Rel: February 16, 2024



# SUPREME COURT OF ALABAMA

## OCTOBER TERM, 2023-2024

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**SC-2023-0520**

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**Felecia Sykes, as administrator of the Estate of Betty Russell, deceased**

**v.**

**Majestic Mississippi, LLC, and Linda Parks**

**Appeal from Madison Circuit Court**
**(CV-21-126)**

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**SC-2023-0572**

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**Joseph J. Sullivan and Rachel W. Mastin**

**v.**

**Majestic Mississippi, LLC, and Linda Parks**

**Appeal from Madison Circuit Court**
**(CV-21-121)**

SELLERS, Justice.

On November 14, 2018, a charter bus owned by Teague VIP Express, LLC, ("Teague Express"), and being driven by its employee, Robin Vines, overturned in DeSoto County, Mississippi, while en route to a casino owned and operated by Majestic Mississippi, LLC ("Majestic"). Linda Parks, a resident of Huntsville, had chartered the bus to transport herself, family members, friends, and acquaintances from Huntsville and Decatur to the casino. As a result of the accident, Betty Russell, an occupant of the bus, was killed, and other occupants, including Joseph J. Sullivan and Rachel W. Mastin, were injured. In appeal no. SC-2023-0520, Felecia Sykes, as administrator of the estate of Russell, appeals from two summary judgments entered by the Madison Circuit Court in favor of Majestic and Parks, respectively. In appeal no. SC-2023-0572,

Sullivan and Mastin appeal from similar summary judgments entered by the trial court in favor of Majestic and Parks, respectively. We affirm.

## I. Facts

From 2013 to 2018, Parks chartered buses on a monthly basis to transport passengers to Majestic's casino in Tunica, Mississippi. According to Majestic, the casino offers various packages to large groups who visit the casino, and, in these cases, each guest who accompanied Parks received $40 in "promo cash" uploaded to a "player's card" that could be used on certain machines and one free meal ticket that could be used at various restaurants. The casino also paid Parks a commission based upon the "amount of participation" of the guests she brought to the casino each month. From 2013 to 2018, Parks received approximately $15,000 in commissions, for which she was issued "1099-MISC" tax forms. For the November 2018 trip, Parks chartered a bus from Teague Express and requested that Vines serve as its driver. According to Parks, she had chartered buses from Teague Express approximately five or six times before the accident, and, she said, Russell, Sullivan, and Mastin had liked the manner in which Vines drove. Teague Express charged Parks a flat fee of $1,650 for round-trip transportation to the casino.

Parks, in turn, collected $35 from each passenger to pay the fee, and, if there were not enough passengers to cover the fee, she personally paid the difference.

According to Parks, on the morning of the November 2018 trip, she heard someone say that there was going to be some bad weather "going in the direction" of or along the route to the casino. Parks made a telephone call to the casino to inquire about the weather and was told that "some weather, nothing bad" was expected, but that it would not arrive until later that evening. Parks stated that she relayed that information to the passengers and that the majority of them, if not all, said "let's go." According to Vines, approximately one hour before the accident, the bus "fishtailed" on a bridge in Tuscumbia, and, she said, she gave Parks the option of turning around, but Parks declined. Vines stated that she had also stopped the bus at a gas station in Corinth, Mississippi, because the weather had started to change and that she had given Parks a second option of turning around. According to Vines, Parks, after consulting with the other passengers, responded that they were "going to keep going." According to Parks, when the bus reached a bridge in Mississippi, "icy stuff started coming down," causing the bus to slide, but

Vines was able to get control of it. Parks stated that, at that point, she told Vines: "[Y]ou see that big green sign up there … ? When we get there, let's hang a right and go back home." However, before the bus reached that point, it slid again and turned on its side, killing Russell and injuring Sullivan and Mastin. Following the accident, it was discovered that Vines's commercial driver's license had been suspended because of an issue with her "medical card" or "medical certificate."

Sykes, as the administrator of Russell's estate, sued Majestic and Parks. Sullivan and Mastin commenced a separate action against Majestic and Parks. We hereinafter refer to Sykes, Sullivan, and Mastin collectively as "the plaintiffs."[1] As discussed below, the plaintiffs sought damages based on various theories of negligence and wantonness. In each action, Majestic and Parks filed separate motions for a summary judgment, which the trial court granted.[2] These appeals followed, and this Court consolidated the appeals ex mero motu.

