



1998

# Recent Developments: ADM Partnership v. Martin: Subjective Belief of Employee That Neglect to Assume Risk Inherent to Job Duties Would Result in Negative Consequences Does Not Constitute a Genuine Dispute Regarding Assumption of Risk

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## Recommended Citation

Lane, Ruth-Ann E. (1998) "Recent Developments: ADM Partnership v. Martin: Subjective Belief of Employee That Neglect to Assume Risk Inherent to Job Duties Would Result in Negative Consequences Does Not Constitute a Genuine Dispute Regarding Assumption of Risk," *University of Baltimore Law Forum*: Vol. 28 : No. 2 , Article 3.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol28/iss2/3>

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## Cases

*ADM Partnership v. Martin:*

The Court of Appeals of Maryland held in *ADM Partnership v. Martin*, 348 Md. 84, 702 A.2d 730 (1997) that the subjective belief of an employee that her neglect to assume a risk inherent to her described job duties would result in negative consequences does not create a genuine dispute regarding the doctrine of assumption of risk. The court concluded that the "voluntariness" factor, inherent in the doctrine of assumption of risk, could not be negated by an employee who was instructed to carry out the performance of work duties, regardless of the employee's fear that refusal to do so would result in the loss of her position or adverse economic repercussions for her employer.

On March 8, 1989, Keen Tykenko Martin ("Martin"), a delivery person for Ideal Reprographics, Inc., was instructed to deliver blueprints to a property owned by ADM Partnership ("ADM"). Upon arriving at her destination, Martin observed that ice and snow covered the majority of the parking lot and walkways surrounding the building. After observing footprints indicating that others had traversed over the same ground, Martin concluded that she, too, could travel safely to and from the business' entrance. As Martin proceeded around her vehicle in order to remove the blueprints from the passenger side, she slipped but avoided injury by grabbing onto her automobile. She then continued her task and delivered the prints successfully. However, upon leaving, Ms. Martin

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fell, severely injuring her lower back.

The Circuit Court for Montgomery County granted ADM's motion for judgment at the conclusion of plaintiff's case, finding that the evidence sufficiently established that Martin had voluntarily assumed a risk of injury when she chose to cross the slippery sidewalk. The court of special appeals reversed, stating that Martin's belief that she would have encountered negative consequences if she failed to fulfill her job requirements presented a factual issue as to whether her actions were voluntary and, therefore, was a question for jury determination.

Certiorari was granted and the Court of Appeals of Maryland began its analysis by reviewing the standard for the assumption of risk doctrine in Maryland. *ADM Partnership*, 348 Md. at 90, 702 A.2d at 734. The court recognized that assumption of risk requires the defendant to prove that the plaintiff: "(1) had knowledge of the

risk of danger; (2) appreciated that risk; and (3) voluntarily confronted the risk of danger." *Id.* at 91, 702 A.2d at 734 (citing *Liscombe v. Potomac Edison Co.*, 303 Md. 619, 630, 495 A.2d 838 (1985)). Further, the court noted that assumption of risk results in the plaintiff relieving the defendant of his duty of care. *Id.* (quoting *Rogers v. Frush*, 257 Md. 233, 243, 262 A.2d 549, 554 (1970)). Finally, the court applied an objective test, stating that when a reasonable person would have clearly understood an obvious risk presented by the individual circumstances, the issue becomes one of a matter of law. *Id.* at 91-2, 702 A.2d at 734 (citing *Schroyer v. McNeal*, 323 Md. 275, 283-8, 592 A.2d 1119, 1123 (1991)). The court concluded, "there are certain risks which anyone of adult age must be taken to appreciate: the danger of slipping on ice, of falling through unguarded openings, of lifting heavy objects. . . and doubtless many others." *Id.* at 92, 702 A.2d at 734 (quoting Prosser and Keeton on the Law of Torts, §68 at 488 (5th ed. 1984)).

In continuing its discussion, the court emphasized that the rationale of the intermediate court relied upon the determination that an employee's job requirement to complete a specified task necessarily controls the issue of voluntarism; thus, Martin had been deprived of choosing whether to act or not to act through no fault of her own. *Id.* at 95, 702 A.2d at 736. The court of appeals noted "the intermediate appellate court then proceeded to draw the conclusion that ' . . . one might

## ***Recent Developments***

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reasonably infer that Martin, with no clear and reasonable alternative, was compelled to use the walkway in order to complete the delivery for her employer.” *Id.* 702 A.2d at 735 (quoting *Martin v. ADM Partnership, Inc.*, 106 Md.App. 652, 665, 666 A.2d at 883 (1995)). The Court of Appeals of Maryland, however, evaluated the case law presented by the parties at trial as contrary to the decision of the court of special appeals and found the analysis of the lower court flawed.

