

General Motors Corp. v. Dist. Ct., 122 Nev. Adv. Op. No. 41 (May 11, 2006)¹

TORTS – CHOICE OF LAW

Summary

Heather Simmons was driving her Chevrolet Metro on the freeway in Southern Nevada while Jerry Freeland was driving a truck a short distance ahead of her. The truck struck an object in the road which caused its fuel tank to leak diesel fuel onto the freeway. Simmons, following behind, came in contact with the diesel fuel, causing her to lose control of her vehicle, which rolled several times. Simmons became a quadriplegic as a result of the accident.

Simmons filed suit against General Motors Corporation (GM), the manufacturer of the car, and Chapman Mesa Auto Center (Chapman Auto), an independent car dealer that sold the Metro to Simmons. Simmons asserted causes of action against both parties for negligence, breach of implied warranty, strict liability, negligent failure to warn, and negligent infliction of emotional distress. She alleges that her injuries were in part caused by the failure of the vehicle's roof assembly.

Simmons is an Arizona resident. GM is a Delaware corporation with its principle office in Michigan, and Chapman Auto is located in Arizona, is not a GM dealership, and is not affiliated with GM in any way.

GM and Chapman Auto seek dismissal of the case for forum non conveniens, or in the alternative, for Arizona law to apply instead of Nevada law. The District Court denied the motion and determined that Nevada law should apply; GM then filed a petition for writ of mandamus seeking to compel the dismissal of the case or application of Arizona law.

Issue and Disposition

Issue

Should the “overwhelming interest test” adopted in *Montenko v. MGM Dist. Inc.*² to determine choice of law claims in torts claims be overruled?

Disposition

Yes, *Montenko* is overruled because it no longer serves as a bright line rule in choice of law issues, and the court adopts Section 145 of the Second Restatement of Torts, unless there is a specific provision of the Second Restatement that addresses the specific tort at issue, such as personal injury.

¹ By Laura Deeter.

² *Montenko v. MGM Dist. Inc.*, 921 P.2d 933 (Nev. 1996).

Commentary

State of Law Before *General Motors v. Dist. Ct.*

Nevada initially applied the “vested rights” approach to choice of law issues in tort actions.³ Under the “vested rights” approach the court applied the substantive law of the forum in which the injury occurred. This was overturned in *Monteko* because it produced harsh results.

In *Monteko*, which is the current state of law, the court developed the “overwhelming interest test,” which is a hybrid of the “vested rights” approach and the Second Restatement of Torts “most significant relationship test.” The “overwhelming interest” test requires the court to apply the substantive law of the forum state, unless another state has an overwhelming interest. The contacts used to determine whether there is an overwhelming interest include: 1) the place where the injury occurred, 2) the place where the conduct causing the injury occurred, 3) the domicile, residence, nationality, place of incorporation and place of business of the parties, and 4) the place where the relationship, if any, between the parties is centered.⁴ These four factors were adopted from § 145 of the Second Restatement of Torts.

The problem with the test is that it neglected to incorporate the standards of § 6 of the Second Restatement, which § 145 specifically references. Section 6 is a higher standard of inquiry, and the *Montenko* court reversed the priority of the sections. It also failed to consider the other sections of the Restatement that specifically address choice of law claims regarding specified tort actions.

Effect of *General Motors Corp. v. Dist. Ct.*

General Motors adopts the Second Restatement of Torts significant relationship test for choice of law claims. Section 145 governs all choice of law claims unless there is a specific section that covers a particular tort. In this case, § 146 address the choice of law in personal injury actions, therefore § 146 is applied.

The adoption of the Restatement will keep the results in a choice of law determination uniform. Generally, under § 145, the law of the state that has the most significant relationship to the parties and occurrence will be applied. Section 6 of the Restatement gives the factors that the court is to use in its analysis.

- (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
- (2) When there is no such directive, the factors relevant to the choice of applicable law include:
 - a. The needs of the interest state and international systems;
 - b. The relevant policies of the forum;
 - c. The relevant policies of other interested states and the relative interests of those states in the determination of the particular issue;
 - d. The protection of justified expectations;
 - e. The basic policies underlying the particular field of law;
 - f. Certainty, predictability and uniformity of result, and

³ *Id.* at 934.

⁴ *Id.*

g. Ease in the determination and application of the law to be applied.⁵

Aside from those factors, other sections of the Restatement that apply to specific Actions must be considered as well. Here, § 146 provides a framework for choice of law claims specifically in personal injury actions. Under this section, the local law of the state applies, unless another state has a significant relationship to the occurrence under the § 6 factors. In looking at the § 6 factors, the parties must present some evidence showing a connection between the nonforum state, the occurrence, and the parties.

The court determined that Nevada law will apply instead of Arizona law to the cause of action against GM because GM has no connection to Arizona, and therefore, the local law default rule applies. The accident occurred in Nevada, and although GM is a Delaware corporation, with its office in Michigan, it can be subject to a cause of action in Nevada because that is where the accident occurred. It cannot be subject to a cause of action under Arizona law because it has no contacts with Arizona because of this occurrence.

On the contrary, Arizona law is applied to the cause of action against Chapman Auto. It presented sufficient evidence to show that it has significant relationship with Arizona. The cause of action against Chapman is a result of the failed roof assembly. Here Simmons is an Arizona resident, Chapman is located in Arizona, and the sale of the vehicle occurred in Arizona. The occurrence giving rise to the liability, the sale of the car, was in Arizona and Arizona law will be applied. The court analyzes this under § 6, which allows the interests of other states to be taken into account. In addition, Nevada and Arizona's comparative fault laws differ greatly, and Arizona has an interest in having its law applied to a cause of action of one of its residents against one of its businesses. It also furthers the parties justified expectations, a § 6 factor, as they are both Arizona residents. Even though two different choices of law will be applied in the same case, the court determines that it also meets the "ease in determination and application of law" factor of § 6 because jury instructions can be modified to allow both types of law to be used in the same case.

Unanswered Questions

Justice Maupin concurs and dissents in part. He agrees with the adoption of the Second Restatement of Torts, however, it is his belief that Nevada law should apply to both defendants. Although the court adopts the Restatement to create more predictability in choice of law issues, the factors still do not create a bright line rule that the court is searching for, as is evidenced from the dissent.

Conclusion

Section 145 of the Second Restatement of Torts governs choice of law claims in Nevada, unless there is a section that specifically addresses a particular tort, such as personal injury. In this case, because section 146 of the Second Restatement of Torts governs choice of law in personal injury cases, it is applied instead of section 145. Nevada law applies to Simmons' claims against General Motors, and Arizona law applies to Simmons' claims against Chapman Auto.

⁵ General Motors Corp. v. Dist. Ct., 122 Nev. Adv. Op. 41 at *4 (2006).