STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA LADERACH, as Next Friend of DIANE ZIETHLOW, a Minor,

Plaintiff-Appellee,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellant.

UNPUBLISHED
June 27, 1997

No. 183161
Macomb Circuit Court
LC No. 93 004416 NP

Before: Young, P.J., and Taylor and R.C. Livo*, JJ.

PER CURIAM.

Defendant General Motors Corporation (GM) appeals by leave granted an order compelling depositions of an employee of German subsidiary and an employee of an Australian joint venture in this interlocutory appeal within a products liability action. We reverse.

In 1992, Patricia Laderach was involved in a car accident while driving her 1980 Buick Skylark, a car manufactured by GM. Her daughter, Diane Ziethlow, was a passenger in the rear seat using a two-point restraint system. Ziethlow suffered injuries as a result of the accident and plaintiff[1] sued GM, asserting that GM had breached its duty to install a safe and effective rear seat occupant seat belt restraint system. During discovery, plaintiff requested production of documents from GM's overseas operations. Plaintiff learned that, in the 1970's, GM had designed and installed three-point seat belt restraint systems as standard equipment in vehicles manufactured by GM-Holden's of Australia (Holden), a GM joint venture with Toyota, and Adam Opel AG of West Germany (Opel), a wholly-owned subsidiary of GM.

In September 1994, plaintiff noticed the taking of depositions of Holden and Opel employees who had the most knowledge about the decision of those GM-related entities to use three-point seat belt restraint systems for rear seat occupants. GM refused to produce the individuals for deposition, asserting that they were employees of subsidiaries, not employees of GM. GM alternately argued that, even if the individuals were GM employees, they should be deposed in their respective foreign countries

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* Circuit judge, sitting on the Court of Appeals by assignment.

under the Michigan Court Rules and the Hague Evidence Convention. Plaintiff moved to compel the production of these individuals for depositions in Michigan. In January 1995, the circuit court granted plaintiff's motion to compel the depositions, ordering GM to produce the deponents in Macomb County and plaintiff to pay for the deponents' travel, lodging and meals. This Court granted GM's interlocutory appeal.

GM contends that the court erred in ordering it to produce persons for deposition that are employees of Holden and Opel, not GM itself. We agree. Whether a court may compel the deposition of employees of foreign subsidiaries of a corporation doing business in Michigan under the Michigan Court Rules is question of law. We review questions of law de novo. *Rapistan Corp v Michaels*, 203 Mich App 301, 306; 511 NW2d 918 (1994).

MCR 2.305(A)(1), which involves the depositions of employees, provides in part: "Service on a party or a party's attorney of notice of the taking of the deposition of a party, or of a director, trustee, officer or employee of a corporate party, is sufficient to require the appearance of the deponent; a subpoena need not be issued." The construction of a court rule is a question of law, which this Court also reviews de novo. *Bruwer v Oaks (On Remand)*, 218 Mich App 392, 397; 554 NW2d 345 (1996). We construe court rules in the same manner as statutes. *Id.*

Because the court rule does not define "employee," we give it its plain and ordinary meaning. *Ali v Detroit*, 218 Mich App 581, 584; 554 NW2d 384 (1996). In construing the term "employee," Michigan courts apply two tests: the "control" test or the "economic reality" test. In reaching its decision, the circuit court ruled that Holden and Opel employees were GM employees under either test.

Under the control test, an employee continues to be within the control of the employer unless the employee is lent or hired to someone else who assumes control. *Hoffman v JDM Assoc, Inc*, 213 Mich App 466, 468-469; 540 NW2d 689 (1995). The economic reality test, which is broader than the control test, requires a court to examine the totality of the circumstances surrounding the performed work. *Farrell v Dearborn Mfg Co*, 416 Mich 267, 276; 330 NW2d 397 (1982).

In applying the economic reality test, courts consider the following factors: (1) control of a worker's duties; (2) payment of wages; (3) the right to hire, fire and discipline; and (4) the performance of the duties as an integral part of the employer's business toward the accomplishment of a common goal. *Wodogaza v H&R Terminals, Inc*, 161 Mich App 746, 753; 411 NW2d 848 (1987).

The control test is the narrower, traditional common law test to "delineate the master-servant relationship," *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 647; 364 NW2d 670 (1984), and is an outgrowth of the respondeat superior doctrine. Notwithstanding, our Supreme Court largely has abandoned this common law test and consistently has applied the economic reality test regarding the existence of an employment relationship. *Id.* The control test has been limited to situations in which vicarious liability under a respondeat superior theory is at issue. *Nichol v Billot*, 406 Mich 284, 297; 279 NW2d 761 (1979). We conclude that the economic reality test should be utilized to determine whether a deponent is an employee under MCR 2.305. This holding is consistent with the language of

the court rules. (While MCR 2.310(A)(1)(b) uses the word "control" to indicate who must produce documents, the court rules regarding depositions do not. Instead, the speak of directors, officers, trustees, managing agents and employees of a corporate party. MCR 2.305(A)(1) and (C)(3); MCR 2.313(D).)

When the circuit court applied the economic reality test, it concluded that GM had the "final say" over Opel's and Holden's activities. Although a GM employee submitted an affidavit to the contrary, the court ruled that GM's Annual Reports reflected that Holden and Opel supported GM in a common financial goal. The court also stated that GM "had ultimate authority over important employment matters" at Holden and Opel. Plaintiff argues that stockholder reports and reports to the Securities and Exchange Commission suggest that GM did not treat Opel and Holden as distinct entities. Those reports included the net earnings, sales and assets of Opel and Holden along with GM's figures. Plaintiff also points to minutes from a GM Product Policy Group meeting that concerned proposed product refinements and improvements to both Opel and Holden cars and a discussion of Opel's proposed rear seat belt requirement. Finally, plaintiff notes that GM's Annual Reports referenced GM's "high degree of integration" with its subsidiaries.

Application of the relevant economic reality test factors does not support a finding that employees of Holden and Opel are really employees of GM. The trial court's disregard of GM's affidavit, made under oath, because it supposedly was inconsistent with GM's annual reports, not made under oath and probably written by the public relations department was improper. It is a well recognized principle that separate corporate entities will be respected. *Seasword v Hilti Inc (Aft Rem)*, 449 Mich 542, 547; 537 NW2d 221 (1995). Absent some abuse of corporate form, Michigan law presumes that parent and subsidiary corporations are separate and distinct entities. *Id*. The "corporate veil" may only be pierced where an otherwise separate corporate existence has been used to subvert justice or cause a result that is contrary to some other clearly overriding public policy. *Id*. at 548. The grounds cited by the trial court for effectively disregarding the parent/subsidiary relationship and joint venture relationship were wholly insufficient. There has no showing of an abuse of corporate form. There has been no suggestion of a subversion of justice and we see no overriding public policy that would require GM to produce for deposition employees of its subsidiary or joint venture.

We note that plaintiff remains free, under MCR 2.306(A)(5) to notice up a deposition of the GM employee(s) with the most knowledge concerning Opel and Holden's decisions to incorporate three point lap shoulder belt restraints for rear seat occupants.

Reversed.

/s/ Robert P. Young, Jr.
/s/ Clifford W. Taylor
/s/ Robert C. Livo

[1] For ease of reference in this opinion, "plaintiff" will refer to both Laderach and Ziethlow, unless otherwise indicated.