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Tort Law - Focusing on the Nature of the Defendant's Control When Defining the Exclusive Control Element of Res Ipsa Loquitur: Trujeque v. Service Merchandise Co.

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TORT LAW—Focusing on the Nature of the Defendant's Control When Defining the Exclusive Control Element of Res Ipsa Loquitur: *Trujeque v. Service Merchandise Co.*

I. INTRODUCTION

The issue in *Trujeque v. Service Merchandise Co.*[1] was whether others' access to a chair precluded its owner from having exclusive control over that chair for the purpose of a res ipsa loquitur[2] claim. The New Mexico Supreme Court held that under the doctrine of res ipsa loquitur, exclusive control was based on the defendant's control over the chair and not others' access to it. The importance of this decision is that it provides an alternative to New Mexico's traditional definition of the exclusive control element.[3] This note examines the application of the exclusive control element in New Mexico, analyzes how other jurisdictions apply exclusive control, and explores the implications of the *Trujeque* decision.

II. STATEMENT OF THE CASE

While waiting for her order to be processed, Plaintiff Carmen Trujeque decided to sit in a chair that Defendant Service Merchandise Co. [hereinafter Service Merchandise] provided for its customers' convenience.[4] When Trujeque sat in the chair, the chair collapsed. Trujeque fell and injured her arm.[5] She filed suit against Service Merchandise for her injuries.[6] The trial court ruled that Trujeque could only present her case on the theory of res ipsa loquitur.[7]

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1. 117 N.M. 388, 872 P.2d 361 (1994).

2. "The doctrine of res ipsa loquitur applies only when evidence establishes that in the ordinary course of events an injury would not occur except through negligence or the person in exclusive control of the injuring instrumentality." *Trujeque*, 117 N.M. at 391, 872 P.2d at 364 (citing N.M. UNIF. JURY INSTRUCTION CIV. 13-1623; *see* Hepp v. Quickel Auto & Supply Co., 37 N.M. 525, 528, 25 P.2d 197, 199 (1933)). Res ipsa loquitur is based on an inference of negligence, not proof of negligence. *See id.* at 393, 872 P.2d at 366 (citing Sweeney v. Erving, 228 U.S. 233, 240 (1913)); *see also* Strong v. Shaw, 96 N.M. 281, 283, 629 P.2d 784, 786 (Ct. App. 1980) ("Res ipsa loquitur is a rule of evidence, not of substantive tort law. Its sole function is to supply inferences from which some negligent conduct can be found, without finding what the negligence was. The tenant does not have to prove a specific act of negligence—only an inference . . . .").

In order to rely on the res ipsa loquitur doctrine, the plaintiff must prove 1) that the injury was proximately caused by an instrumentality which was under the *exclusive control and management of the defendant*, and 2) that the event causing the injury was of a kind which does not ordinarily occur in the absence of negligence on the part of the person in control of the instrumentality. If the plaintiff proves each of these propositions a jury may infer that the defendant was negligent. *See* N.M. UNIF. JURY INSTRUCTION CIV. 13-1623 (emphasis added).

3. Although the supreme court stated that they would not define exclusive control because it was a self-explanatory phrase, the court proceeded to interpret exclusive control on the basis of its past application. *Trujeque*, 117 N.M. at 390-93, 872 P.2d at 363-66. This interpretation of New Mexico precedent is the functional equivalent of defining exclusive control.

4. *Trujeque*, 117 N.M. at 389, 872 P.2d at 362.

5. *Id.*

6. *Id.*

7. *Id.*

At the close of trial, Service Merchandise offered a definition of exclusive control that would require Trujeque to show that "others [besides Service Merchandise] did not have an opportunity of equal access to the instrumentality."[8] The trial court refused this instruction and instructed the jury according to New Mexico Uniform Jury Instruction Civil 13-1623.[9] Shortly thereafter, the jury asked for a precise definition of exclusive control.[10] In spite of Trujeque's objection, the trial judge instructed the jury according to Service Merchandise's proffered instruction.[11] The jury returned a verdict for Service Merchandise.[12] Trujeque appealed, and the court of appeals affirmed.[13] The supreme court reversed and remanded for a new trial, holding that the trial court's definition of exclusive control was inappropriate.[14]

III. THE APPLICATION OF THE EXCLUSIVE CONTROL ELEMENT IN NEW MEXICO

Prior to *Trujeque*, many New Mexico decisions involving res ipsa loquitur defined exclusive control as requiring the plaintiff to prove that no one, except the defendant, had access to the object involved in the accident.[15] Such a definition has been criticized by other courts as "ri-

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8. *Id.* The proposed instruction articulated the following standard of proof for the element of exclusive control:

> In order to prove that the defendant had exclusive control and management over the instrumentality causing plaintiff's accident and injuries, plaintiff must show from the evidence that others did not have an opportunity of equal access to the instrumentality.