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[1]The plaintiffs also sued, among others, Teague Express and Vines, with whom they entered into a pro tanto settlement.

[2]In each action, Parks filed a separate motion for a summary judgment, adopting and incorporating Majestic's summary-judgment arguments and evidentiary submissions. Parks has not favored this Court with an appellee's brief in either appeal, but we assume that she

## II. Standard of Review[3]

This Court reviews a summary judgment de novo, and we use the same standard used by the trial court to determine whether the evidence presented to the trial court presents a genuine issue of material fact. Rule 56(c), Ala. R. Civ. P.; Nettles v. Pettway, 306 So. 3d 873 (Ala. 2020). The movant for a summary judgment has the initial burden of producing evidence indicating that there is no genuine issue of material fact and that the movant is entitled to a judgment as a matter of law. Once the movant produces evidence establishing a right to a summary judgment, the burden shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. We consider all the evidence in

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is interested in having the summary judgments in her favor affirmed. See United Sec. Life Ins. Co. v. Dupree, 41 Ala. App. 601, 602-03, 146 So. 2d 91, 93 (1962) ("Where the appellant submits the cause on brief and no brief is filed by the appellee, the court considers the cause on its merits on the assumption that appellee is interested in having the judgment sustained.").

[3]Under the principle of "lex loci delicti," this Court determines the substantive rights of the plaintiffs according to the law of Mississippi, the state where the death and injuries occurred; the law of this State governs procedural matters. Ford Motor Co. v. Duckett, 70 So. 3d 1177, 1179 n.3 (Ala. 2011).

the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts in the nonmovant's favor. Id.

## III. Discussion

### A. Majestic

#### 1. Negligence -- Duty to Provide Accurate Weather Information

The plaintiffs assert that Majestic was negligent by allegedly providing inaccurate weather information to Parks, which, they say, encouraged the plaintiffs to proceed to the casino in the face of potentially inclement weather. In its motions for a summary judgment, Majestic argued that, under Mississippi law, a business owner such as Majestic owes no duty to ensure the safe transportation of prospective, out-of-state patrons who visit its casino. The plaintiffs, however, argued in response that they had presented substantial evidence to indicate that, under the facts presented, Majestic had assumed such a duty. Specifically, the plaintiffs asserted that the evidence demonstrates that, on the date of the accident, Parks called the casino "multiple times and asked if it was safe to proceed in the face of potentially inclement weather." The plaintiffs then stated that, "not only did Majestic … fail to provide competent [weather] advice and cancel the trip, but … Majestic … actively

encouraged the trip to proceed" by offering financial incentives. The plaintiffs therefore contended that, once Majestic voluntarily "offer[ed] guidance as to the safety of the trip and the weather," it assumed a duty to provide accurate weather information. To demonstrate that Majestic gave Parks inaccurate weather information, the plaintiffs offered the affidavit of its expert meteorologist, Dr. Timothy A. Coleman, who stated, in relevant part, that, on November 14, 2018, at 2:54 a.m., the National Weather Service had issued an updated winter weather advisory warning of potentially dangerous travel conditions, i.e., snow, freezing drizzle, and sleet, for DeSoto, Marshall, and Tunica Counties in Mississippi.

Under Mississippi law, the elements of negligence are "duty, breach, proximate causation, and damages." Simpson v. Boyd, 880 So. 2d 1047, 1050 (Miss. 2004). "Duty and breach of duty, which both involve for[e]seeability, are essential to finding negligence and must be demonstrated first." Id. "A duty can be assumed either by contract or by a gratuitous promise that induces detrimental reliance." Doe v. Hunter Oak Apartments, L.P., 105 So. 3d 422, 427 (Miss. Ct. App. 2013). "[W]hether a party assumed a duty must be determined by the individual

facts of the case and the existence or absence of detrimental reliance on that assumed duty." Wagner v. Mattiace Co., 938 So. 2d 879, 886 (Miss. Ct. App. 2006). "Whether a duty is owed is a question of law." Doe ex rel. Doe v. Wright Sec. Servs., Inc., 950 So. 2d 1076, 1079 (Miss. Ct. App. 2007). "When a plaintiff fails to prove that a duty is owed, there can be no claim for negligence." Horton v. City of Vicksburg, 268 So. 3d 504, 510 (Miss. 2018).

