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1999 Survey of Rhode Island Law: Cases: Civil Rights

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Civil Rights. *Liu v. Striuli*, 36 F. Supp.2d 452 (D.R.I. 1999). The Rhode Island Civil Rights Act does not impose vicarious liability on an employer for the negligent acts of its employees. Under Rhode Island law, the Rhode Island Civil Rights Act is violated only by intentional discrimination.

In *Liu v. Striuli*,¹ the United States District Court for the District of Rhode Island interpreted and applied Rhode Island law with regards to the Rhode Island Privacy Act, the Rhode Island Civil Rights Act, and tort negligence. With respect to the Rhode Island Civil Rights Act (the Act), the court predicted how the Rhode Island Supreme Court would answer a question of first impression regarding the imposition of vicarious liability on the employer under the Act.

FACTS AND TRAVEL

Mary Liu (Liu), a graduate student at Providence College (College), needed assistance with getting her immigration papers in order so that she would be allowed to stay in the United States and at the school.² On October 3, 1994, she met with Giacomo Striuli (Striuli), the "Designated School Official" for foreign graduate students.³ According to Liu, after her first meeting with Striuli, Striuli raped her more than one hundred times over a period of approximately eight months.⁴ She also claims that Striuli used her need for immigration papers and her fear of being deported as leverage in order to maintain his "relationship" with her.⁵ Striuli presented evidence suggesting the couple had a consensual relationship.⁶

It appears from the record that officials of the College may have known about the relationship.⁷ However, what they knew is unclear.⁸ Under the College's sexual harassment policy, relationships between students and faculty are discouraged, but not forbid-

1. 36 F. Supp.2d 452 (D.R.I. 1999).

2. *See id.* at 458.

3. *See id.* at 459.

4. *See id.* at 460.

5. *See id.*

6. *See id.* at 459-60.

7. *See id.* at 460-61.

8. *See id.*

den.⁹ After obtaining a restraining order against Striuli in August of 1995, Liu met with the Vice President for Academic Affairs and the College's Sexual Harassment Officer.¹⁰ After an investigation, the College determined that the relationship was consensual and "that a letter of reprimand for failing 'to exercise appropriate professional judgment by entering into a romantic relationship with a student' was a fitting sanction for Striuli."¹¹ Liu then filed lawsuits against both Striuli and Providence College.¹²

Liu's complaint consisted of eight counts.¹³ Count I alleged that Striuli and Providence College had violated Title IX of the Education Amendments of 1972.¹⁴ Count II alleged that Striuli had violated provisions of the Violence Against Women Act.¹⁵ Count III alleged that both Striuli and Providence College had violated Rhode Island's Civil Rights Act.¹⁶ Count IV alleged that Striuli had violated Rhode Island's Privacy Act.¹⁷ Count V alleged that Striuli had assaulted and battered Liu, in violation of state common law.¹⁸ Count VI alleged that Striuli had violated state common law by intentionally inflicting emotional distress on Liu.¹⁹ Count VII alleged that Striuli and the College had negligently inflicted emotional distress, in violation of state common law.²⁰ Count VIII alleged that Providence College had violated state common law by the negligent hiring and supervision of Striuli.²¹

9. *See id.* at 461-62.

10. *See id.* at 461.

11. *Id.* at 462 (referring to Fr. McGonigle's decision regarding Liu's sexual harassment complaint).

12. *See id.*

13. *See id.* at 462-63.

14. *See id.* at 462. *See also* 20 U.S.C.A. § 1681 (a) (providing that "[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance").

15. *See id.* *See also* 42 U.S.C.A. § 13981 (b) (stating that "[a]ll persons . . . shall have the right to be free from crimes of violence motivated by gender").

16. *See id.* *See also* R.I. Gen. Laws § 42-112-1 (1956) (1998 Reenactment & Supp. 1999) (prohibiting discrimination on the basis of: "race, color, religion, sex, disability, age, or country of ancestral origin").

17. *See id.* *See also* R.I. Gen. Laws § 9-1-28.1 (1956) (1997 Reenactment) (creating an individual's right "to be secure from unreasonable intrusion upon one's physical solitude or seclusion").

18. *See id.*

19. *See id.* at 462-63.

20. *See id.* at 463.

