

Look Before You Leap: The case of the missing elevator floor

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Introduction

Injuries that lead to disability and even death have reached peak numbers in the world, including the USA. Occupational incidents part of the most important issues faced in business, especially in the hospitality industry (Song et.al., 2011; Gyekye, 2010). Not only that these accidents cause financial losses for both the company and the implicated employee, but it can also damage the reputation of the implicated businesses. According to the International Labor Organization there are also economic costs involved when the necessary precautions are not taken regarding occupational health and safety. In the United States, hotel workers are almost 40% more likely to be injured on the job. However, up to 98% of these kinds of accidents can be prevented by taking the necessary precautions (Unguren, 2018).

Hotel Overview

The Sandhill Golf Resort & Spa (Sandhill) is one of the most popular spots in the entire Bay Area, attracting numerous celebrities, executives, and well-to-do travelers. The 2,500-room hotel features four gourmet restaurants, two casual diners, a pool bar, and an upscale coffee shop.

Situated on over 75 acres, the property boasts three 18-hole championship golf courses, two swimming pools, ten tennis courts, two squash courts, and a world-renowned health spa. The resort is owned by Regal Real Estate Investment, Inc. (Regal), and operated by Sands Management, Inc. (Sands). The two parties are in their ninth year of a 20-year hotel management contract. The contract clearly states that the employees legally belong to Sands.

It is Sands' legal duty to keep the property in a reasonably safe condition (Copeland v. The Lodge Enterprises, 2000). They do this by conducting regular inspections and scheduling ongoing maintenance. However, some of this maintenance requires special expertise and must be outsourced to third-party independent contractors. Elevators are one such area (Dowden v. Otis Elevator Company, 2001). Hotel management companies operate hotels --- they do not maintain, repair or install elevators. Yet most hotels have numerous elevators which require regular inspection and certification. Elevator maintenance

companies provide hotels with these services. Lift Elevators, Inc. (Lift) is Sandhill's service provider.

While each Sandhill restaurant and diner features its own gleaming stainless-steel kitchen and prep area, every Sandhill food and beverage outlet is supported by the main prep kitchen and storeroom. It is here that inventory is received and stored, requisitions are submitted and issued, and prep work is organized and accomplished. The main prep area comprises two floors – the massive store room and prep kitchen is housed on the first floor and a smaller prep kitchen/pastry area is located one story below in the "basement." Employees use a service elevator to transfer inventory between floors.

Tom Green has been Sandhill's executive chef for the past eight years. His creative, eclectic cuisine has earned numerous awards and many positive reviews from local critics. Together with first sous-chef, they oversee a full-time kitchen staff of nearly 100. Jimmy Santos has worked in Sandhill's storeroom for over six years. He is one of the supervisors in charge of inventory control. Together with 15 others, Jimmy oversees Sandhill's entire inventory, including the transfer of stock both to individual outside outlets and between floors via the service elevator.

Situation Overview

Friday started like any other work day for Jimmy. He began the morning by kissing his wife and three children goodbye. At 39-years-old and in impeccable physical condition, he was proud of his family, and felt grateful that he could provide for them. As he pulled into the employee parking lot, he was again overwhelmed with gratitude and a general sense that life was good washed over him.

After punching in, Jimmy walked toward the coffee machine, "Hi Ken, it's a beautiful morning, isn't it?"

"Indeed, it is, Jimmy!"

Ken and Jimmy were friends from way back. They worked well together and trusted each other implicitly.

"How's that elevator working this morning?" Jimmy asked Ken, "Should be good – Lift worked on it all night,"

Ken had worked the overnight shift and was getting ready to punch out. Jimmy looked at the numerous clip boards hanging on the wall – each full of requisition forms. He began organizing the day – the daily transfer of raw ingredients that would eventually become tortes, stocks, confit, and rouille.

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"OK, Ken – have a great weekend – maybe we can get together on Sunday for a cold one!" "Sounds good Jimmy! Sounds good!"

Jimmy watched Ken disappear through the employee entrance and poured himself another cup of coffee. Now that he was a supervisor, Jimmy usually didn't physically move inventory himself – unless of course someone was out sick or there was an immediate need. The phone rang and Jimmy picked it up,

"Hello, storeroom..."

"Jimmy! Good Morning, It's Suzie downstairs in Pastry, how are you?" "Hi Suzie, what can I do for you?"