In their attempt to demonstrate that Majestic had assumed a duty to provide accurate weather information, the plaintiffs rely on two telephone calls that Parks made to the casino on the date of the accident. Specifically, Parks indicated that, on the morning of the accident, someone had told her that there was going to be some bad weather "going in the direction" of the casino. Parks stated that, before the bus departed from Huntsville, she called the casino to inquire about the weather and that she talked to some unknown person in the casino's security department. Parks recounted her conversation with that person as follows:

> "[Parks:] I asked him about the weather, that we were planning on bringing a bus down today and I wanted to know what the weather was like. … And he, basically, said that they were expecting some bad weather. And I asked what bad

weather, and he said light snow, possibly no accumulation, but it's not due in until late.
"….

"[Parks:] And then at that point I asked what's late, what are we talking. And he said they're not expecting it to come in until late, around 10:00 [p.m.] or 11:00 [p.m.].

"[Attorney for Majestic:] Okay. All right. That conversation … took place between 7:30 [a.m.] and 8 o'clock in the morning; correct?

"[Parks:] Yes.

"….

"[Attorney for Majestic:] Yeah. And so you normally would have arrived at the casino around 1:30 [p.m.] or 2:00 [p.m.] did you say?

"[Parks:] right.

"[Attorney for Majestic:] And the plan would have been to stay for about eight hours?

"[Parks:] Yes, that's the normal stay time.

"….

"[Attorney for Majestic:] Okay. Do you -- you know weather can change?

"[Parks:] Yes.

"[Attorney for Majestic:] Okay, you know, you can -- you can have all of a sudden some snow and ice that can develop very quickly?

> "[Parks:] Right.
>
> "[Attorney for Majestic:] Just like … tornadoes. Do you have any reason to believe, Ms. Parks, that what the person told you, do you have any reason to believe that person was being dishonest with you at the time you had that conversation?
>
> "[Parks:] No, I do not.
>
> "….
>
> "[Attorney for Majestic:] Okay, Now, did you ask him -- you were asking him about the weather at the casino; correct?
>
> "[Parks:] Right.
>
> "….
>
> "[Attorney for Majestic:] The fellow -- the security officer [--] he wasn't trying to entice anybody [to travel to the casino], he was simply answering the question you asked him [about the weather]; right?
>
> "[Parks:] Exactly."

(Emphasis added.) While en route to the casino, Parks made a second telephone call to the casino's group-sales department, as she always did, to confirm the actual number of people on the bus and the approximate time that the bus would be arriving. Parks stated that she talked to Nona McKinney and that, during that conversation, she asked McKinney (1) whether, if the group had to leave early because of the weather, the group members would still receive the same "promo-cash" and meal-ticket

package and (2) whether, if the group had to stay because of the weather, the casino would have enough hotel rooms to accommodate the members. According to Parks, McKinney confirmed that the group members would receive the same incentive package regardless of how long they stayed at the casino and that the casino "should have enough hotel rooms" to accommodate her group. Parks further stated that she never asked McKinney if the hotel rooms would be "comped" but that she assumed that they would be if "there was a problem beyond [their] control." Contrary to the plaintiffs' assertions, Park's testimony, when viewed in the proper context, does not indicate that, when she called the casino, she asked anyone there whether "it was safe to proceed" to the casino because of the weather, does not suggest that anyone at the casino "encouraged" the group to continue to the casino by offering financial incentives, and does not indicate that anyone at the casino "offered guidance as to the safety of the trip and the weather." Rather, as Parks indicated, she merely called the casino to check on the weather there and to inquire whether the group members would still get the same incentive package if they had to leave early and whether the casino had enough hotel rooms to accommodate the members of her group if the weather got bad.

Accordingly, the plaintiffs have not offered substantial evidence to indicate that Majestic assumed a duty to provide the plaintiffs with "accurate" weather information, which, they imply, would have prevented the accident.

2. Negligence -- Duty to Conduct Due Diligence on Teague Express

The plaintiffs also claim that Majestic was negligent based on its alleged failure to conduct due diligence on the fitness of Teague Express before allowing the bus company to transport patrons to its casino. The plaintiffs assert that such due diligence would have disclosed, among other things, that Vines was not competent to drive a charter bus in icy conditions and that, at the time of the accident, her commercial driver's license had been suspended. In its motions for a summary judgment, Majestic argued that it had no duty to conduct due diligence on Teague Express because, it said, there was no evidence to indicate that it had any involvement in selecting the bus company or its driver. Rather, Majestic claimed that its only involvement with Teague Express related to confirming that the charter bus was properly insured before entering its property. Majestic relied on the affidavit of Lester James McMackin

