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Premises Owner Entitled To CPLR Article 16 Protection Despite Non-Delegable Duty

By Jessica M. Erickson

The owner of real property in New York has a non-delegable duty to maintain the premises in a reasonably safe condition. Although it would appear that a non-delegable duty is an exception to the apportionment of CPLR Article 16, §1602(2)(iv) is actually a "savings provision" that allows a premises owner found less than 51% liable to apportion the liability with responsible tortfeasors. CPLR Article 16 serves to limit a defendant's share of damages to the extent of its percentage of fault and allows a jury to apportion percentages of fault amongst the defendants at trial. Article 16 only applies to non-economic damages, which include pain and suffering, mental anguish, loss of consortium, etc. and a defendant can only assert Article 16 protection if they are found to have been 50% or less at fault. The New York legislature enacted this provision to protect the low-fault, deep-pocket defendant from New York's joint and several liability rule, which could potentially cause a defendant found 1% liable responsible for an entire judgment. Notwithstanding the protections the legislature sought to enact, Section 1602 limits the application of this article with multiple exceptions to the general rule. One such exception is §1602 (2)(iv), which provides that the limitations set forth in Article 16 shall not enlarge, impair, alter or restrict any liability which arises from a non-delegable duty.

The Court of Appeals addressed the issue of whether §1602(2)(iv) precludes apportionment where a defendant's liability arises from a breach of a non-delegable duty in Rangolan v. County of Nassau, 96 N.Y.2d 42, 725 N.Y.S.2d 611 (2001). In Rangolan, the plaintiff brought suit against the County of Nassau based on a non-delegable duty, and the county thereafter sought to apportion its liability with the active tortfeasor pursuant to CPLR §1601. The Court of Appeals held that §1602(2)(iv) was not an "exception" to the rule of apportionment, rather it was a "savings provision" which preserved the principles of vicarious liability. Further, the Court found that this provision ensures that a defendant is liable to the same extent as its delegate or employee, but does not preclude a municipality, landowner or employer from seeking apportionment between itself and other tortfeasors for whose liability it is not answerable.

The Rangolan decision may have significant impact in supporting claims for apportionment in premises liability matters. In an action involving personal injuries stemming from an accident on a sidewalk, Section 7-210 of the New York City Administrative Code provides that the owner of real property which abuts any sidewalk, shall maintain that sidewalk in a reasonably safe condition and is liable for any injury to property or personal injury proximately caused by the failure to maintain the sidewalk in a reasonably safe condition. That duty is also non-delegable as to the premises owner.

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The courts have not specifically addressed how §1602(2)(iv) would apply in a personal injury action involving a trip and fall on a sidewalk where the ground floor tenant has contractually agreed to maintain the sidewalk adjacent to the building and the owner of the building has a non-delegable duty to maintain the sidewalk pursuant to NYC Administrative Code §7-210. However, based on the holding of Rangolan, in such a case we would argue that the premises owner is entitled to the protections afforded by Article 16 and that the owner should be afforded the opportunity to seek apportionment from the actual tortfeasor for whom it is not answerable. Thus, should a jury find that the owner of a premises was less than 51% at fault for the accident, but acknowledges that the owner has a non-delegable duty, Rangolan supports the argument that the owner should not be held responsible for the entirety of the judgment, and CPLR §1601 should apply to apportion the liability for non-economic damages (pain and suffering) thanks to the "savings clause" found in §1602(2)(iv).

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