior holds employers vicariously liable for their employees' torts. Here, the band was not the radio station's employee, so this doctrine does not apply.

(Choice C) Although the band and nightclub owners likely owed the audience a duty of care, that does not eliminate the radio station's concurrent duty of care.

(Choice D) A superseding cause is an *unforeseeable* force or act that negates a defendant's tort liability. Here, the band's illegal use of fireworks was reasonably *foreseeable*, so its conduct was not a superseding cause and does not absolve the station of liability.

Educational objective:

Land possessors—persons who occupy and control the land—owe land entrants a duty to use reasonable care to identify and mitigate foreseeable risks of harm.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm §§ 49, 51 (Am. Law Inst. 2012) (duty owed by land possessors).

Fed. R. Civ. P. 56(a) (motion for summary judgment).

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Defendant's motion for summary judgment