III, the chief operations and marketing officer for Majestic's parent company, who stated, in relevant part:

> "15. [The casino] is open for business 24 hours per day, 7 days per week, and 365 days per year. The customers and guests of [the casino] travel to the casino from every direction across the United States and in all forms of transportation. [Majestic] does not act or serve as a ground or air traffic controller. [Majestic] does not select the modes of transportation for its guests, nor does it select the routes that are taken by its guests to [the casino]. For guests who travel to [the casino] by air, [Majestic] does not select the airline or the pilots who fly the guests to nearby airports. For guests who travel by charter bus, [Majestic] does not select the charter bus company or the charter bus driver who transports the guests. [Majestic] is not a transportation company and does not employ bus drivers or own any commercial buses.
>
> "16. Before a charter bus can enter [the casino] property, [Majestic] requires that the charter bus company be licensed by the United States Department of Transportation (USDOT) and be insured up to $5,000,000.00. The primary reason for the insurance requirement is that there are guests of all ages who walk through the parking lots of the casino and hotel throughout the day. Teague VIP Express met the USDOT and insurance requirements on the date of the accident."

(Emphasis added.) Consistent with McMackin's testimony, Parks stated in her deposition that, in 2013, she had inquired about what would be involved in bringing people to the casino by charter bus on a regular basis. According to Parks, someone at the casino told her that she needed to find "a bus line," and then let the casino know the name of the bus line,

and that the casino would "take it from there." Parks stated that it was her understanding that "take it from there" meant confirming that the bus company had proper insurance. Parks also indicated that Majestic played no role in selecting Teague Express or Vines. Majestic also offered the affidavit of Lane Vaningen, the president and owner of Transportation Compliance Experts, Inc., who stated that Majestic had no duty to conduct any due diligence on Teague Express:

> "In 2018, [Teague Express] was certified by the [United States Department of Transportation ('the USDOT')] to transport passengers on commercial charter buses. According to Tyrone Teague, [the owner of Teague Express], [Teague Express] enjoyed a Satisfactory safety rating from the USDOT. A Satisfactory safety rating is the highest safety rating that is issued by the USDOT to commercial motor vehicle carriers. Only 5-6 percent of USDOT registered motor entities hold a Satisfactory safety rating which [is] the highest [USDOT] rating category possible.
>
> "Based upon my education, training, and experience in motor carrier safety and compliance, it is reasonable for the general public to conclude that a motor carrier who is certified by the USDOT to transport passengers on a commercial charter bus and who holds a Satisfactory safety rating issued by the USDOT is competent and qualified to operate charter buses. A company that holds a Satisfactory safety rating has been found to have adequate safety management controls in place to comply with applicable industry safety standards that are implemented to reduce preventable crash involvement.
>
> "I understand that Linda Parks … hired [Teague Express] to transport a group of passengers from Huntsville and Decatur,

> Alabama to [the casino] in Tunica County, Mississippi. I further understand that Ms. Parks did not have an ownership interest in either [Teague Express] or the charter buses that were owned and operated by [Teague Express]. Without such an ownership interest, Ms. Parks had no duty or responsibility under the Federal Motor Carrier Safety Regulations to hire, supervise, monitor, or otherwise vet any of the drivers employed by [Teague Express]. Ms. Parks also had no duty to inspect or maintain the charter buses owned by [Teague Express]. As a motor carrier, it was the duty and responsibility of [Teague Express] to provide a licensed, competent, and qualified driver to transport passengers and to provide equipment that was reasonably safe to operate on public highways. The [Federal Motor Carrier Safety Regulations] do not permit those duties and responsibilities to be delegated to other parties, including [Majestic].
>
> "I understand that [Majestic] own[s], operates, and manages [the casino]. I also understand that [Majestic] (1) did not hire or retain [Teague Express] to transport any passengers to the casino; and (2) had no ownership interest in [Teague Express], or in any of the charter buses owned by [Teague Express]. Like Ms. Parks, [Majestic] also had no duty or responsibility under the Federal Motor Carrier Safety Regulations to hire, supervise, monitor, or otherwise vet any of the drivers employed by [Teague Express]. As a motor carrier, it was the duty and responsibility of [Teague Express] to provide a licensed, competent, and qualified driver to transport passengers and to provide equipment that was reasonably safe to operate on public highways."