N.M. UNIF. JURY INSTRUCTION CIV. 13-1623. Service Merchandise based this definition on Gonzales v. Shoprite Foods, Inc., 69 N.M. 95, 364 P.2d 352 (1961). The *Gonzales* court held that a store did not have exclusive control over a stack of merchandise because numerous customers had equal access to the merchandise. *Id.* at 101, 364 P.2d at 358.

9. *See supra* note 2.

10. *See Trujeque*, 117 N.M. at 390, 872 P.2d at 363.

11. *Id.*; *see supra* note 8.

12. *See Trujeque*, 117 N.M. at 390, 872 P.2d at 363.

13. *Id.* at 389, 872 P.2d at 362.

14. *Id.*

15. *See* Archibeque v. Homrich, 88 N.M. 527, 543 P.2d 820 (1975) (holding that owner of car who was present did not have exclusive control over the car because the nonowner driver had access to the car. Therefore, the owner was not liable for the nonowner's acts.); Waterman v. Ciesielski, 87 N.M. 25, 528 P.2d 884 (1974) (finding that defendant did not have exclusive control over the unloading of a motor that fell because the plaintiff, as well as the defendant, had access to the knowledge of the cause of the movement that resulted in the plaintiff's injuries.); Gonzales v. Shoprite Foods, Inc., 69 N.M. 95, 364 P.2d 352 (1961) (holding that store owner did not have exclusive control over stacked merchandise because patrons had access to the stack of merchandise.); Tafoya v. Las Cruces Coca-Cola Bottling Company, 59 N.M. 43, 278 P.2d 575 (1955) (holding that customer established the bottling company's exclusive control over a bottle with tainted contents by showing that there was no reasonable opportunity for others to tamper with the bottle or its contents.); Hepp v. Quickel Auto and Supply Co., 37 N.M. 525, 25 P.2d 197 (1933) ("It [res ipsa loquitur] bases its chief claim to justification on the fact that ordinarily the cause of the injury is accessible to the party charged and inaccessible to the person injured."); Begay v. Livingston, 99 N.M. 359, 658 P.2d 434 (Ct. App. 1981) (finding that hotel owner did not have exclusive control over the gas supply in a guest's room because the guest had access to the supply. "The phrase 'exclusive control' . . . means 'the sole power . . . of defendant to superintend, direct or oversee' the instrumentality.") (quoting Archibeque v. Homrich, 88 N.M. 527, 531, 543 P.2d 870, 874 (1975); Harless v. Ewing, 81 N.M. 541, 469 P.2d 520 (Ct. App. 1970) (finding that defendant had exclusive control over his truck because he maintained the truck and plaintiff did not have access to the maintenance of the truck.).

diculous" because it is "overly rigid" and "improper."[16] This criticism is based on the fact that the purpose of the exclusive control element is to provide a basis on which the fact finder can draw an inference of the *defendant*'s negligence, not the *plaintiff*'s negligence.[17]

A. New Mexico Cases Analyzed by the Trujeque Court

In *Tafoya v. Las Cruces Coca-Cola Bottling Co.*,[18] the plaintiff brought an action against a bottling company for injuries caused by foreign matter found in a bottle. The New Mexico Supreme Court held that res ipsa loquitur was applicable because the bottling company had exclusive control over the contents of the bottle.[19] The court concluded that the defendant had exclusive control because there was "no reasonable probability that the contents were tampered with by anyone else."[20] Thus, the *Tafoya* court found that the exclusive control element depended on the plaintiff showing that no one else had access to the bottle or its contents.[21]

In 1970, the court of appeals defined exclusive control in a similar manner. In *Harless v. Ewing*,[22] a truck lessee's employee brought an action based on res ipsa loquitur for injuries that resulted when one of the truck's wheels exploded.[23] The court held that the employee established the defendant lessor's exclusive control over the wheel when the employee showed that he did not have access to the maintenance of the truck.[24]

