

**STATE OF LOUISIANA**  
**COURT OF APPEAL, FIRST CIRCUIT**

KIM NOULLET

NO. 2021 CW 0567

VERSUS

BOSCO'S ITALIAN IMPORTS,  
LLC, BOSCO'S ITALIAN  
IMPORTS, #2, LLC AND BIG  
HAT, LLC

**OCTOBER 11, 2021**

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In Re: Bosco's Italian Imports, LLC and Bosco's Italian Imports #2, LLC, applying for supervisory writs, 22nd Judicial District Court, Parish of St. Tammany, No. 2019-14766.

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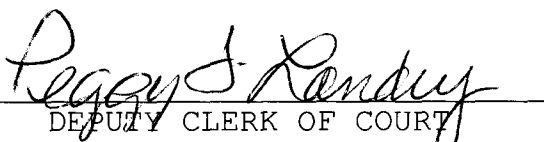
**BEFORE: THERIOT, HOLDRIDGE, AND HESTER, JJ.**

**WRIT GRANTED.** The test for whether a defendant has custody over a thing so as to impose liability on the defendant for defects or damage caused by it is whether the defendant has a right of direction and control over the thing and what, if any, benefit the defendant derives from the thing. **Peters v. Bogalusa Community Medical Center**, 2012-1777 (La. App. 1st Cir. 5/2/13), 117 So.3d 538, 540. In support of its motion for summary judgment, Bosco's Italian Imports, LLC and Bosco's Italian Imports #2, LLC ("Boscoss") provided the deposition testimony of the owner of the premises, Joseph Champagne, who testified to the fact that the area where plaintiff, Kim Noullet, allegedly fell is in the "common area" of the strip mall, and is used for the benefit of the entire strip mall, and was not specifically included in the leased premises to Bosco's over which Bosco's would have responsibility for maintenance; rather, he testified that Big Hat, LLC owned the property and at all times remained in control of the parking lot and the handicap ramp. We find that Bosco's carried its burden that plaintiff would be unable to prove at trial the issue of custody and control of the premises such that Bosco's motion should be granted and it should be dismissed from this case. The burden then shifted to Ms. Noullet to demonstrate that genuine issues of material fact exist as to Bosco's garde over the ramp and parking lot area, which Ms. Noullet failed to provide. Therefore, we grant this writ application, reverse the trial court's March 25, 2021 judgment denying Bosco's motion for summary judgment, and grant same, dismissing Bosco's Italian Imports, LLC and Bosco's Italian Imports #2, LLC, from this suit.

**MRT**  
**CHH**

**Holdridge, J., concurs.**

COURT OF APPEAL, FIRST CIRCUIT

  
DEPUTY CLERK OF COURT  
FOR THE COURT