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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 HEIDI LENT, an individual,  
12 Plaintiff,

13 v.

14 ARAMARK SPORTS &  
15 ENTERTAINMENT SERVICES LLC, a  
16 Washington corporation; and SHARI  
17 KELLEY EVENTS, a California general  
18 partnership,  
19 Defendants.

No. C 09-5230 KLS

ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT S.K.  
EVENTS MOTION FOR SUMMARY  
JUDGMENT

20 This matter comes before the Court on the Summary Judgment Motion of the Defendant Shari  
21 Kelley Events. (Dkt. 16 - 18, 25 and 26). The Plaintiff filed her Response (Dkt. 19 - 24). For the reasons  
22 set forth below, the Defendant's motion is GRANTED in part and DENIED in part. The Court concludes  
23 that there remain material issues of fact that can only be resolved by the trier of fact.  
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25 **UNDISPUTED FACTS**

26 Shari Kelley Events (S.K. Events) was hired in late 2007 by the Boys & Girls Club of South Puget  
27 Sound to plan a fundraising event for September 2008 to be held at the Greater Tacoma Convention and  
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1 Trade Center (GTCTC). S.K. Events entered into a contract with GTCTC for use of a room which was  
2 approximately 22,000 square feet. The contract with GTCTC required S.K. Events to use the services of  
3 the defendant Aramark for catering. S.K. Events contracted with Aramark, as required by GTCTC, for  
4 the catering and service of all food and beverages.

5 The S.K. Events contract with Aramark contained the following clause:

6 Set-ups and Floor Plans. ARAMARK reserves the right to approve, and make changes  
7 to, all floor plans and layouts of all event areas where ARAMARK's services are to  
8 be provided, as deemed necessary in ARAMARK's sole discretion, to enable the  
9 safe and efficient conduct of ARAMARK's services by ARAMARK's staff. Without  
10 limiting the generality of the foregoing, ARAMARK reserves the right to specify the  
11 locations and configuration of all decor, tables, buffet and service stations, aisles,  
12 and staging and breakdown areas.

13 Dkt. 17-2, Exhibit B.

14 The S.K. Events contract with GTCTC contained the following:

15 C. EVENT REQUIREMENTS

16 1. Custodial: CITY will maintain all public access areas including lobbies, registration  
17 areas, concourses, hallways, restrooms and meeting rooms (except when utilized for exhibit  
18 space), at no extra cost to LICENSEE. All janitorial and cleaning service, except as previously  
19 described, beginning with the first leased day through the final leased day, shall be  
20 the responsibility of the LICENSEE. In the event that no aisle carpeting is used for  
21 shows in the exhibition hall, CITY will provide (at no expense) personnel and equipment  
22 to properly clean aisles prior to the opening of each show day. Costs to remove debris  
23 or trash not associated with the normal course of business shall be borne by the LICENSEE.

24 ARAMARK provided its own bartenders and other waitstaff. S. K. Events neither supervised or  
25 instructed any of the ARAMARK employees with regard to how to perform any of their duties.

26 The Plaintiff attended the fundraiser at the GTCTC on September 20, 2008. This fundraiser had a  
27 Cirque du Soleil theme with the bar, operated by ARAMARK, located inside the entrance doors to the  
28 room. Prior to her fall, at least three people noticed an accumulation of water on the floor near the bar.  
This water appeared to be melting ice from the bussing trays. At least two people made the bartenders  
aware of the water and requested that it be cleaned up. Aimee Hentschell believes that she made just such  
a request 30 minutes prior to Heidi Lent's fall. Heidi Lent fell because of the liquid on the floor and was  
injured as a result of the fall.

No one with S. K. Events was ever told about the presence of the liquid on the floor adjacent to

1 the bar.

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3 **ALTERNATIVE REQUEST TO CONTINUE MOTION**

4 The Court notes that the Plaintiff made an “alternative” request to continue the Defendant’s  
5 Motion under Fed. R. Civ. P. 56(f), which reads as follows:

6 If a party opposing the motion shows by affidavit that, for specified reasons, it  
cannot present facts essential to justify its opposition, the court may:

- 7 (1) deny the motion;  
8 (2) order a continuance to enable affidavits to be obtained, depositions to be  
taken, or other discovery to be undertaken; or  
9 (3) issue any other just order.

10 The Court notes that the Plaintiff failed to comply with the requirements of this rule. Counsel for  
11 Plaintiff did not file an affidavit as required. Rather, this alternative request was contained in the body of  
12 the Plaintiff’s Response, which is not a document signed under oath or penalty of perjury.

