

Delaware Supreme Court Examines Whether Liability Waiver Covers Injuries Based on Implied Agency Relationship

This ruling may impact how future personal injury cases are litigated, such that the court clearly values emphasis on explicit fact establishment in order to support legal inferences and conclusions to be drawn from same. Cases lacking in this manner will likely be met with an uphill battle from the defense perspective in the face of a motion for judgment on the pleadings, if the pleadings at issue leave too many avenues for understanding to question.

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The Delaware Supreme Court recently issued an opinion addressing whether the allegations in a complaint filed by a participant in a recreational event permitted a reasonable inference that an agency relationship existed between two separate corporations involved in a parade and celebration event. Operation SEAs the Day, Inc. (Seas the Day) sponsored the event, and the appellant-plaintiff had been directed to park in a lot owned by the appellee-defendant, Sea Colony Recreational Association, Inc. (Sea Colony) upon arrival. After parking in the designated lot, the plaintiff exited her vehicle and walked through an adjacent grassy area, where she tripped in a hole obscured by the grass, fell, and severely twisted her ankle. Prior to attending the event, she had signed a participant liability waiver, which stated in part:

“I hereby surrender any right to seek reimbursement from Operation Seas the Day,

Inc. and its directors, officers, employees, volunteers and other agents for injury sustained and liability incurred during my participation in the event ... I knowingly and freely assume all such risks, both known and unknown, even if arising from the negligence of the releasees or others and assume full responsibility for my participation.”

The complaint was filed in Delaware Superior Court on July 18, 2024, alleging that Sea Colony was negligent in maintaining the parking lot and seeking damages for personal injuries, pain and suffering, past and future medical expenses, mental anguish, loss of enjoyment, out-of-pocket expenses, court costs, and any other relief deemed just by the court. In its answer, Sea Colony asserted as an affirmative defense that the plaintiff had waived her claims by signing the waiver, and simultaneously moved for judgment on the plead-

ings. The plaintiff opposed the motion, arguing that the waiver was ambiguous because Sea Colony was not specifically named, was not a recognized agent of Seas the Day, and her injuries occurred outside the scope of the event. The Delaware Superior Court granted Sea Colony's motion, finding the waiver unambiguous, applicable to Sea Colony as an agent of Seas the Day, and inclusive of the plaintiff's injuries.

The plaintiff timely moved for reargument, contending that Sea Colony was not named in the waiver and was not an agent of Seas the Day. She also introduced new information—that she was a registered guest at Sea Colony at the time of the incident—which was improper to include in a motion for reargument. The Delaware Superior Court denied the motion, and the plaintiff appealed the Oct. 28, 2024, order to the Delaware Supreme Court.

On appeal, the Delaware Supreme Court reversed the Superior Court's ruling and remanded for further proceedings. The court emphasized the legal standard for establishing an agency relationship: "when one party consents to have another act on its behalf, with the principal controlling and directing the acts of the agent." See *Fisher v. Townsends*, 695 A.2d 53, 57 (Del. 1997) (quoting *Sears Mortgage v. Rose*, 634 A.2d 74, 79 (N.J. 1993)). The Supreme Court criticized the trial court's failure to analyze the relevant factors in determining whether an agency relationship existed. Specifically, the court noted the importance of evaluating "the extent of control, which, by the agreement, the master may exercise over the details of the work; ... whether or not the one employed is engaged in a distinct occupation or business; ... and whether or not the

parties believe they are creating the relation of master and servant." See *Wave-Division Holdings v. Highland Capital Management*, 49 A.3d 1168, 117 (Del. 2012) (quoting *Fisher*, 695 A.2d at 59); see also Restatement (Third) of Agency Section 1.01 (2006).

Although the existence of an agency relationship is typically a question of fact, the court clarified that a contract or license between two parties—such as the waiver—does not automatically establish such a relationship. The court acknowledged that the waiver's reference to "agents" of Seas the Day left open the possibility that Sea Colony could be considered an agent. However, the pleadings lacked sufficient facts to evaluate whether Seas the Day exercised control over Sea Colony; whether Sea Colony acted on Seas the Day's behalf; or whether the parties intended to create a master-servant relationship.

The court noted that the allegation that Sea Colony's parking lot was used for overflow parking by Seas the Day for invitees such as the plaintiff could support an inference that Seas the Day controlled the lot. However, it also allowed for the possibility that Sea Colony's involvement was limited to granting a license for use of the lot. The pleadings did not include the existence or terms of any agreement between Sea Colony and Seas the Day, nor did they identify the individual who directed the plaintiff to park in the lot or the entity with which that individual was affiliated.

Ultimately, the Delaware Supreme Court held that the absence of clear facts demonstrating an agency relationship meant that other reasonable inferences

could be drawn from the pleadings. Because Sea Colony did not meet its burden to prove the affirmative defense that an agency relationship existed sufficient to bring the plaintiff's injury within the scope of the waiver, the trial court erred in granting judgment on the pleadings.

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face of a motion for judgment on the pleadings, if the pleadings at issue leave too many avenues for understanding to question.



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