(Emphasis added.)

Despite the foregoing, the plaintiffs argue: "Parks affirmatively requested Vines to drive for them. Majestic then approved Vines as the

driver. When Majestic did so, it assumed the duty to select and approve a competent driver." Sykes's brief at 36. The plaintiffs then state:

> "Critically, '[i]n Mississippi, the fact than an independent contractor is retained does not absolve the party hiring the contractor from liability for negligent hiring.' Whatley v. Delta Brokerage & Warehouse Co., 159 So. 2d 634, 637 (Miss. 1964) …. Thus, when Parks selected and Majestic approved Vines, they had a duty to make sure she was competent."

Sykes's brief at 36-37.

The plaintiffs' argument is flawed in several respects. First, although they assert that Majestic approved Vines as the bus driver, they cite to no part of the record in support of that factual allegation. See Rule 28(a)(7), Ala. R. App. P. Next, it appears from the above quote that the plaintiffs are insinuating, without citation to the record, that Vines was an independent contractor in some respect. Regardless, the above quote regarding independent contractors does not appear in Whatley v. Delta Brokerage & Warehouse Co., 248 Miss. 416, 159 So. 2d 634 (1964), nor are the facts of that case relevant to the facts here or to the issue presented regarding an assumed duty to conduct due diligence on a common carrier or its driver. Finally, the plaintiffs rely on the testimony of Michael K. Napier, Sr., an expert in trucking litigation who, they say,

stated in his deposition, among other things, that the Federal Motor Carrier Safety Administration imposes a duty to conduct appropriate due diligence on a motor carrier when a party such as "Majestic[,] through Parks, arranges for the transport of patrons." Sykes's brief at 35 (emphasis omitted). However, the plaintiffs' claim, alleging that Majestic had a duty to conduct due diligence on Teague Express, is predicated on a theory of direct negligence; Napier's testimony regarding a duty appears to be based on an agency theory. In any event, the uncontroverted evidence indicates that Majestic did not arrange for or approve the charter bus; rather, as Majestic's representative testified, the only role its casino plays regarding charter buses is to verify that those buses are properly insured before entering its property. In his deposition, Tyrone Teague, the owner of Teague Express, confirmed that casinos do not have to "approve" charter buses that transport patrons to their casinos:

> "[Attorney for the plaintiffs:] Are you the person at [Teague Express] that would have communicated with the casinos about the proof of insurance and getting approved to transport passengers to any particular casino?
>
> "[Teague:] You don't have to get approval. You just [have] to send a certificate of insurance."

(Emphasis added.) The evidence is further uncontroverted that Teague Express, as a motor carrier, had a nondelegable duty to provide a licensed, competent, and qualified driver to transport passengers to Majestic's casino. Accordingly, the plaintiffs failed to offer any evidence to indicate that Majestic voluntarily assumed a duty either to provide the plaintiffs with accurate weather information or to conduct due diligence on the fitness of Teague Express. Thus, the trial court did not err in entering a summary judgment in favor of Majestic on the plaintiffs' direct-negligence claims.

B. Majestic and Parks

1. Negligence -- Vicarious Liability

The plaintiffs contend that the trial court erred in entering summary judgments in favor of Majestic on their vicarious-liability claims because, they say, they presented substantial evidence to indicate that, even if Majestic was not directly negligent, it is still vicariously liable for the alleged negligence of Parks under the doctrine of respondeat superior. See J & J Timber Co. v. Broome, 932 So. 2d 1, 6 (Miss. 2006) ("An action against an employer based on the doctrine of respondeat superior is a derivative claim arising solely out of the negligent conduct

of its employee within the scope of his or her employment."). We need not address the issue whether Majestic and Parks had an employer-employee relationship because, under the facts presented, the plaintiffs have presented no evidence to indicate that Parks was negligent as alleged. The plaintiffs first contend that Parks was negligent by failing to conduct due diligence on the suitability of Teague Express. As previously indicated, Vaningen, Majestic's expert, stated in his affidavit that, under the Federal Motor Carrier Safety Regulations, Parks had no duty or responsibility to conduct due diligence on Teague Express or its drivers. Rather, as a motor carrier, Teague Express had a nondelegable duty to provide licensed, competent, and qualified drivers to transport passengers. The plaintiffs also contend that Parks was negligent by failing to stop the bus from proceeding to the casino in the face of potentially inclement weather. The plaintiffs cite no legal authority to indicate that a person such as Parks, who arranges transportation for other passengers, has a duty to ensure those passengers' safety. Rather, the plaintiffs rely solely on Vines's testimony that, on two separate occasions, she had given Parks the option of turning the bus around and heading back to Alabama but that Parks declined each time. Even

