The Espinal Doctrine

The Espinal doctrine is a useful tool for defendants to limit their liability to third parties. Here, Kevin Faley and Andrea Alonso discuss cases that demonstrate the Espinal exceptions and how the courts interpret this doctrine.

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Generally, a contractual obligation, standing alone, will not give rise to tort liability in favor of a third party. *Eaves Brooks Costume Co. v. Y.B.H. Realty Corp.*, 76 N.Y.2d 220 (1990). In 1928, Chief Judge Benjamin Cardozo warned that imposing third-party liability under such circumstances could lead the contracting parties to be liable to "an indefinite number of potential beneficiaries."

Since 1928 several exceptions have arisen to this general rule. The Court of Appeals, in *Espinal v. Melville Snow Constrs.*, 98 N.Y.2d 136 (2002), compiled these exceptions to create what is now known as the "Espinal Doctrine."

Relying on precedent in *H. R. Moch Co. v. Rensselaer Water Co.,* 247 N.Y. 160 (1928), *Eaves Brooks supra.* and *Palka v. Servicemaster Management Services*, 83 N.Y.2d 579 (1994), the court in *Espinal* identified three situations in which a party who enters into a contract to render services may have assumed a duty of care and thus potentially would be liable in tort to third persons.

The first situation in *Moch* holds that a duty of care may be assumed "where the contracting party, in failing to exercise reasonable care in the performance of his duties 'launches a force or instrument of harm.'"

The second situation where a duty may arise is enunciated in *Eaves Brooks*. That duty arises "where the plaintiff detrimentally relies on the continued performance of the contracting party's duties." A duty to a third person may also arise "where the contracting party has entirely displaced the other party's duty to maintain the premises safely" as explained in *Palka*. These three exceptions are the basis of the "Espinal Doctrine."

Where the contracting party, in failing to exercise reasonable care in the performance of his duties, "launches a force or instrument of harm." The *Matter of Schoharie Limousine Crash of Oct. 6, 2018,* 71 Misc.3d 934 (2021) involves a tragic accident in which the court applied the first Espinal exception.

On Oct. 6, 2018, a stretch limousine for hire, an altered 2001 Ford Excursion, crashed at the bottom of a hill in Schoharie County. This accident resulted in the death of all 17 passengers including four sisters and two newly married

couples, the limo driver, and two pedestrians that were in a nearby parking lot, for a total of 20 fatalities.

The estates of the deceased sued both the owners of the limo company and Mavis Discount Tire, Inc., who was hired by the owners to work on and inspect the limo. The plaintiffs claimed that "Mavis performed their services with negligence and gross negligence, and willfully in collusion with the Hussain defendants to allow them to continue operating the Excursion for hire in their limousine business, despite its safety defects and unauthorized inspection."

Two specific instances of gross negligence were cited. The first was that Mavis observed multiple problems with the brake system, but instead of fixing the problems they further exacerbated the damage by causing the rear brake line to bend and collapse near the rear right wheel.

The second involved Mavis putting a DMV inspection sticker on the limo, even though they were not authorized to do so since the limo was a passenger vehicle for hire with a carrying capacity of 15 or more people, requiring a more rigorous NYS DOT inspection that was not performed.

Mavis moved for summary judgment claiming that under the Espinal Doctrine its contract for repair and inspection of the limo gave rise to no legal duty to the plaintiffs. The court denied summary judgment holding that the plaintiffs presented sufficient facts demonstrating that "Mavis's actions of negligence and gross negligence in the course of repairing the Excursion's [limo's] brake system directly created or exacerbated the defective and dangerous condition."

Secondly, "plaintiffs plausibly allege that Mavis launched an instrument of harm by acting with gross negligence in placing an unauthorized DMV inspection sticker on the excursion in May 2018, when Mavis knew or should have known both that the brake system was unsafe and the 18-passenger vehicle for hire required a more rigorous NYS DOT safety inspection."

The court determined that the plaintiffs "suffice[d] to state a claim that Mavis is liable in tort for launching an instrument of harm which caused or contributed to the fatal October 6, 2018 crash."

In *Church v. Callanan Indus.* 99 N.Y.2d 104 (2002) the court ruled that the contracting defendant did not have a legal duty to the plaintiff under the Espinal Doctrine. On Dec. 26, 1992, nine-year-old Ned Church suffered catastrophic spinal injuries when the driver of the vehicle, in which he was a back seat passenger, fell asleep at the wheel. The vehicle veered off the New York State Thruway near mile marker 132.7.