"Well Jimmy, I put in the requisition last night for five cases of oranges and normally, I could wait...but they changed the time that they need these cheesecakes...Jimmy, I really need these oranges now, is there any way..."

"Suzie don't worry – I'll bring them down now myself – no problem!" "Thanks Jimmy – I owe you."

"No, you don't Suzie, really it's no problem – see you in a minute."

Jimmy had always liked Suzie and was happy to do her this favor. He walked over and grabbed a standard fork pallet truck, placed the forks under an empty wooden pallet and rolled it toward the oranges. He placed five cases of oranges on the pallet and headed toward the elevator. Each case of oranges weighed about 40 pounds, the pallet weighed about 50 pounds, and the pallet truck weighed approximately 150 pounds making the total weight around 400 pounds. It was easier for Jimmy to pull the loaded pallet, so he approached the elevator with his back facing the door. As he turned around, he watched his finger push the button – summoning the elevator to him.

As the elevator door opened, Jimmy turned around and grabbed the handle of the pallet truck. Pulling the oranges as he walked backwards, his left foot raised in the air, reaching to touch an elevator floor that had vanished. It all happened so fast. Gravity had its way with Jimmy – his left foot falling into the elevator abyss, his hands clenched to the pallet truck handle and all of its cargo – hundreds of pounds crushing his soon-to-be critically injured body.

Suzie heard a scream and then a loud thud. It came from the direction of the elevator. The elevator floor had betrayed Jimmy and descended to the bottom. Suzie ran to the open elevator door to find Jimmy's bloody body lying next to her oranges. She screamed as she picked up the phone to call 911. The ambulance arrived. EMS said Jimmy was still alive. He was taken to the hospital where he was admitted to the ICU in critical condition. In the days that followed Jimmy's accident, many co-workers came to visit and offer their support – both to Jimmy and his family.

Jimmy suffered permanent injuries and will never again be able to work in a storeroom environment. He nearly died. He spent over 40 days in the hospital. He had seven surgeries. A less fit person almost certainly would have succumbed.

Literature Review

Safety has great influence on job satisfaction, it creates an environment and attitude that promotes the injury reduction of employees at the work place, furthermore, it has great impact on the overall happiness, performance and efficiency (Manduku and Munjuri, 2017). Revilla (2016), concluded in their study that the risk of an employee to have an accident in a mid-size business or greater is much higher than in a small business. Furthermore, Schezer et al. (2005) and Buchanan et al. (2010), explain that hotel employees have a higher rate of injury compared to other service industries.

There were 2.9 million nonfatal workplace injuries reported in 2016 at a rate of 2.6 cases per 100 full-time equivalents (Bureau of Labor Statistics, 2016). According to Zaccarelli (1985) and Kysilka et al. (2013), hospitality supervisors are used to high turnover and accidents as "the cost of doing business", however, there have been establishments that do not have these personnel-related problems. Unguren (2018) explain in his study that the majority of accidents that occur in hotels are human induced and large amount of these accidents result in short term and long-term incapacitations. Furthermore, 37% of these accidents are caused by lack of attention, resulting that the human factor should be the main focus when trying to considerably reduce occupational accidents. Cheadle et al. (1994) explains that if a worker does not resume work in 2 years after a work-related accident, their chances thereafter are very low. In the US alone \$10 billion is estimated annual cost for accidents caused by slipping, stumbling, and falling (ILO, 2014).

Occupational accidents are a large financial loss for all parties involved as well as the national economy as it imposes a burden on social security systems as well (Türen & Gökmen, 2014). Due to these accidents, the overall nationwide productivity can be affected (Ceylan, 2011; Laramik & Seker, 2015). Furthermore, work related injuries to not affect the victims not only in a physical way but also in a psychological way, leading to depression, anxiety, and even loss of self-worth, as the existing systems does not deal with the rehabilitation of the workers (Lax, 2008). Negligence represents one of the most common types of lawsuits a business may face (Baum, 2019). It can be defined as a breach of duty, however in order to properly understand negligence it needs to be separated for duty, and therefore negligence is "conduct which involves and unceasingly great risk of causing damage" (Harvard Law Review, page 40, 1915).

