

DAILY RECORD

VOLUME 208 • NUMBER 158

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Law Firms Not Liable For Acts Of Process Servers, CSA Says

Appellate Court Throws Out Vicarious Liability Lawsuit Against Rockville Law Firm of Van Grack, Axelson & Williamowsky

BY JEF FEELEY

Daily Record Legal Affairs Editor

Law firms are not responsible for torts committed by process servers hired as independent contractors to deliver court papers, the Maryland Court of Special Appeals said yesterday.

The state's intermediate appellate court upheld a Montgomery County Circuit Court judge's decision to throw out an intentional infliction of emotional distress lawsuit against the Rockville law firm of Van Grack, Axelson & Williamowsky over the actions of one of its process servers.

The process server allegedly lied about delivering notices of a lawsuit to two women who near-

ly had a default judgment entered against them. The women sued the server along with the law firm for the emotional distress caused by the incident.

But in its 13-page opinion in *Carol Kersten, et al. v. Van Grack, Axelson & Williamowsky*, No. 1524, Sept. Term 1991, a CSA three-judge panel found the law firm could not be held vicariously liable for the acts of the server, who was not a full-time employee of the firm.

"The circuit court ruled that Van Grack, Axelson & Williamowsky neither possessed nor exercised that degree of control over the private process server which would give rise to vicarious liability," Associate Judge Glenn T. Harrell wrote. "We find

no error and affirm.

"... [T]he only conclusion that may be drawn from the record is that [the process server] was an independent contractor in his relationship with [the law firm]," Harrell added.

Firm vindicated

Jeffrey Axelson, a name partner in the Rockville law firm, said he felt vindicated in the fact that the CSA decided the lawsuit against his firm had no merit.

"We believe the papers were properly served, but felt we were not responsible even if they weren't," Axelson said. "We contended all along that this person was not an employee, but was

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■ A D V E R T I S I N G

Maryland CSA Upholds Dismissal of Lawsuit Against Rockville Law Firm

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an independent contractor."

Towson attorney Harvey Greenberg, who represented Carol and Peggy Kersten in their action against the Rockville law firm, said it was unclear whether he would ask the Maryland Court of Appeals to review the decision.

"I have to review it because we thought we had some good law. I have to talk to my clients," said Greenberg, a sole practitioner. "It's new law. It's never been decided in Maryland."

Law firm consultants and managing partners in Baltimore said the *Kersten* decision will offer some comfort to law firm officials around the state worried about increased exposure to tort liability. James R. Lyler, Miles & Stockbridge's managing partner, said most large and small law firms hire outside firms to handle service of process duties for both economic and liability reasons.

"One motivation to use independent contractors is to avoid liability, but eco-

nomics would be the greatest factor in my mind," Lyler said. "It just doesn't make economic sense to have someone on staff to do it. The work is just too sporadic."

Baltimore law firm consultant Karen Williamson added that most law firms are able to cut deals with process servers to deliver papers more cheaply than they could with a full-time employee.

In the *Kersten* case, the Van Grack law firm hired Richard A. James to serve defendants copies of a lawsuit filed against them on behalf of the Private Mortgage Investors Trade Association. James submitted purported affidavits of service to the law firm stating that he had

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personally served the defendants.

When the defendants failed to respond to the lawsuit, the Montgomery County Circuit Court entered a notice of default against them and notified them of the action pending against them.

At that point, the Kerstens moved to vacate the default order against them and then turned around and sued James and the Van Grack law firm for inflicting emotional distress on them by not serving them with notice of the lawsuit.

Montgomery County Circuit Court Judge William M. Cave dismissed the suit against the law firm, saying there was no basis for the vicarious liability action.

In agreeing with Cave, the CSA's Harrell noted that James had never been an employee of the law firm or on contract to it, he was paid per case, had his own offices and offered his services to the general public.

Not enough control

Because the facts of the case "did not demonstrate the degree of control required to establish an employee/employer relationship," Cave properly dismissed the vicarious liability count in the suit, Harrell said.

And Harrell dismissed the Kerstens' arguments that service of process is "non-delegable duty" for which attorneys must be held responsible.

That argument "supports the absurd notion that a law firm may be vicariously liable for the acts of a sheriff as well as a private process server," the judge wrote. "We cannot accept this notion."

Asbestos

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from their own workers and their employees.

"Think about what it means to not be that something you come into contact with every single day is dangerous enough to kill you. My people just want-

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