Halliburton Energy Services, Inc. v. Dept. of Transportation
(2013) 220 Cal. App. 4th 87 – Fifth Appellate District
Employer is not liable for freeway accident cause by its employee who was driving back to work as part of a personal trip to buy a car for his wife.

FACTS AND PROCEDURAL POSTURE

Defendant Troy Martinez was employed by Halliburton as a directional driller. He was issued a company vehicle and told by his supervisor that he may use the vehicle for personal errands en route to and from work. Martinez was also told by his supervisor that he could run errands so long as he was back in time for his next shift. Halliburton's written policy was that company vehicles were not to be used for personal business, but stops directly en route for personal reasons while traveling to and from work were allowed.

Martinez lived in Caliente, about 45 to 50 miles from Bakersfield. He spent half of his time working in Bakersfield. The other half of the time was spent at other locations around California. Martinez was assigned to work on an oil rig near Seal Beach from 9pm to 9am. On the day of the accident, after finishing his work on the oil rig, he drove 140 miles to Bakersfield to meet his wife and daughter at a car dealership to purchase a vehicle. While returning to Seal Beach traveling on southbound I-5, Martinez drove over loose gravel which caused the truck to fishtail and be launched into the air. He struck another vehicle in the northbound lanes of I-5 and injured the six plaintiffs. The accident occurred 20 miles away from Bakersfield.

Suit was filed against Martinez, Halliburton and Caltrans. The plaintiffs alleged that Martinez's vehicle lost traction because of the gravel which caused the vehicle to travel up a mound of dirt in the center divider and get launched into the air and land to collide with the plaintiffs. Actions were filed against Martinez and Halliburton for negligence and against Caltrans for a dangerous condition of public property. Halliburton filed suit for indemnity against Caltrans and moved for summary judgment on the grounds that it could not be held liable because Martinez was not acting within the course and scope of his employment. The motion was granted and this appeal followed.

DISCUSSION

The court reviewed Halliburton's contention that it could not be liable on a theory of respondeat superior. The court acknowledged a two-prong test for respondeat superior. Under this test, where either: 1) the act performed is required or incident to an employee's duties or 2) the employee's misconduct could be reasonably foreseen by the employer in any event, the employer is liable for the injury. Under respondeat superior, foreseeability means that in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among the other costs of the employer's business. Therefore, there must be a nexus between the employee's tort and his employment. An exception is recognized for employees who substantially deviate from their duties for personal reasons.

Plaintiffs argued that the incidental benefit exception to the "going and coming" rule applied. Where the employee incidentally benefits the employer with his commute, that commute may become part of the employee's workday for purposes of respondeat superior liability. This exception has been applied where the employee is furnished with, or required to furnish, a vehicle for work-related transportation. This application is based on the theory that the employer benefits from the employee driving the vehicle because the it is then available for use in the employer's business during the work day and available to the employee for emergency business trips or business stops on the way to and from work. The risk of accidents occurring during this commute are considered incident to the business enterprise.

Plaintiffs argued that Martinez's use of the vehicle provided some benefit to Halliburton; however, the court believed that, even if the incidental benefit exception applied, the facts established that Martinez was engaged in purely personal business at the time of the accident. His shift had already been finished and he drove 140 miles to Bakersfield to meet his wife to purchase a vehicle for her. Martinez was not running any errands for Halliburton or engaging in any services on its behalf. His supervisor was unaware of the trip until after the accident had occurred. The trip did nothing in the furtherance of Halliburton's business enterprise and the fact that Martinez was using a company vehicle was inadequate to create a nexus between his personal business and that of Halliburton. The court recognized that where an employee substantially departs from his employment duties during his commute to or from work or the trip serves a purely personal purpose; the incidental benefit exception does not apply. The court concluded that the risk of a traffic accident during a personal trip is not a risk typical to Halliburton's business activities.

Plaintiffs argued that Martinez was returning to work, so the drive back was a work commute. The court refused to separate the return portion of the trip from the overall purpose of Martinez's drive to Bakersfield, which was personal in nature. The trip was considered a significant departure from the employer's business due to the distance traveled and the fact that Martinez did not ask or inform his employer about the trip. Plaintiffs' theory would unduly expand the incidental benefit exception. Plaintiffs also tried to argue that the question of foreseeability governs, not whether Martinez was engaged in a personal errand; however, the court rejected this argument stating that questions of foreseeability and the purpose of the trip are merely different ways of articulating the same test for scope of employment.

The court held that the incidental benefit rule only operates as an exception to the extent that the employee does not deviate substantially from the commute to and from work in pursuing his own personal business. Because Martinez substantially departed from his commute and job duties, there was no nexus between his activities and Halliburton's business.

DISPOSITION: The judgment of the trial court was affirmed.