In *Begay v. Livingston*,[25] a hotel guest was asphyxiated by carbon monoxide that escaped from a gas heater in a hotel room.[26] The personal representative of the deceased guest brought suit against the hotel owner, claiming that under res ipsa loquitur, the owner had exclusive control of the heater.[27] The *Begay* court stated that "the phrase 'exclusive control and management' . . . means 'the sole power of authority of the defendant to superintend, direct or oversee' the instrumentality."[28] The court held that because the deceased could have used the heater, the hotel owner did not have the "sole power to superintend, direct, or oversee" the heater.[29]

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16. *Trujeque*, 117 N.M. at 392, 872 P.2d at 365. *See* Judson v. Camelot Food, Inc., 756 P.2d 1198, 1201 n.3 (Nev. 1988) (quoting W. PAGE KEETON ET AL., PROSSER & KEETON THE LAW OF TORTS 249-50 (5th ed. 1984)).

17. *See Trujeque*, 117 N.M. at 392, 872 P.2d at 365; Strong v. Shaw, 96 N.M. 281, 283, 629 P.2d 784, 786 (Ct. App. 1980); Finocchio v. Crest Hollow Club at Woodbury, Inc., 584 N.Y.S.2d 201, 202 (N.Y. 1992); Rose v. Melody Lane of Wilshire, 247 P.2d 335, 338 (Cal. 1952).

18. 59 N.M. 43, 278 P.2d 575 (1955).

19. *Id.* at 50, 278 P.2d at 582.

20. *Id.* at 47, 278 P.2d at 579.

21. *Id.*

22. 81 N.M. 541, 469 P.2d 520 (Ct. App. 1970).

23. *Id.* at 543-44, 469 P.2d 522-23.

24. *Id.* at 544, 469 P.2d at 523.

25. 99 N.M. 359, 658 P.2d 434 (Ct. App. 1981), *rev'd on other grounds*, 98 N.M. 712, 652 P.2d 734 (1982).

26. *Id.* at 361, 658 P.2d at 436.

27. *Id.*

28. *Id.* at 363, 658 P.2d at 438.

29. *Id.* "The doctrine [of res ipsa loquitur] does not apply when the injury *might* have been

These three cases all interpret exclusive control by focusing on others' access to the object. Such analysis represents the common interpretation of the exclusive control element in New Mexico.[30] The supreme court, however, rejected this definition in *Trujeque*.

B. The Defendant and Plaintiff's Cases

1. The Defendant's Case

The crux of Service Merchandise's argument was based on *Gonzales v. Shoprite Foods, Inc.*,[31] which was the foundation of the trial court's jury instruction.[32] In *Gonzales*, the New Mexico Supreme Court held that a store owner did not have exclusive control over a stack of merchandise in the store because numerous customers had access to the merchandise.[33] Thus, others' access to the object defeated the defendant's exclusive control over the object, thereby making res ipsa loquitur inapplicable. Following this rationale, Service Merchandise argued that because other customers, including Trujeque, had access to its chair, it did not have exclusive control over the chair.[34]

2. The Plaintiff's Case

Trujeque based her argument on the only two collapsing chair cases in New Mexico, *Tuso v. Markey*[35] and *Chapin v. Rogers*.[36] Trujeque asserted that her case was distinguishable from *Gonzales* because it did not involve stacked merchandise, but instead involved a chair.[37] Furthermore, Trujeque contended that, unlike the *Gonzales* case, neither of the two collapsing chair cases required an analysis of others' access to the chair. Trujeque argued that both these cases only required a showing of management, ownership, and possession of the chair to establish exclusive control.

In *Tuso*, a restaurant patron brought an action against a restaurant for injuries sustained when one of its chairs collapsed.[38] The *Tuso* court held that because the accident would not have happened had the owner exercised due care in maintaining the chair, the patron was entitled to rely on res ipsa loquitur.[39] Thus, the court found that the restaurant had

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caused by plaintiff's negligence or have been due to one of several causes, for some of which the defendant is not responsible." *Id.* at 364, 658 P.2d at 438 (quoting Hogan v. Miller, 314 P.2d 230, 236 (Cal. 1957)).

30. *See supra* note 15.

31. 69 N.M. 95, 364 P.2d 352 (1961).

32. *See supra* note 8 and accompanying text.

