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A man's lawsuit against Home Depot can proceed after he alleges merchandising contractors at the Schaumburg warehouse store negligently ran into him with a cart loaded with molding supplies as he bent down to shop. AP Photo/Ted Shaffrey

Injured shopper's suit against Home Depot proceeds

BY ANDREW MALONEY
Law Bulletin staff writer

An injured customer can move forward with his lawsuit against The Home Depot after contract workers allegedly pushed a heavy cart into him as he shopped.

U.S. Judge Matthew F. Kennelly denied summary judgment for the home-improvement chain in a case alleging the store was responsible for two contractors pushing a cart full of molding supplies that collided with a customer.

The plaintiff, Henry Hernandez, was shopping at the Home Depot in Schaumburg in September 2014 when he bent over to check a label and was struck by two contractors hired to move about 10,000 pounds of goods in the store's molding aisle.

Kennelly finds store had enough control over contractors to make case for agency

contractors, Hernandez claimed the store was ultimately responsible for his injuries, which the opinion referred to as "significant."

Hernandez alleges the store overloaded the cart, failed to chaperone the transport and did not prevent customers from entering the aisle where work was being done.

The store countered that the workers, Shawn Eckles and Michael Younglove, violated the store's protocol for such transfers by hauling the cart in a way that made navigation excessively difficult — specifically, by having one man push the cart and the other

pull it while walking backwards.

In a 12-page decision Thursday, Kennelly wrote that Hernandez showed enough evidence that a reasonable jury could conclude Home Depot's actions caused the incident, even if indirectly.

"This is not to suggest that Home Depot's arguments to the contrary will necessarily fail. Rather, drawing all reasonable inference [in] Hernandez's favor from the record before the [c]ourt, a reasonable jury could conclude that vicarious liability is appropriate," Kennelly concluded.

Hernandez alleged the store's district manager testified Home

Depot employees are "ultimately responsible for moulding product and processes in the store" and are supposed to help guide carts like the one in this case.

Hernandez argued that Younglove stated it was standard practice at other Home Depot locations for store associates to help guide carts and that many aisles have gates that can close off customer access.

Alternatively, he argued the store had enough control over the workers, contracted through an agency called National Service Solutions, to render them agents of the store.

Home Depot argued the injury would not have occurred were it not for the contractors' negligence. Specifically, if Eckles had been facing forward while in front of the

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Complaint shows Home Depot imposed safety rules on contractors

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cart, he would have seen Hernandez and avoided the collision. It also argued it had insufficient agency over them to make them legal agents of the franchise.

Kennelly first determined Hernandez brought enough evidence at this stage to suggest the store's conduct was a "cause in fact" of the injury, or in other words, there was a reasonable connection between the store's actions and the injury.

"Specifically, he has pointed to admissible testimony from which a reasonable jury could conclude that Home Depot indeed overfilled the cart, causing Eckles and Younglove's error," the judge wrote. "Likewise, a reasonable jury could conclude that Home Depot's omissions in failing to supervise the moulding transfer or close the aisle are also causes in fact of the accident."

Next, he wrote there was enough

evidence to show the incident was relatively foreseeable, or that the store's actions could be a "legal cause" of the injuries.

Hernandez noted that while the contractors moved the cart, it was stacked by Home Depot employees, and it was reasonable to infer Eckles might walk backwards to help move the heavy cart along.

The store cited its guidelines on moving the carts to show the contractors were negligent, but the fact that it had such guidelines at all is "undoubtedly probative of whether such injuries were reasonably foreseeable to Home Depot."

"In sum," Kennelly concluded, "because Hernandez has presented sufficient evidence from which a reasonable jury could conclude Home Depot's actions or omissions were both the cause in fact and the legal cause of his injuries, Home Depot is not entitled to summary judgment on the question of prox-

imate causation."

Finally, the judge ruled Hernandez prevailed on his claim Home Depot exercised sufficient control over the contractors, rendering them legal agents for purposes of vicarious liability. The plaintiff argued such contractors are supposed to abide by store policies and rely on employees for access to the supplies they were moving.

The store countered that the plaintiff didn't cite any part of its contract with the workers, and again, that no actual Home Depot employee was there when the incident occurred.

"Construing the evidence in the light most favorable to Hernandez, the [c]ourt concludes that Home Depot is not entitled to summary judgment on Hernandez's agency theory of liability," Kennelly concluded. "Hernandez has offered evidence that NSS contractors like Eckles and Younglove are subject to significant control by Home De-

pot via its policies and potential supervision."

Hernandez's complaint does not specify particular injuries, but alleges he "has endured and will continue to endure significant pain and suffering, has been injured in his capacity to earn a living, has incurred significant sums for medical care and treatment, and has been otherwise injured."

The case was initially filed in Cook County Circuit Court in September 2016, and it was removed to federal court the following month.

Bartholomew Galvin, of Winters Salzetta O'Brien & Richardson, LLC, represents the plaintiff in the case. He could not be reached.

Noel Basil Haberek Jr., of McVey & Parsky LLC, represents Home Depot in the case. He declined to comment on the ruling this morning.

The case is *Henry Hernandez v. Home Depot Inc.*, No. 16 C 9573.

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