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Torts: Res Ipsa Loquitur in Exploding-Bottle Cases

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TORTS: RES IPSA LOQUITUR IN EXPLODING-BOTTLE CASES

Starke Coca-Cola Bottling Co. v. Carrington, 32 So.2d 584 (Fla. 1947)

Defendant manufactured and bottled Coca-Colas, using the medium of automatic vending machines for sale to the public. These machines were serviced exclusively by the defendant's employees. Upon coin insertion this type of machine is activated, positioning a bottle for removal. Plaintiff lifted a still-capped bottle from one of these machines with her right hand and, while proceeding to transfer the bottle to her left hand, preparatory to opening it, the bottle exploded and caused serious injury to her hand. The plaintiff recovered damages in the circuit court, the doctrine of res ipsa loquitur being applied. Defendant appealed on the ground that the doctrine of res ipsa loquitur was not applicable, since the bottle, at the time of the explosion, was no longer in the defendant's exclusive control. HELD, the doctrine of res ipsa loquitur may be applied even though possession of the instrumentality has passed to the plaintiff. Judgment affirmed.

Practically all jurisdictions recognize the doctrine of res ipsa loquitur.[1] Courts usually require three basic elements:[2] exclusive control and management by the defendant of the instrumentality causing the injury; an accident that ordinarily would not occur in the absence of negligence; and no contributory negligence. These three elements are also required in Florida.[3] This doctrine is regarded not as a rule of substantive law, however, but rather as a rule of procedure;[4] and accordingly the absence

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[1]Sweeney v. Erving, 228 U. S. 233, 33 Sup. Ct. 416, 57 L. Ed. 815 (1913); Auzenne v. Gulf Public Service Co., 181 So. 54 (La. App. 1938); Rogers v. Coca-Cola Bottling Co., 156 S. W.2d 325 (Tex. Civ. App. 1941).

[2]Sweeney v. Erving, 228 U. S. 233, 33 Sup. Ct. 416, 57 L. Ed. 815 (1913); Pickwick Stages Corp. v. Messinger, 44 Ariz. 174, 36 P.2d 168 (1934); Watson v. Pullman Co., 238 Ky. 491, 38 S. W.2d 430 (1931); Peters v. Lynchburg Light Co., 108 Va. 333, 61 S. E. 745 (1908).

[3]American Dist. Electric Protective Co. v. Seaboard Air Line Ry., 129 Fla. 518, 177 So. 294 (1937).

[4]Reichenbach v. New Alamac Hotel Corp., 141 Fla. 797, 194 So. 250 (1940); Claxton Coca-Cola Bottling Co. v. Coleman, 68 Ga. App. 302, 22 S. E.2d 768 (1942); Kleinman v. Banner Laundry Co., 150 Minn. 515, 186 N. W. 123 (1921).

of exclusive control by the defendant is not fatal in certain of the decisions based on this doctrine. The principal case is one such exception.

Once the doctrine is found applicable, it operates in one of two generally recognized ways. Under the one it establishes a prima facie presumption, upon which a verdict may be directed if the defendant fails to produce rebutting evidence.[5] Under the other no presumption arises; instead the doctrine creates a strengthening inference which must be evaluated along with other evidence by the jury.[6] This jurisdiction adheres to the latter.[7]

The principal case gains its significance from the fact that the affirmation of recovery by the Florida Supreme Court evidences approval of the steady trend[8] extending the doctrine of res ipsa loquitur to exploding-bottle cases even when the defendant no longer maintains control of the instrumentality. The extension has been previously considered in Florida, and dicta in an earlier opinion indicated that such a decision as that of the principal case might be reached.[9]

To offset this relaxation, there has been placed upon the proponent the burden of showing affirmatively that the bottle was neither subjected to any extremes in temperature nor otherwise improperly handled from the time of the bottler's loss of possession until the explosion.[10]

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[5]Ireland v. Mardsen, 108 Cal. App. 632, 291 Pac. 912 (1930); Lanza v. De Ridder Coca-Cola Bottling Co., 3 So.2d 217 (La. App. 1941).

[6]Sweeney v. Erving, 228 U. S. 233, 33 Sup. Ct. 416, 57 L. Ed. 815 (1913); Markowitz v. Liebert, 23 N. J. Misc. 281, 43 A.2d 794 (1945); Davis v. Coca-Cola Bottling Co. of Asheville, 228 N. C. 32, 44 S. E.2d 337 (1947).

[7]American Dist. Electric Co. v. Seaboard Air Line Ry., 129 Fla. 518, 177 So. 294 (1937); Skinner v. Ochiltree, 148 Fla. 705, 5 So.2d 605 (1941); Coaster Amusement Co. v. Smith, 141 Fla. 845, 194 So. 336 (1940).

[8]Cole v. Pepsi-Cola Bottling Co., 65 Ga. App. 204, 15 S. E.2d 543 (1941); Meyers v. Alexandria Coca-Cola Bottling Co., 8 So.2d 737 (La. App. 1942); Sweeney v. Blue Anchor Beverage Co., 325 Pa. 216, 189 Atl. 331 (1937); Coca-Cola Bottling Co. v. Rowland, 16 Tenn. App. 184, 66 S. W.2d 272 (1932).

[9]*See* Hughs v. Miami Coca-Cola Bottling Co., 155 Fla. 299, 303, 19 So.2d 862, 864 (1944).

[10]Payne v. Rome Coca-Cola Bottling Co., 10 Ga. App. 762, 73 S. E. 1087 (1912); Bradley v. Conway Springs Bottling Co., 154 Kan. 282, 118 P.2d 601 (1941); Benkendorfer v. Garrett, 143 S. W.2d 1020 (Tex. Civ. App. 1940).

Courts following the trend still retain individual idiosyncrasies[11] but logically allow the non-possessory extension; to hold otherwise would permit the existence of irremediable wrong. Although a minority[12] refuse to apply the doctrine to exploding-bottle cases, with each new application of res ipsa loquitur[13] the growing majority of American courts move ever nearer to the imposition of absolute liability upon the bottler.[14]

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[11]Davis v. Coca-Cola Bottling Co. of Asheville, 228 N. C. 32, 44 S. E.2d 337 (1947)
[12]Wheeler v. Laurel Bottling Works, 111 Miss. 442, 71 So. 743 (1916).
[13]Escola v. Coca-Cola Bottling Co. of Fresno, 24 Cal.2d 453, 150 P.2d 436 (1944).
[14]*See* Mr. Justice Traynor, concurring in Escola v. Coca-Cola Bottling Co. of Fresno, 24 Cal.2d 453, 150 P.2d 436, 440 (1944).