assuming that Vines provided Parks the option of turning the bus around, Vines testified in her deposition that it is the driver of a commercial vehicle who decides whether or not the vehicle continues to proceed to its destination in any given circumstance. Teague also stated in his deposition that Parks would have had no authority to control how Vines operated and drove the charter bus involved in the accident and that Vines had complete and exclusive control of the bus on the date of the accident. Vaningen likewise stated in his affidavit that,

> "[a]s the commercial motor vehicle driver of the Teague charter bus, Ms. Vines was in the complete and exclusive control of the bus regardless of the desires of any of the passengers on the bus. If Ms. Vines believed it was dangerous or unsafe to either make the trip to the casino or continue the trip to the casino due to hazardous weather or road conditions, it was Ms. Vines' and [Teague Express's] duty and responsibility to take reasonably appropriate action under the circumstances then existing. This responsibility did not lie with Linda Parks or [Majestic] who were not in control of the operation of the charter bus."

In other words, Vines was the "captain" of the charter bus, and any decision to abort the trip to the casino remained with either her or Teague Express. Because Parks did not owe the plaintiffs a duty either to conduct due diligence on Teague Express or to abort the trip to the casino to ensure the plaintiffs' safety, there could be no negligence on her part

that could be imputed to Majestic. Accordingly, the trial court did not err in entering summary judgments in favor of Majestic and Parks on the issues of vicarious liability and negligence.

2. Joint Venture -- Negligent Entrustment and Negligent Hiring, Supervision, and Training

The plaintiffs also claim that they presented substantial evidence to indicate that Majestic, Teague Express, and Parks were engaged in a joint venture to transport patrons to the casino in order to make a profit, and they seek to hold Majestic and Parks liable on claims of negligent entrustment and negligent hiring, supervision, and training based on that theory.[4] The plaintiffs state, in relevant part:

> "Here, there is vast evidence about how the parties worked together to make a profit. The parties used each other's services to make a profit -- all in one joint venture over and over and over again. Majestic profited and engaged in marketing to bring people from Alabama to its Casino to gamble. It paid Parks as much as $15,000 over 5 years to bring people to the Casino. Parks paid for the bus to drive the people to the Casino. Parks and Majestic selected/approved the bus company, and Majestic vetted the company to make sure it was suitable and to make sure the bus company was appropriately insured and listed itself as a secondary insured.

[4]The plaintiffs claim that Teague Express negligently entrusted the charter bus to Vines and that Majestic is therefore liable for that tort under a joint-venture theory. The plaintiffs also assert that Majestic and Parks are liable under a joint-venture theory for the negligent hiring, supervising, and training of Vines as the bus driver.

> Majestic also gave the bus driver incentives and meals to drive the bus and come to the Casino. To say that it is a joint undertaking is an understatement."

Sykes's brief at 48.

Under Mississippi law, a joint venture has been defined as follows:

> "A joint venture has been broadly defined as 'an association of persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, efforts, skill and knowledge.' Hults v. Tillman, 480 So. 2d 1134, 1142 (Miss. 1985). The conditions precedent for the existence of a joint venture are (1) a joint proprietary interest in the enterprise; and (2) a right of mutual control. Id. An agreement to share in the profits is essential, and both parties must actually intend to be associated as joint venturers. Id. at 1142, 1143. While it has been stated that there need be no specific agreement to share in the losses, Sample v. Romine, 193 Miss. 706, 727, 8 So. 2d 257, 261 (1942), the absence of any discussion or agreement about paying the expenses of the venture may support the conclusion that no joint venture existed. Hults, 480 So. 2d at 1147."

Pennebaker v. Gray, 924 So. 2d 611, 618 (Miss. Ct. App. 2006). "The existence of a joint venture may be inferred from the facts, circumstances, and conduct of the parties." Id.