21. *See id.*

The College motioned for summary judgment on Counts I, III, VII and VIII.²² Striuli motioned for summary judgment on all Counts, or in the alternative, on Counts I, II, III, IV and VII.²³ Due to the nature of Counts I and II as federal claims, only the remaining counts will be analyzed with respect to how Rhode Island law was applied by the district court.

ANALYSIS AND HOLDING

The United States District Court for the District of Rhode Island stated that in ruling on a motion for summary judgment all facts must be viewed "in the light most favorable to the nonmoving party."²⁴ Therefore, although Liu and Striuli disagreed with regards to the nature of their relationship, in making its decision on the motions for summary judgment, the court was obligated to assume all facts as portrayed by Liu.²⁵

Motion for Summary Judgment by Providence College

Count III: Rhode Island Civil Rights Act

Liu alleged that Providence College was vicariously liable for Striuli's alleged harassment of her under the Rhode Island Civil Rights Act of 1990.²⁶ Due to the fact that there was little Rhode Island case law addressing the Act, the court looked to state and federal authorities to assist in predicting how the Rhode Island Supreme Court would answer the question.²⁷ After analyzing the legislative intent behind the Act, the court determined that the Rhode Island Supreme Court would likely decide that the Act may only be violated by an intentional act, not one that is merely negligent.²⁸

The court then addressed the general rule in Rhode Island that employers are not liable for the intentional acts of their employees.²⁹ A recognized exception to this rule is that an employer

22. *See id.*

23. *See id.*

24. *Id.* (citing *Continental Cas. Co. v. Canadian Universal Ins. Co.*, 924 F.2d 370, 373 (1st Cir. 1991)).

25. *See id.*

26. *See id.* at 469.

27. *See Lui*, 36 F. Supp.2d at 469.

28. *See id.*

29. *See id.* at 469-70.

may be liable for an intentional tort committed by the employee during the performance of job-related duties with the express or implied authority of the employer.³⁰ In addition, employers may be liable for negligent hiring, training, or supervision.³¹ Concluding that the facts of the present case did not fall within either exception, the court held that the College could not be found vicariously liable for Striuli's conduct under the Rhode Island Civil Rights Act of 1990.³² Therefore, summary judgment on Count III against the College was granted.³³

Counts VII and VIII: Negligence claims

In order to respond to the counts for negligent infliction of emotional distress and negligent hiring and supervision, the court first addressed the requirements necessary to support a claim for negligence.³⁴ The court stated that "the plaintiff must demonstrate that the defendant owed the plaintiff a legal duty, that the defendant breached that duty, that the breach factually and legally caused the plaintiff harm, and that the plaintiff suffered a demonstrable loss therefrom."³⁵ The Rhode Island Supreme Court, in *Welsh Manufacturing v. Pinkerton's, Inc.*,³⁶ stated that the duty that an employer owes a third party "is premised on its failure to exercise reasonable care in selecting a person who the employer knew or should have known was unfit or incompetent for the employment, thereby exposing third parties to an unreasonable risk of harm."³⁷ Therefore, the College clearly owed its students a duty to not employ any individual that posed a reasonably foreseeable risk to its students.³⁸

Furthermore, the holding of *Welsh* also suggests that an employer may be found negligent for employee supervision only "by failing to prepare and supervise the employee for the very task to

30. *See id.* at 470.

31. *See id.*

32. *See id.*

33. *See id.*

34. *See id.* at 466.

35. *Id.* (citing *Splendorio v. Bilray Demolition Co.*, 682 A.2d 461, 466 (R.I. 1996)).

36. 474 A.2d 436 (R.I. 1984).

37. *Liu*, 36 F. Supp.2d at 467 (quoting *Welsh*, 474 A.2d at 440).