33. *Gonzales*, 69 N.M. at 101, 364 P.2d at 358. The New Mexico Supreme Court stated, "with equal access to merchandise, the merchandise can hardly be said to be within the sole and exclusive control of the appellee." *Id.*

34. *See supra* note 8.

35. 61 N.M. 77, 294 P.2d 1102 (1956).

36. 80 N.M. 684, 459 P.2d 846 (Ct. App. 1969).

37. *Trujeque*, 117 N.M. at 389-90, 872 P.2d at 362-63.

38. *Tuso*, 61 N.M. at 79, 294 P.2d at 1104.

39. *Id.* at 80, 294 P.2d at 1105.

exclusive control regardless of others' access since it was responsible for the condition of the chair. Therefore, the court implied that exclusive control was defined by the defendant's control over the chair, not others' access to the chair.

Similarly, in *Chapin*, a customer brought suit against a restaurant for injuries sustained when one of the restaurant's stools broke.[40] The trial court instructed the jury that in order for the restaurant to be liable under the theory of res ipsa loquitur, the patron must have established that he did not participate or contribute to the accident.[41] The plaintiff appealed, alleging that the court's instruction was erroneous.[42] The court of appeals stated, "this condition or element has never been included in the definition of the doctrine in New Mexico."[43] Thus, the *Chapin* court held that the patron did not have to show that he did not contribute to or participate in[44] the accident in order to establish the defendant's exclusive control over the stool.

C. *The Trujeque Court Builds on the Collapsing Chair Cases*

Although both the trial court and court of appeals in *Trujeque* found the *Gonzales* rationale persuasive, the supreme court held it inapplicable to a chair case[45] because it dealt with exclusive control only in the context of stacked merchandise. On the other hand, the court found that the two collapsing chair cases provided an alternative basis for defining exclusive control. Both of the collapsing chair cases, *Tuso* and *Chapin*, imply that exclusive control over collapsing chairs is defined by the nature of the defendant's control over the chair, not others' access to the chair. These cases, however, did not expressly state this alternative definition of exclusive control.[46] Therefore, the New Mexico Supreme Court turned to other jurisdictions for assistance in conceiving an explicit definition of exclusive control in collapsing chair cases.

IV. ANALYSIS OF CASES FROM OTHER JURISDICTIONS

Several other jurisdictions focus on the nature of the defendant's control, instead of others' access to the object when defining exclusive control in collapsing chair cases.[47] The *Trujeque* court found the rationale of such jurisdictions persuasive.[48]

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40. *Chapin*, 80 N.M. at 684, 459 P.2d at 846.

41. *Id.* at 685, 459 P.2d at 847. Contributing to or participating in the accident is the equivalent of access. This is because the plaintiff cannot contribute to or participate in the accident of the collapsing chair unless the plaintiff had access to the chair.

42. *Id.*

43. *Id.* at 688, 459 P.2d at 850.

44. *See supra* note 41.

45. *Trujeque*, 117 N.M. at 392-93, 872 P.2d at 365-66. The supreme court held that stacked merchandise was not a "safe" instrumentality like a chair. This was because customers could not "anticipate the safe use" of stacked merchandise. *Id.*

46. *Id.* at 391, 872 P.2d at 364.

47. *See, e.g.*, Finocchio v. Crest Hollow Club at Woodbury, Inc., 584 N.Y.S.2d 201 (N.Y. 1992) (holding that even though plaintiff had possession of the chair, possession will not negate

In *Herries v. Bond Stores, Inc.*,[49] a customer filed suit against a store for injuries that resulted from a store's collapsing chair. The Missouri Court of Appeals held that although the customer used the chair, she did not control the chair.[50] The *Herries* court suggested that because the customer could not inspect the chair, she could not control the chair.[51] The court stated that the "[d]efendant had the ownership, management, and control of the chair, and had full opportunity to inspect the chair and ascertain its actual defective condition . . . ."[52] Therefore, the *Herries* court reasoned that the store's right to inspect the chair, and not the customer's access to the chair, was determinative in defining exclusive control.

Similarly, in *Rose v. Melody Lane of Wilshire*,[53] the California Supreme Court held that the determinative factor of whether a restaurant had exclusive control over a stool was the nature of the restaurant's control.[54] The court concluded that although the patron used the stool, the restaurant controlled the stool.[55] The restaurant's control arose from the fact that the restaurant was responsible for the stool's condition.[56] The court stated, "it was the condition of the stool, not the use made of it that was responsible for the fall."[57] Thus, the restaurant was liable to the patron on the basis of res ipsa loquitur.[58]

Although the majority of the cases from other jurisdictions focused on the nature of the defendant's control when defining exclusive control in collapsing chair cases,[59] the *Trujeque* court was cognizant that other jurisdictions rejected such an approach.

