

Publications

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Landmark Texas Supreme Court Case Finds No “Direct Liability” for Franchisor Arising Out of Franchisee Employee’s Actions

On May 2, 2025, the Texas Supreme Court reversed a Texas Court of Appeals’ decision that had affirmed a jury’s verdict finding a franchisor directly liable to the customer of a franchisee for actions undertaken by the franchisee’s employee. The Supreme Court found that the franchisor did not owe a duty to the franchisee’s customer. This is a major ruling in the ongoing developments regarding potential franchisor liability for actions by independently owned and operated franchisees and franchisees’ employees.

Texas Supreme Court Reverses Franchisor Liability Ruling in *Massage Heights Case*

In *Massage Heights Franchising, LLC v. Hagman*, the Texas Supreme Court held that the franchisor, Massage Heights, did not owe a duty of care to a customer of the franchisee-owned location. The customer was sexually assaulted by Mario Rubio, a licensed massage therapist hired by the franchisee, MH Alden Bridge, LLC, despite his criminal background. The customer sued Massage Heights and other parties, asserting claims of negligence and gross negligence.

The jury found all defendants negligent, found a negligent undertaking by Massage Heights, attributed 15 percent responsibility to Massage Heights, and awarded Plaintiff both actual and exemplary damages. The court of appeals reversed the exemplary damages award but otherwise affirmed the trial court’s judgment, concluding that Massage Heights owed a duty of reasonable care to customers at franchise locations as a matter of law due to its general control over franchisee’s operations. The court also found there was sufficient evidence that Massage Heights was negligent in failing to provide a list of disqualifying offenses to its franchisees and allowing MH Alden Bridge to hire Rubio despite his criminal background.

Franchisor Duty of Care Hinges on Specific Control Over the Activity that Caused the Injury

The Supreme Court of Texas reversed. It recounted that the question of whether a franchisor owes a duty to a customer of a franchisee turns on control. The Texas Supreme Court held that the Court of Appeals erred by evaluating the franchisor’s “general right to

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control” instead of assessing the “specific control over” the “alleged... defects that led to [the plaintiff’s] injury,” as required. *Exxon Corp. v Tidwell*, 867 S.W.2d 19, 23 (Tex. 1993). The analysis and control “must relate to the activity that actually caused the injury.” *Coastal Marine Servs. Of Tex., Inc. v. Lawrence*, 988 S.W.2d 223, 226 (Tex. 1999). The Court then analyzed whether Massage Heights had control over the injury-causing conduct, which it found to be the hiring of Rubio.

The Supreme Court evaluated both the franchisor’s contractual right to control and actual control from the record and found that Massage Heights did not control Rubio’s hiring and thus owed no duty to Plaintiff. The Court found (1) Massage Heights did not have a contractual right to control MH Alden Bridge’s hiring of Rubio as the Franchise Agreement made MH Alden Bridge “solely responsible for all employment decisions,” and (2) the jury failed to find MH Alden Bridge was subject to Massage Height’s actual control by conduct, and Plaintiff had not proven as a matter of law that Massage Heights actually controlled Rubio’s hiring or that its safety instructions unreasonably increased Plaintiff’s risk of injury. Therefore, there was no proof of control over the specific injury-causing conduct.

Franchise Agreements Play Critical Role in Determining Legal Responsibility

The Court focused much of its reasoning on the language of the parties’ franchise agreement. The Franchise Agreement between Massage Heights and MH Alden Bridge provided that MH Alden Bridge was an independent contractor with sole responsibility for all employment decisions, subject to two conditions: all massage therapists had to (1) be licensed by the State (of Texas), without any suspensions or licensing offenses reported and (2) undergo an oral interview, a practical interview and a background check by MH Alden Bridge’s selected third-party provider. The franchise agreement also stated that MH Alden Bridge had sole responsibility for customer safety and security on its premises as well as compliance with Texas laws regarding hiring, training and supervising therapists. It was not sufficient that Massage Heights provided guidance and advice about certain “standards, specifications, processes, procedures, requirements or instructions,” particularly through the Operations Manual.

The Court found that aside from Rubio’s own criminal intent, the only plausible proximate cause of the assault was MH Alden Bridge’s decision to hire Rubio, which Massage Heights did not control. Therefore, Plaintiff’s alternative argument that Massage Heights had a duty to refrain from entering into a franchise agreement with MH Alden Bridge also failed. Lastly, the Court found there was legally insufficient evidence to support a finding of negligent undertaking—when a defendant undertakes to render services it knows are for another’s protection—as the franchise agreement contractually assigned all safety responsibilities to MH Alden Bridge, and Massage Heights had no duty to “investigate the operations” of MH Alden Bridge and its owners.

How Polsinelli Can Help

Polsinelli attorneys defend franchisors from claims by employees, customers and third parties arising out of alleged franchisee and franchisee employee actions, including direct liability claims. Our team is equipped to help franchisors defend such claims and other similar claims regarding joint employment and vicarious liability. We are also available to assist with understanding and preparing franchise agreements, reviewing operations manuals and training guidelines and providing compliance training to franchisors on how to best navigate their franchisee relationships. If you have any questions or need assistance, please reach out to Len MacPhee, Josh Goldberg, or a member of our Franchise team.