According to the study conducted by Akalp et al. (2015), there is a high importance for the cooperation between management and employees when it comes to the monitoring of all safety procedures and regulations. There is a positive correlation between safety perception of management and that of employees, as well as awareness of safety precaution and safety awareness. In other words, Jimmy trusted the repair of the elevator, therefore did not feel the need to double check if it was working properly. Wong and Weiner (1981), present in

their study that employees link positive incidents with internal factors and negative ones with external factors; this aspect being also true in the presented case.

The Legal Aspect

The general rule is that maintenance of an elevator is a non-delegable duty (Gaffney v. EQK Realty Investors, 1994). This means that even though Sands hired an outside contractor to perform the elevator maintenance, they cannot then blame them for the malfunction – they cannot delegate their duty to provide a reasonably safe premises to the elevator company – they can delegate the actual performance of the maintenance (the work) but not any liability associated with the work. However, assuming there is an indemnification/hold harmless clause in the contract between the two, Sands can seek indemnification from Lift for any amount Sands may have to pay (Lift will have to legally reimburse Sands pursuant to the contract). Another general rule is that Worker's Compensation is the exclusive remedy for employees injured while on the job (Heritage v. Van Patten, 1982). In other words, so long as the employer has a Worker's Compensation policy in effect at the time of the injury, the employee cannot sue the employer for negligence. Worker's Compensation policy is defined as an "insurance policy provides coverage for an employer's two key exposures arising out of injuries sustained by employees. Part One of the policy covers the employer's statutory liabilities under workers compensation laws, and Part Two of the policy covers liability arising out of employees' work-related injuries that do not fall under the workers compensation statute" (Iirmi, n.a.).

Worker's Compensation benefits are the only recourse for the injured employee – medical bills, lost wages – no pain and suffering are awarded through Worker's Compensation. An exception would be if the employer committed an intentional tort against the employee which caused the injury (Turner v. PCR, 2000). Clearly, that was not the case with Jimmy. Furthermore, the non-delegable duty contract also needs to be taken into consideration; the contract under this circumstance states that even though a duty is delegated to an outside contractor it is still the responsibility of the obligator, i.e. the employee, to protect their employees, therefore being liable for the safety of the employee at work even though an external entity is hired. Indemnification is the portion of an agreement which holds one party accountable to bear the monetary costs. This can be done by reimbursement or directly (Bhagat et al., 1987). Impleader is an action prior to trial when a party joins a third party into a lawsuit because the third party is liable to an original defendant (Columbia Law Review, 1933).

Discussion and Activities

Jimmy will likely consult an attorney – suppose the attorney decides to sue Regal. They are the owner of the property – quite similar to the role of landlord. The management contract governs the

relationship between Regal and Sands. Jimmy has no Worker's Compensation restriction when it comes to Regal – the contract clearly states Sands is the employer.

- Why did this happen? Was there a malfunction?

The service elevator has a safety feature that prevents movement between floors when the door is open, i.e., the doors must be closed when the elevator is in use. But the doors never closed at the time of Jimmy's accident – the floor simply moved down the elevator shaft. Lift had just been there servicing it because it had not been operating properly.

- Does Regal have liability here? Is Sands liable? What Lift?

The answer is almost certainly no. But this may provide a way for Jimmy to get at Sands and Lift. Regal will answer the complaint by impleading (bringing in a new party) Sands into the lawsuit as a third-party defendant. Regal will act as a third-party plaintiff thereby suing Sands, i.e., Jimmy sues Regal who then sues Sands. To take it a step further, once the elevator company is identified through discovery, Sands will then become a third-party plaintiff and sue Lift who will become a third-party defendant. Ultimately, Regal will move for summary judgment pursuant to the management contract which will contain an indemnification/hold harmless clause allowing Regal a way out. This will leave Jimmy suing Sands and Sands suing Lift – all in one action. If Lift is the ultimate culprit here (which appears to be the case), Sands will owe Jimmy damages but will then be eligible for reimbursement (assuming they were smart enough to include an indemnification/hold harmless clause in their contract).

- What, if anything, is Jimmy entitled to?

The most likely outcome here is that the parties will be mandated to pre-trial mediation by the court. All sides will present their best arguments and then be separated at which time the mediator will attempt to put together a settlement option that all parties can live with. At the end of the day, Jimmy has paid a terrible price – he will never be able to work again. Is any amount of money worth that?