The court of appeals previously held that where a plaintiff makes an informed choice and is fully aware of the dangerous conditions of certain premises, the plaintiff is barred from recovery based on the doctrine of assumption of risk. *Id.* (quoting *Schroyer*, 323 Md. at 288-89, 592 A.2d at 1125-26). The plaintiff in *Schroyer* was a guest at a hotel where the front entrance to the lodging had been cleared of ice and snow. *Id.* at 97, 702 A.2d at 737. *Schroyer*, however, voluntarily chose to park her automobile in an area more convenient to her hotel room that had not been shoveled. *Id.* After safely completing one trip from her vehicle to her hotel room, she slipped and fell during a second attempt. *Id.* The court refuted the intermediate court’s application of *Schroyer* to the instant case, stating that no evidence existed in the previous *Martin* decision to indicate that plaintiff’s employment was adversely affected. *Id.* What is more, the court of appeals distinguished *Schroyer* further, noting that due to plaintiff’s knowledge of the existing icy condition of the sidewalk, she voluntarily chose to encounter the risk. *Id.* The *Schroyer* tribunal, the court of appeals continued, was not able to reach the

voluntariness issue because plaintiff was barred from recovery based on the facts presented: “[t]here simply was no evidence, in that case, to suggest that the plaintiff’s employment was adversely affected and, therefore, we did not address that issue.” *Id.* at 98, 702 A.2d at 737.

Moreover, the court of appeals rejected the lower court’s application of *Burke v. Williams*, 244 Md. 154, 223 A.2d 187 (1966). *Id.* The court of special appeals attempted to apply *Burke* to the case at bar to determine at what point the performance of employment responsibilities becomes a voluntary act. *Id.* In *Burke*, the plaintiff, a deliveryman, suffered injury when he slipped and fell off two footboards, landing in an excavation. *Id.* at 95, 702 A.2d at 736. Although he had safely completed other trips at that location prior to his accident, it was argued by the plaintiff that due to limited routes into the work area, the nature of the employment, and *Burke*’s trepidation regarding a loss of income if he failed to deliver the sink tops, he did not voluntarily assume the risk. *Id.* at 95-6, 702 A.2d at 736-37 (quoting *Burke*, 244 Md. at 158, 223 A.2d at 189). The Court of Appeals of Maryland remarked that this argument ultimately did not apply to the *Martin* scenario because the only holding in *Burke* was that “there was no evidence to show that plaintiff was not acting on his own volition or free will, or that his employment would have been in jeopardy had he refused to use the walkway to make the delivery.” *Id.* at 98, 702 A.2d at 737-38.

Additionally, the court found error in that the evidence proffered at trial by plaintiff did not support a conclusion that ADM placed Martin in a position of having no choice

but to use the snow and ice-covered walkway. *Id.* 702 A.2d at 738. Also, neither Martin’s employer nor ADM ever insisted that she use the sidewalk against her will, despite her testimony that she held a subjective belief that she would be terminated had she failed to do so. *Id.*

Lastly, the court was not persuaded by plaintiff’s argument that ADM breached their tort-based duty to Ms. Martin. *Id.* at 100, 702 A.2d at 739. Martin presented the reasoning that where a defendant has a duty to a plaintiff to make conditions of their relationship safer than they appear, coercion may emanate from sources other than the defendant, thereby negating the application of the doctrine of assumption of risk. *Id.* The court concluded, nevertheless, that Martin failed to establish that the alleged breach of the duty owed her may have been responsible for the coercive element inflicted upon her; therefore, the necessary factor of volition could not be discarded when applying the doctrine to the case at hand. *Id.*

Chief Judge Bell, writing for the majority in *ADM Partnership v. Martin*, reaffirmed the necessary factors inherent to the application of the doctrine of assumption of risk. In finding error in the decision of the court of special appeals, the court managed to focus its opinion upon the original issue of “voluntariness,” and held that an employee’s subjective belief that failure to fulfill an employment responsibility is not sufficient to establish liability on the part of the defendant. This analysis by the Court of Appeals of Maryland negates any subjective aspect regarding the application of the doctrine of assumption of risk. In emphasizing the test as an

objective one, the court established the doctrine as a matter of law, not of fact, and suitable for judicial determination. As a result, plaintiffs are precluded from relying on their own emotional

pleas to establish a persuasive argument regarding assumption of risk and, therefore, from presenting evidence that may have influenced their decision making process. Thus, determination of liability is

properly placed instead on an impartial participant -- the presiding judge -- rather than in the hands of the jury.

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