In *Kilgore v. Shepard Co.*,[60] the Rhode Island Supreme Court held res ipsa loquitur inapplicable to a collapsing chair case when others had access to the chair.[61] The *Kilgore* court reasoned that because others had access to the chair, they controlled the chair.[62] If people other than the

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the inference of defendant's negligence when defendant was responsible for the chair's condition); Judson v. Camelot Food, Inc., 756 P.2d 1198, 1201 (Nev. 1988) ("A business proprietor retains exclusive control of seating while it is being properly used by patrons."); Benedict v. Eppley Hotel Co., 65 N.W.2d 224 (Neb. 1954) (holding that evidence of defendant's ownership, possession, and control were enough to establish exclusive control); Rose v. Melody Lane Wilshire, 247 P.2d 335 (Cal. 1952); Herries v. Bond Stores, Inc., 84 S.W.2d 153 (Mo. Ct. App. 1935).

48. *See Trujeque*, 117 N.M. at 392-93, 872 P.2d at 364-65.

49. 84 S.W.2d 153 (Mo. Ct. App. 1935).

50. *Id.*

51. *Id.* at 157.

52. *Id.*

53. 247 P.2d 335 (Cal. 1952).

54. *Id.* at 338.

55. *Id.* "Plaintiff's actions had no more legal significance as a cause of the accident than those of the innocent bystander in the typical *res ipsa loquitur* case." *Id.*

56. *Id.* "So far as construction, inspection, or maintenance of the stool were concerned, defendant had exclusive control." *Id.* Thus, the court focused on the nature of the restaurant's control (construction, inspection, or maintenance) when applying the exclusive control element.

57. *Id.* at 338.

58. *Id.*

59. *See supra* notes 47-58 and accompanying text.

60. 158 A. 720 (R.I. 1932).

61. *Id.* at 721.

62. *Id.*

defendant controlled the chair, then their actions could have caused the accident, thus negating the inference that the defendant's negligence caused the accident.[63]

Likewise, in *Mineo v. Rand's Food Shops, Inc.*,[64] a New York Court precluded the use of res ipsa loquitur in a collapsing chair case because the plaintiff failed to establish the defendant's exclusive control over the chair.[65] The *Mineo* court held that because others had access to the chair, such individuals controlled the chair.[66]

Both the *Mineo* and *Kilgore* courts concluded that the exclusive control element was not satisfied when others had access to the chair. Although most New Mexico cases define exclusive control in a similar manner,[67] such decisions have been "widely criticized as ridiculous conclusions."[68] Thus, the *Trujeque* court rejected this rationale.[69]

V. ANALYSIS OF *TRUJEQUE*

A. *The Purpose of Exclusive Control Warranting an Inference of Negligence*

By focusing on the nature of the defendant's control, the *Trujeque* decision established an approach to res ipsa loquitur that *warrants*, not *compels*, an inference of negligence.[70] The purpose of the exclusive control element is to *reasonably* eliminate all explanations of the accident, other than the defendant's negligence.[71] "This does not mean that all other possibilities must be eliminated, but only that their likelihood be reduced so that the greater probability [of negligence] lies at the defendant's door."[72] Thus, the *Trujeque* decision defined exclusive control in a manner consistent with its purpose.

Prior to *Trujeque*, plaintiffs had to address the question of whether others' access to an object would preclude a finding of exclusive control. Thus, to make a prima facie showing of exclusive control, a plaintiff had to provide evidence that no one besides the defendant had access

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63. *See id.*

64. 32 N.Y.S.2d 23 (N.Y. City Ct. 1941).

65. *Id.* at 25.

66. *Id.*

67. *See supra* note 15.

68. *Trujeque*, 117 N.M. at 392, 872 P.2d at 365 (citations omitted). *See supra* text accompanying notes 16 & 17.

69. *Id.* The *Trujeque* court rejected this rationale because of the widespread criticism. This rationale, however, was criticized because it improperly ignored the purpose of the exclusive control element which was to draw an inference of the *defendant's* negligence. *See supra* note 16. "Only in this narrow point does the incident 'speak for itself' . . . ." Strong v. Shaw, 96 N.M. 281, 283, 629 P.2d 784, 786 (Ct. App. 1980).

