

***O'Malley v. Hospitality Staffing Solutions***

California Courts of Appeal, No. G054724, Jan. 31, 2018, J. Eileen C. Moore

Where hotel staff checks on a guest and fails to notice her suffering an aneurism in a dark room, a summary judgment on negligent undertaking theory of liability was held to be improper.

**FACTS/ PROCEDURE**

Priscilla O'Malley arrived at the Capistrano hotel at 4:00 p.m. in March 2014 and went to her room for the evening. Around 9:00 p.m., her husband Michael began calling her to no response. Michael became distressed and called the front desk, asking Kora Mann, a clerk, for help. Mann asked a nearby maintenance worker, Saul Ramos, to go to O'Malley's room to see if Priscilla was there. Ramos said he knocked several times on the door, then opened it, took one step into it and called out to see if anyone was there. He said the room was dark and that he could only see shapes of the furniture. He informed Mann that no one was in the room, and Mann told Michael the same. In fact, Priscilla had suffered a brain aneurism and had been laying on the hotel floor, apparently unnoticed by Ramos. In a resulting negligence and loss of consortium action the trial court granted summary judgment in favor of the defense.

**HOLDING/DISCUSSION**

Reversed and remanded. Under the "negligent undertaking" theory of liability, where a person who generally lacks a duty of care to another nonetheless undertakes to lend aid to that other, liability may result where the person does not act with reasonable care. Though the question of whether a defendant owes a negligent undertaking duty is a legal one, it sometimes depends on the nature and extent of the act undertaken, a question of fact. And, if the record can support competing inferences, or if the facts are not yet sufficiently developed, an ultimate finding on the existence of duty cannot be made prior to a hearing on the merits.

Here, because there were disputed material facts and inferences regarding precisely what Rams may have undertaken to do and because the risk that Priscilla may have been lying incapacitated somewhere in the hotel room may have been reasonably foreseeable, a reasonable trier of fact might decide that some portion of the O'Malleys' injuries were the result of a lack of reasonable care exercised by Ramos.