The Thruway Authority had contracted with Callanan Industries Inc. to remove some of the 275 feet existing guiderail near mile marker 132.7 and replace it with a longer (312.5 feet) guiderail. Callanan hired a subcontractor, San Juan Construction and Sales Company, to install the new guiderail.

A suit was commenced by the plaintiff against both Callanan and San Juan alleging that San Juan was negligent in that they only installed 212 of the 312.5 feet guiderail and that the missing portion was where the vehicle had gone out of control and left the highway. The plaintiff argued that the non-completion of the guiderail led to the devastating injuries suffered by the nine-year-old.

Both Callanan and San Juan moved for summary judging arguing "as purely contracting parties with respect to installation of the guide railing, they owed no duty to the plaintiffs." The court granted the defendant's motion determining that they had not launched a force or instrument of harm.

The court cited precedent in *Moch supra.,* saying that the breach of contract consists "merely in withholding a benefit… where inaction is at most a refusal to become an instrument for good." The court elaborated that the failure to install the additional guiderail did nothing more than neglect to make the Thruway safer as opposed to affirmatively making the Thruway more dangerous.

Where the plaintiff detrimentally relies on the continued performance of the contracting party's duties. *Kerwin v. Fusco* 138 A.D.2d 1398 (4th Dept. 2016), relied upon the second Espinal exception to determine that a contracting party did have a duty to a third party.

In *Kerwin*, the plaintiff sustained injuries when he fell through a stairway in the house where he resided as a student/ tenant in Delhi, New York. The plaintiff sued both the owner of the house as well as BH Decker Inc., the property manager. Decker was responsible for any repairs/ inspections on the property.

A week before the accident the plaintiff noticed a loose stair tread in the stairway. The plaintiff called Decker who came to the property to repair the tread. While at the house Decker noticed that there was structural framing under the staircase missing but did nothing to remedy the problem. A week later the plaintiff fell through the staircase.

Decker moved for summary judgment arguing that their contractual agreement with the owner of the property did not give rise to tort liability in favor of a third party (the plaintiff). The court rejected this argument. The court determined that there were sufficient facts for the plaintiff to argue that he did detrimentally rely on Decker's inspection and performance of repairs to the stairway in accordance with Decker's duties under the agreement with the owner.

Where the contracting party has entirely displaced the other party's duty to maintain the premises safely. The decision in *Sampaiolopes v. Lopes* 172 A.D.3d 1128 (2d Dept. 2019) illustrates the final of the three Espinal exceptions.

On the evening of Jan. 3, 2010, the plaintiff slipped and fell on ice on the exterior front steps of a two-family house in Nassau County. The plaintiff rented the ground floor of the home, and the plaintiff's mother (the defendant) leased the upper part of the home from the property manager. The defendant had an oral agreement with the property owner making her responsible for the entire premises and removing all snow and ice from the property, including the front steps.

The defendant moved for summary judgment alleging that she did not owe a duty of care to the plaintiff, since the plaintiff was not a party to the oral agreement between the defendant and the property owner.

The court denied the defendant's motion finding that the plaintiff raised a triable issue of fact as to whether the defendant's oral agreement with the property owner regarding maintenance was comprehensive and exclusive so as to entirely displace the property owner's duty to maintain, the exterior front steps and the gutter.

Burden of Proof

"Where the pleadings do not allege facts which would establish the applicability of any of the Espinal exceptions, a defendant is not required to affirmatively demonstrate that the exceptions do not apply in order to establish its prima facie entitlement to judgment as a matter of law." *Arnone v. Morton's of Chicago/ Great Neck*, LLC, 183 A.D.3d 862 (2nd Dept. 2020).

It is the plaintiff's burden of proof to demonstrate that one or more of the Espinal exceptions apply, not the defendant's responsibility to disprove. This is a pleading requirement in Espinal cases and a plaintiff's failure to include Espinal exceptions in the summons and complaint could result in the burden of proof shifting to the plaintiff in a motion for summary judgment.

Conclusion

The Espinal doctrine is a useful tool for defendants to limit their liability to third parties. The above cases demonstrate the Espinal exceptions and how the courts interpret this doctrine.

It should also be noted that while the defendant may be successful in invoking the Espinal rule and dismissing a suit by a plaintiff that was not a party to the contract, this defendant may still be liable to the party it contracted with. For instance, while a snow removal company might not be liable to a pedestrian who slips and falls in a parking lot, the snow removal company may be liable to the owner of the parking lot for negligent snow removal if it violated its snow removal duties contained in the contract.

The Espinal rule is extremely helpful to defendants and motions for summary judgment should be considered in any type of negligence claim by a party with whom the defendant is not in privity.

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