70. *Trujeque*, 117 N.M. at 393, 872 P.2d at 366 (quoting Sweeney v. Erving, 228 U.S. 233 (1913)) (emphasis added).

71. *See* Finocchio v. Crest Hollow Club at Woodbury, Inc., 584 N.Y.S.2d 201, 202 (N.Y. 1992) (emphasis added).

72. *Id.* (quoting Dermatossian v. New York City Transit Auth., 492 N.E.2d 1200 (N.Y. 1986) (citing 2 HARPER & JAMES, TORTS § 19.7, at 1086)).

to an object.[73] Such a requirement compels an inference of negligence by eliminating all possible explanations of the accident.[74] If all explanations other than the defendant's negligence are eliminated, then the plaintiff actually establishes the cause of the accident—the defendant's negligence. This approach actually goes beyond what is required for res ipsa loquitur, the doctrine of inferences.[75]

The *Trujeque* court, however, focused on the nature of the defendant's control over the chair. Such an approach measures the probability of the defendant's responsibility without actually establishing the defendant's responsibility. Therefore, this alternative definition warrants an inference of negligence by reasonably, not actually, eliminating all explanations of the accident other than the defendant's negligence.

B. Exclusive Control Over a Chair—A Common Sense Idea

The *Trujeque* decision is more in line with the common sense idea that there is a difference between access to a chair and control of that chair.[76] Simply because a customer has access to a chair does not mean that the customer controls the chair. The customer cannot paint the chair, fix it, maintain it, and is not responsible for its condition.[77] The *Trujeque* court recognized this distinction between access and control, stating that "all that the plaintiff should be required to do . . . is show that the defendant owned, operated, and maintained" the chair.[78] Therefore, according to *Trujeque*'s alternative definition, a defendant will have exclusive control over a chair when the nature of the defendant's control is such that the defendant is responsible for the condition of the chair.

C. The Limits of Trujeque

Although the *Trujeque* definition of exclusive control undoubtedly applies to collapsing chair cases, the court failed to adequately delineate the bounds in which this definition applies in other factual situations. In fact, the *Trujeque* court insisted that it was not going to construct a definitive meaning of exclusive control.[79] The court did state, however, that the *Trujeque* definition is not applicable to cases dealing with stacked

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73. *See supra* note 15.

74. If no one other than the defendant had access to the object, then all other explanations are eliminated because there is no one else who may be liable for the accident.

75. *See* Tuso v. Markey, 61 N.M. 77, 80, 294 P.2d 1102, 1105 (1956) (The court stated, "had appellant . . . established all the facts as to how the accident happened, . . . , the doctrine [res ipsa loquitur] would not be available."). *See supra* note 2. *See, e.g.*, Strong v. Shaw, 96 N.M. 281, 283, 629 P.2d 784, 786 (Ct. App. 1980).

76. *See Trujeque*, 117 N.M. at 389, 872 P.2d at 362.

77. *See id.*; Rose v. Melody Lane Wilshire, 247 P.2d 335 (Cal. 1952) (stressing that there is a difference in the characterization of one using [sitting in] a chair and one controlling [inspecting or maintaining] a chair. Inspecting and/or maintaining a chair is more consistent with the characteristics of control, not use.).

78. *Trujeque*, 117 N.M. at 393, 872 P.2d at 366 (quoting Chenall v. Palmer Brick Co., 43 S.E. 443, 445 (Ga. 1903)).

79. *Trujeque*, 117 N.M. at 390, 872 P.2d at 363. *See supra* note 3.

merchandise.[80] Thus, it appears that New Mexico has two definitions of exclusive control.[81]

It is possible to construct an explanation of *Trujeque*'s limitations. To do so would require a court to focus not on the plaintiff's access to the object nor the nature of the defendant's control over the object, but on the object itself. The supreme court stated that *Trujeque*'s definition of exclusive control is applicable "when applied to an object, the anticipated safe use of which . . . would be reasonable for any number of customers."[82] In other words, the *Trujeque* definition of exclusive control may only be applicable when a case is dealing with an object that a reasonable person would anticipate is safe, like a chair.[83] Depending on the nature of the object, the definition of exclusive control may vary. Therefore, it is left to attorneys to argue the extent to which *Trujeque* is applicable.[84]

D. Implications of Trujeque

Depending on the limitations of the *Trujeque* decision, the *Trujeque* definition of exclusive control may generate more litigation because it may make it easier to proceed on a res ipsa loquitur claim. Plaintiffs may no longer have to eliminate all possible explanations for an accident in order to provide an inference of the defendant's negligence.[85] Plaintiffs may establish that the defendant controlled the object by merely showing that the defendant was responsible for the condition of the object.[86] This greatly eases the plaintiffs' burden for a res ipsa loquitur claim.

