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New York Expands Scope of Negligent Supervision and Retention Claims Against Employers

The Bottom Line

- Prospective customers (not just existing customers) may pursue claims against New York employers arising from an employee's misconduct under the doctrine of negligent supervision and retention. But the facts must still show that the employer owed a duty to the prospective customer in order to state a viable claim.
- Employers cannot turn a blind eye when employees' conduct should reasonably raise red flags about potential misbehavior, as the employer may be found to have constructive knowledge of an employee's propensity for misconduct under appropriate circumstances.

When is an employer legally responsible for injuries caused by a rogue employee?

Under New York state law, if an employee injures a third party on the employer's premises or through use of the employer's property or resources, the employer may be liable under the doctrine of negligent supervision and retention. To prevail, the injured party must show, among other things, that the employer owed it a legal duty of care and had notice of the employee's tendency toward harmful behavior.

It is well-settled that employers owe a duty of care to existing customers – but what about *prospective* customers? And how much does the employer really have to know about the employee's misbehavior to be "on notice"? The New York Court of Appeals recently answered these questions in *The Moore Charitable Foundation v. PJT Partners, Inc.*, holding that employers' duties may run to prospective customers, and employers need not have notice of actual prior instances of the same misbehavior to be liable for the employee's actions. The court's decision highlights the potentially expansive scope of negligent supervision and retention claims against New York employers.

The Case

The case stems from the actions of Andrew W.W. Caspersen, who was the managing director of the Park Hill Group, a division of the investment bank PJT Partners, Inc.

According to the complaint, Caspersen closed a major deal in 2015 that resulted in an $8.1 million fee for PJT, but he embezzled the $8.1 million fee and then gambled it all away on risky securities trades in his personal account. When PJT's back-office personnel asked about the missing fee, Caspersen falsely claimed that the fee would not be paid until a "stub closing" was complete. To cover his tracks, Caspersen solicited a $25 million investment from The Moore Charitable Foundation, telling Moore that it would be investing in a legitimate financing deal, when in fact no such deal existed. Caspersen used his PJT email account to send fake documents bearing Park Hill letterhead to Moore, and instructed Moore to deposit its investment into what appeared to be a legitimate deal-related account that was, in fact, controlled by Caspersen himself. Caspersen used Moore's $25 million investment to repay the $8.1 million fee to PJT, transferred the remainder to his personal account and, again, lost it all engaging in speculative securities trading.

Caspersen was arrested in 2016 and ultimately pleaded guilty to charges of securities and mail fraud. Moore subsequently filed a civil complaint seeking to recover damages from PJT on the theory that PJT was liable for negligently supervising and retaining Caspersen. The trial court dismissed Moore's claim, finding insufficient allegations of PJT's knowledge of Caspersen's propensity for fraud, and the Appellate Division — New York's intermediate appellate court — agreed, adding that the lack of any preexisting customer relationship with PJT was "fatal" to Moore's case.

The Holding — An Employer's Duty to Non-Customers

The New York Court of Appeals disagreed. In a 5-2 decision handed down in June, the court held that reasonable expectations of the parties govern the scope of an employer's duties to third parties for purposes of a negligent supervision and retention claim, not the plaintiff's status as a customer or non-customer. Caspersen used PJT's and Park Hill's resources to solicit Moore's participation in what Moore reasonably believed was one of PJT's legitimate business deals. Under those circumstances, PJT owed a duty to Moore to supervise Caspersen in a non-negligent way, notwithstanding the fact that Moore was not a current client of PJT's.

Constructive Notice of an Employee's Harmful Behavior

The court also held that, contrary to the lower courts' findings, Moore had sufficiently alleged that PJT was on constructive notice of Caspersen's fraud. Providing a helpful reminder to employers, the court clarified that an employer is on constructive notice of its employee's propensity to cause harm when the employer "has *reason* to know of the facts or events evidencing that propensity;" knowledge of actual prior instances of similar alleged misconduct is not required.

The facts of this case provide a useful illustration of this principle. Moore had argued that PJT was on notice of Caspersen's propensity to commit fraud based on his alleged excessive drinking and personal stock trading during work hours and the false response regarding the purported "stub closing" when PJT noticed the missing $8.1 million fee. The court held that Caspersen's alleged excessive drinking and personal stock trading during work, while unprofessional and irresponsible, did not suggest a proclivity to commit fraud and therefore did not put PJT on notice of Caspersen's misconduct. On the other hand, Caspersen lying to his employer in a manner that, according to Moore, was transparently false and should have been recognized as such by PJT, was sufficiently similar to the fraud that Caspersen ultimately committed. Based on these allegations, the Court of Appeals held that Moore sufficiently alleged that PJT was on notice of Caspersen's tendency to commit fraud.

For More Information

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