13 In addition, the request which was included in the Plaintiff’s Response sought additional time to  
14 take discovery depositions. The Court filed its Scheduling Order on August 12, 2009. Dkt. 9. Pursuant  
15 to the Scheduling Order, discovery was to be completed by February 8, 2010. The Defendant filed its  
16 summary judgment motion on January 12, 2010 with a noting date of February 5, 2010. It appears, from  
17 the Response, that the parties have agreed to discovery beyond that authorized by the Court’s order. It  
18 also appears that the lack of diligence on the part of the Plaintiff and the lack of the necessary affidavit  
19 compel **DENIAL** of this “alternative” request.

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21 **SUMMARY JUDGMENT STANDARD**

22 Pursuant to Fed. R. Civ. P. 56 ( c), the court may grant summary judgment “if the pleadings,  
23 depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that  
24 there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of  
25 law.” The moving party is entitled to judgment as a matter of law when the nonmoving party fails to  
26 make a sufficient showing on an essential element of a claim on which the nonmoving party has the  
27 burden of proof. *Celotex Corp., v. Catrett*, 477 U.S. 317, 323 (1985).



1 beverages, other than some plastic “hamburger baskets.” No employees of S.K. Events worked the buffet  
2 or bar stations. The provision of liability insurance, as required by the contract with GTCTC, does not  
3 affect the analysis of vicarious liability in this case.

4 As noted in the Defendant’s brief, a principal is not liable for the acts of an independent contractor.  
5 *DeWater v. State*, 130 Wn.2d 128, 137, 921 P.2d 1059 (1996). Pursuant to an analysis of the factors  
6 identified in *Hollingbery v. Dunn*, 68 Wn.2d 75, 80, 411 P.2d 431 (1966), the undersigned concludes that  
7 S.K. Events is not vicariously liable for any actions or inactions of the employees of ARAMARK. The  
8 Defendant’s motion to dismiss based on this theory is therefore **GRANTED**.

9 **2. S.K. Events duty of care to Plaintiff.** The Defendant, S.K. Events, asserts that it owed no  
10 duty of care to the plaintiff based on its assertion that ARAMARK had exclusive control of the area in  
11 which the plaintiff fell and that S.K. Events was not, therefore, in possession of that area.

12 One argument the Defendant presents in support of this conclusion is that ARAMARK used space  
13 within the GTCTC on a regular basis and therefore it was not using space owned or provided by S.K.  
14 Events. However, the facts show that ARAMARK used a portion of the space contracted by S.K. Events  
15 from GTCTC. If S.K. Events did not enter into the contract, there would be no reason for ARAMARK to  
16 be at the GTCTC that evening.

17 S.K. Events also argues that the contractual language with ARAMARK supports the conclusion  
18 that S.K. Events did not have control and therefore possession over the area where the Plaintiff fell.  
19 While it is true that the contract gave ARAMARK control regarding floor plan and layout, this control as  
20 contained in the contract does not clearly remove the possessory interest that S.K. Events had over the  
21 entire 22,000 square feet leased from GTCTC.

22 The Court notes, however, that the contractual language is less than clear as to who had or did not  
23 have the obligation to maintain the floors in a safe condition. The GTCTC agreed, in the contract, to  
24 provide janitorial service but there is no clear definition of that service. On the other hand, S.K. Events  
25 had contractual custodial responsibilities including: All janitorial and cleaning service, except as  
26 previously described, beginning with the first leased day through the final leased day, shall be the  
27 responsibility of the LICENSEE. Finally, the Court notes that there is no reference in the contract with  
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1 ARAMARK regarding janitorial, clean-up or custodial responsibilities.

2 In addition, it is clear from the contract that S.K. Events leased the total area of 22,000 square feet  
3 and for purposes of this summary judgment motion the court concludes that it was in possession of that  
4 area. There is no allegation, however, that there was something inherently dangerous in the room.  
5 Rather, the issue that remains for resolution is whether S.K. Events knew or should have known of the  
6 condition of the floor around the bar. For these reasons, therefore, the Defendant's motion to dismiss is  
7 **DENIED.**

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9 **SUMMARY**

10 S.K. Event's motion to dismiss (Dkt. 16) is **GRANTED ONLY AS IT RELATES TO THE**  
11 Plaintiff's claim that S.K. Events is vicariously liable for the actions or inactions of ARAMARK. The  
12 balance of the motion is **DENIED**, for the reasons set forth above, as there remain material issues of fact  
13 that require resolution by the trier of fact.

14 DATED this 19<sup>th</sup> day of February, 2010.

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17 Karen L. Strombom  
18 United States Magistrate Judge  
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