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80. *Id.* at 392, 872 P.2d at 365. The court specifically limited *Trujeque*'s application of the exclusive control element to exclude cases involving stacked merchandise. This is because Service Merchandise relied on *Gonzales*, which applied the exclusive control element to stacked merchandise. As mentioned earlier, the *Trujeque* court distinguished *Gonzales* on the basis that *Gonzales* involved stacked merchandise, not a chair. *See supra* note 45 and accompanying text. Thus, if the court could not rely on the reasoning of *Gonzales*, a stacked merchandise case, then stacked merchandise cases cannot rely on the reasoning of *Trujeque*, a chair case.

81. *See Trujeque*, 117 N.M. at 392, 872 P.2d at 365.

82. *Id.*

83. On the other hand, a reasonable person would not consider a heavy crate being unloaded from a truck as safe. *See* Waterman v. Ciesielski, 87 N.M. 25, 528 P.2d 884 (1974). In *Waterman* the court applied exclusive control by focusing on others' access to the crate, the approach taken with unsafe objects. *Id.* at 27, 528 P.2d at 886.

84. This has already happened. In Mireles v. Broderick, 117 N.M. 445, 872 P.2d 863, 870 (1994), the supreme court applied the *Trujeque* approach to a medical malpractice action. In *Mireles*, the plaintiff sued an anesthesiologist under the doctrine of res ipsa loquitur for medical malpractice claiming that the anesthesiologist failed to properly position and cushion the plaintiff's arm during surgery. The plaintiff contended that this resulted in ulnar neuropathy. The defendant asserted that since others (doctors, nurses, etc.) had access to the plaintiff during surgery, the plaintiff could not establish that the defendant had exclusive control over her. However, the supreme court rejected this approach, cited *Trujeque*, and focused on the nature of the defendant's control in analyzing the exclusive control element. Thus, the court found that since the defendant was responsible for the positioning and cushioning of the plaintiff's arm [nature of the defendant's control], the defendant had the requisite control needed to satisfy the exclusive control element, regardless of others' access to the plaintiff. *See id.*

85. *See supra* notes 74-78 and accompanying text.

86. *See Trujeque*, 117 N.M. at 393, 872 P.2d at 366.

Furthermore, litigants may face procedural changes. Following *Trujeque*, it may be more difficult for defendants to have plaintiffs' cases dismissed. No longer will a plaintiff's failure to prove that no one else had access to an object be sufficient grounds for dismissing a res ipsa loquitur claim. Therefore, it is easier for plaintiffs to get to the jury on the theory of res ipsa loquitur, thus increasing the plaintiffs' probability of success.

On the other hand, defendants may have to be more cautious regarding the safety of the physical environment they control. Because it is easier for plaintiffs to show that defendants are responsible for the consequences arising out of an object that they control,[87] defendants may have to virtually ensure the safety of every object they control. Such an outcome, however, directly conflicts with New Mexico's policy that individuals are not guarantors of the public's safety.[88]

VI. CONCLUSION

Trujeque rejected most of the New Mexico precedent that involved the definition of the exclusive control element for the rationale implicit in two New Mexico collapsing chair cases and explicit in other jurisdictions. In doing so, the court provided an alternative definition of exclusive control in collapsing chair cases that is not dependent on others' access to the chair, but on the nature of the defendant's control over the chair. Under this approach, a defendant can no longer defeat a plaintiff's res ipsa loquitur claim in a collapsing chair case by showing that others had access to the chair. The *Trujeque* court, however, did not limit this decision to collapsing chair cases, but left the door open for future courts to apply *Trujeque* to any number of situations. Therefore, only time will tell the extent of the impact of the *Trujeque* decision.

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87. *Id.*

88. *See, e.g.*, Gonzales v. Shoprite, 69 N.M. 95, 99, 364 P.2d 352, 356 (1961) (quoting Kitts v. Shoprite Foods, Inc., 64 N.M. 24, 323 P.2d 284 (1958)).