

Res Ipsa Loquitur It Really Does Speak for Itself

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Abstract

This case problem is designed to aid the student in understanding the concept of res ipsa loquitur. It will be found to be an effective tool in certain negligence cases, but not all. In the process, they will have the opportunity to see some of the obstacles that may be used by defendants during and after the litigation process. They will also learn the successful application of the concept does not require direct evidence in negligence cases, but rather, it is inferred from the circumstances

Keywords: Tort, negligence, strict liability, circumstantial evidence, direct evidence

Fact Scenario

Mr. and Mrs. Hax were the owners and operators of a small local hardware store. Sometime during the evening hours of November 9, 2015, their establishment caught fire. They owned both the building and the business. The hardware store and the building next door were a complete loss. The restaurant next door had serious water and smoke damage. The owner of the restaurant and building housing the restaurant secured the services of an attorney, Joe Slick, Esquire. He filed the necessary legal papers with the appropriate Court requesting monetary damages on behalf of his client in the amount of \$350,000.00, to cover a complete renovation of the restaurant, as well as some structural damage that was caused by the fire. In the meantime, the restaurant has been closed for business for the past several months.

During the discovery process, Slick was able to ascertain from the fire marshal's report that the fire originated in a locked storage room. That room had no windows or access points other than the interior door. To which only the owners and the store general manager had an access key. It was also determined that the room was designated to store old paint as well as flammable liquids. The police report showed no signs of a forced entry into the building. And so, Slick argued that the contents of the room reacted with an unexplained combustion resulting in the subsequent fire and damages.

He was able to argue to the Court that such an event does not normally occur in the absence of some negligence by the defendants. He also argued that because of the location of the locked storage room and the situation with the keys, that the defendant's maintained exclusive control of said room, as the general manager answered directly to the owners. And under the doctrine of respondeat superior, the defendant's were ultimately responsible. Having said all of that, Slick went on to explain to the Court that his client had done nothing to cause the fire. And finally, he argued that there was no other reasonable explanation, other than the inferred negligence of Mr. and Mrs. Hax.

The defendants have come to you for advice.

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Questions

1.) **First and foremost, is it likely that Slick's arguments will carry the day?**

Yes. Common law negligence determines that the elements of care and beach can be inferred. As here, there is no direct evidence and therefore the only reasonable explanation would involve the inferred negligence of the defendants.

2.) **Was the instrumentality which was the cause of the fire under the exclusive control of the defendants?**

Again yes. Mr. and Mrs. Hax had the original key and the general manager had the only duplicate. Therefore, there could have been no unauthorized entry without one or the other unlocking the door. And since the general manager worked for the owners, they were be responsible under the concept of respond eat superior.

3.) **The defendants assert the claim that the damages are not their fault, that somehow there was an outside intervention or involvement on the part of the restaurant.**

However, the fact scenario does not support this argument. As the police report showed that there was no forced entry into the hardware store. And the defendants are not able to show any contributory negligence on the part of the restaurant owner based on these facts alone.

4.) **How does Slick prove negligence?**

He can state that the circumstantial evidence supports his argument, and furthermore that there is no direct evidence to contradict this assertion.

5.) **Assume for the moment that the trier of fact (judge or jury) awarded a monetary award of \$350,000.00. Again, the defendants have come to you for advice.**

After careful consideration, you refer your clients to a competent bankruptcy attorney. He/she may very well advise them to file the appropriate and necessary bankruptcy petitions. If successful, the entire monetary award of \$350,000.00 could be discharged and eliminated. Of course it would also depend on their financial status generally.

However, at the end Mr. and Mrs. Hax may very well be excused from the judgment. Hopefully, the restaurant owner had insurance, but again one of his obstacles might be the timely notice of his claim.

References

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Applicable Courses

Legal Studies

Negligence

Torts

Business Law.