38. *See id.*

which it assigned him.³⁹ According to the court, Liu failed to introduce sufficient evidence that would allow a reasonable jury to conclude that the College breached its duty.⁴⁰ Similarly, her claim against the College for negligent infliction of emotional distress also failed because she did not introduce sufficient evidence of negligence by the College.⁴¹ Liu failed to meet the standard required for summary judgment on each of her negligence claims against the College.⁴² Summary judgment, therefore, was granted in favor of Providence College on Counts VII and VIII.⁴³

Motion for Summary Judgment by Striuli

Res Judicata Defense for All Counts

Striuli argued that Liu's claims were barred because Liu did not include them in her action for a temporary restraining order brought in August of 1995.⁴⁴ His argument is based on the doctrine of res judicata, which would not permit her to bring claims later that she could have brought in an earlier suit.⁴⁵ Striuli's defense of res judicata failed.⁴⁶ Bringing an action to acquire a temporary restraining order is intended to be an expedient process.⁴⁷ Therefore, it is neither anticipated nor necessary that all claims be brought at that time.⁴⁸

Count III: Rhode Island Civil Rights Act

Striuli argued that he could not be held liable for violation of the Rhode Island Civil Rights Act because it was not intended to allow an action against someone who is a party to a contract.⁴⁹ Looking at the language of the statute, however, the court determined that the Act was intended to be interpreted broadly.⁵⁰ Addi-

39. *Id.* at 468 (citing *Welsh*, 474 A.2d at 443).

40. *See id.* at 467-68.

41. *See id.* at 468.

42. *See id.*

43. *See id.*

44. *See id.* at 470.

45. *See id.* at 470-71.

46. *See id.*

47. *See id.*

48. *See id.*

49. *See id.* at 478.

50. *See id.*

tionally, the holding of *Ward v. City of Pawtucket*⁵¹ requires that the court interpret the Act as broadly as possible.⁵² Since Liu introduced some evidence that Striuli interfered with her relationship as a student at the College, a determination would have to be made by the court.⁵³ Therefore, Striuli's motion for summary judgment on Count III was dismissed.⁵⁴

Count IV: Rhode Island Privacy Act

Under Rhode Island law, one has a right to be secure from an "unreasonable intrusion upon [his or her] physical solitude or seclusion."⁵⁵ Under the Privacy Act, one has the right to bring an action at law or in equity for violations of the statute.⁵⁶ In order to satisfy the requirements of the Act, Liu would have to produce sufficient evidence to show that Striuli invaded "something that is entitled to be private or would be expected to be private" and that "[t]he invasion was or is offensive or objectionable to a reasonable man."⁵⁷ Given the facts as portrayed by Liu, her privacy was physically invaded each time she was raped by Striuli.⁵⁸ However, due to Striuli's different account of the facts, this claim remained for a jury.⁵⁹ Therefore, Striuli's motion for summary judgment on Count IV was denied.⁶⁰

Count VII: Negligent Infliction of Emotional Distress

The court found no basis for Liu's claim of negligent infliction of emotional distress against Striuli.⁶¹ The court stated that her entire case was based on the intentional nature of Striuli's acts, not negligence.⁶² Furthermore, the district court noted that the Rhode Island Supreme Court limits claims of negligent infliction of emotional distress to cases of bystander liability.⁶³ As Liu was

51. 639 A.2d 1379 (R.I. 1994).

52. See *Liu*, 36 F. Supp.2d at 478 (citing *Ward*, 639 A.2d at 1381-82).

53. See *id.* at 479.

54. See *id.*

55. *Id.* (quoting R.I. Gen. Laws § 9-1-28.1(a)(1) (1956) (1997 Reenactment)).

56. See *id.*

57. *Id.* (quoting R.I. Gen. Laws § 9-1-28.1(a)(1)).

58. See *id.* at 479.

59. See *id.* at 480.

60. See *id.*

61. See *id.*

62. See *id.*

63. See *id.*

clearly not a bystander who witnessed the alleged negligent act, she cannot prevail on this count.⁶⁴ For both of these reasons, the court granted Striuli's motion for summary judgment as to Count VII.⁶⁵

CONCLUSION

In *Liu v. Striuli*, the United States District Court for the District of Rhode Island interpreted the Rhode Island Civil Rights Act and predicted how the Rhode Island Supreme Court would rule on the imposition of vicarious liability on an employer under the Act. Ultimately, the court concluded that, given the Rhode Island Supreme Court's "reluctance . . . to hold employers vicariously liable absent employer negligence or an act in furtherance of the employer's business,"⁶⁶ it could not interpret the Act to provide a theory for vicarious liability in the present case.

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64. *See id.*

65. *See id.* at 480-81.

66. *Id.* at 470.