

## **No Good Deed Goes Unpunished\***

by

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An injured employee of a contractor can proceed to trial against a monk and an abbey when they, in trying to help the employee do his job, may have caused his injuries. The case is *Griffith v. Dominic and Assumption Abbey*, Case No. 28617, decided April 8 by the Missouri Court of Appeals, Southern District.

This case demonstrates the legal problems that can ensue when good-intentioned owners provide unsolicited assistance to a contractor during construction. Often the most legally safe action an owner can take is to stay out of the way.

Assumption Abbey in Ava, Missouri hired Friga Construction Company to renovate the roofs and to remodel the "chapter room" of the Abbey. Alvin Griffith worked as a laborer for Friga.

While working in the chapter room, Griffith began prying with a small block of wood a stack of drywall that was leaning against a wall. The sheets of drywall were about four feet wide, twelve feet long and 5/8 inches thick.

Griffith was moving the drywall to make room to fit a piece of plywood behind the drywall and next to the wall. At some point, Brother Dominic, a monk who resided at the Abbey, joined Griffith in moving the drywall. According to the court opinion, Brother Dominic and the other monks at the Abbey were not supposed to work on the construction site. Griffith had not asked for help.

Brother Dominic had no special training or experience in construction in general or in moving drywall in particular. After moving several sheets, Brother Dominic and/or Griffith lost control of the drywall; the entire stack of drywall fell on Griffith, injuring his legs.

Griffith sued Brother Dominic and the Abbey in negligence for the injuries. Griffith claimed that Brother Dominic caused the accident and that the Abbey, under the theory of respondeat superior, was responsible for Brother Dominic's actions.

Griffith also pursued a separate claim against Friga with the Division of Workers' Compensation. This resulted in the payment to Griffith of workers' compensation benefits for his injuries, including payment of his medical bills, temporary total disability payments and a lump sum settlement.

Brother Dominic and the Abbey moved the trial court for an order of summary judgment, which requires the court to conclude there are no important facts in dispute and the law is clearly in favor of the defendants.

Their theory was that under the doctrine of premises liability they had relinquished control of the Abbey to Friga, who as an independent contractor, assumed control of the area during construction. If true, this shifted the duty inherent in any owner to use ordinary care for safeguarding its premises from the Abbey to Friga.

To establish a claim for premises liability under Missouri law, Griffith had to show that there was a dangerous condition that existed on the premises that created an unreasonable risk, that the Abbey knew or by using ordinary care should have known of the condition, that the Abbey failed to use ordinary care in removing or warning of the danger, and that as a result of all of this, Griffith was injured.

The trial court applied this theory of premises liability to the motion for summary judgment. The court found the facts to be similar to the earlier case of *Logan v. Sho-Me Power Electric Coop.*, 122 S.W.3d 670 (Mo. App. 2003).

In this case, an employee of an independent contractor construction company was fatally electrocuted while installing fiber optic cable for the electric company. The *Logan* court concluded that the electric company had not retained substantial control over the construction site and thus the duty of care remained with the contractor.

More recently, the Missouri Court of Appeals for the Eastern District considered a similar issue in *Daoukas v. City of St. Louis*, 228 S.W.3d 30 (Mo. App. E.D. 2007). In this case, an employee of an independent contractor electric company was seriously injured while performing electrical work at an airport under a contract with the City of St. Louis.

Apparently, an airport electrician was in charge of de-energizing the source of power while the employee for the independent contractor worked in the area. The airport electrician dismantled the safety mechanism and left it on the floor. An explosion occurred when the

employee began working on the feeder because it was still energized, thereby injuring the employee.

The *Daoukas* court held that the airport electrician, by the nature of what he was doing, had control of the work area. The injured worker could maintain a claim against the owner.

Returning to our case, the appellate court in *Griffith* decided the facts were more like the ones in *Daoukas* than the facts in *Logan*. Thus, the trial court erred by granting the motion for summary judgment.

The appellate court concluded that Brother Dominic's actions put the drywall in motion and this may be what caused or contributed to cause Griffith's injuries. Thus, Griffith can proceed to trial on a general theory of negligence. A jury will be deciding what percentage, if any, of the fault for this accident rests with Brother Dominic and the Abbey.

\*Clare Booth Luce, in *H. Faber, The Book of Laws, 1980*

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