Clearly, there was no express agreement to indicate the existence of a joint venture between Teague Express, Majestic, and Parks. Moreover, there is no evidence, indirect or otherwise, to indicate that Teague Express, Majestic, and Parks intended to be associated as joint

venturers. See Hults v. Tillman, 480 So. 2d 1134, 1143 (Miss. 1985) ("A joint venture is a form of contract, and governed by contract law. The first question is whether there was an intent to form a joint venture." (citation omitted)). "What is essential to any intent to form a joint venture is the idea that the parties are engaging in the undertaking with both parties owning the venture, with a right of mutual control, and joint obligations and liabilities." Id. at 1146. McMackin, who submitted an affidavit on behalf of Majestic, stated that Majestic had never formed a joint venture with Teague Express or Vines; Teague indicated in his deposition that Teague Express had never been involved in any type of joint venture with Parks or Majestic; and Parks stated in her deposition that she had never intended to form any kind of business relationship with either Teague Express or Majestic. Rather, Parks stated that organizing the bus trips to the casino was something she did after retirement -- it was "simply for fun." We find the above testimony convincing evidence that neither Teague Express, nor Majestic, nor Parks contemplated a single business enterprise for profit in transporting patrons to Majestic's casino. Rather, the evidence indicates that each party operated independently of the others. Parks communicated solely with Teague Express about arranging

the charter bus, she paid Teague Express the bus fee, and Teague Express accepted payment of that fee. The only role Majestic played with regard to Teague Express was to verify that it, like all other bus companies, had proper insurance before allowing its buses to enter its premises. Finally, there was no written or oral agreement between Parks and Majestic requiring Parks to bring patrons to the casino. According to Parks, she was free to visit any casino of her choice, she was free to cancel any scheduled trip to the casino without penalty, and the casino left it up to her and the members of her group "as to what day [they] wanted to [visit the casino]." The fact that the casino offered incentive packages to Parks and her guests, including Vines, does not amount to a joint-venture relationship; the evidence was undisputed that the casino offers such packages to all "large groups." In fact, such incentive packages would appear to be nothing more than a marketing strategy aimed at encouraging customer patronage and loyalty. As Parks admitted in her deposition, she and her guests liked Majestic's casino because it "did a better job of marketing itself" than other casinos did. In other words, the requirement of intent to form a single joint enterprise is completely absent here, where there is no evidence to indicate that the parties had

any mutual intent to participate in a joint profit-making venture. Moreover, there is no evidence to indicate any discussion between the parties as to how a joint venture would be managed, how profits and losses would be shared, and, critically, which party would be responsible for operations and expenses. See Pennebaker, 924 So. 2d at 618. As indicated, "the absence of any discussion or agreement about paying the expenses of the venture may support the conclusion that no joint venture existed." Id. Based on the foregoing, the trial court did not err in entering summary judgments in favor of Parks and Majestic on the plaintiffs' claims premised on a joint-venture theory.

3. Wantonness

The plaintiffs finally assert that the trial court erred in entering the summary judgments in favor of Majestic and Parks because, they say, there was substantial evidence to indicate wantonness on the part of both. The Mississippi Supreme Court has stated that, although negligence is characterized as the failure or refusal to exercise due care, wantonness is defined as "'a failure or refusal to exercise any care.'" Maldonado v. Kelly, 768 So. 2d 906, 910 (Miss. 2000) (citation omitted). The plaintiffs assert the following regarding their wantonness claims:

> "Here, with a conscious indifference to the consequences, the Casino told Parks and the bus (with 46 elderly occupants) to proceed through clearly arriving inclement severe weather and did so with an unlicensed and inexperienced inclement weather commercial driver. Moreover, Majestic's failure to do any due diligence whatsoever on [Teague Express] prior to these trips arises to wanton conduct."

Sykes's brief at 65. The plaintiffs further state that Park's conduct was wanton for the same reasons and also because the evidence indicated that she "was more interested in earning her fees than the safety of the passengers." Id. As previously indicated, (1) the plaintiffs have mischaracterized Park's testimony, e.g., no one at the casino "told" Parks "to proceed" to the casino in the face of potentially inclement weather, (2) neither Majestic nor Parks had a duty under the facts presented to conduct due diligence on the suitability of Teague Express, and (3) Parks had no duty to ensure the safety of the bus passengers in this case. Lastly, it strains credulity to believe that Park's receipt of approximately $250 a month in commissions was so significant that she would sacrifice friendship, reputation, or safety to obtain it. Accordingly, the trial court did not err in entering the summary judgments in favor of Majestic and Parks on the issue of wantonness.

## IV. Conclusion

Based on the foregoing, the plaintiffs failed to offer substantial evidence to support any of their claims against Majestic or Parks in connection with the charter-bus accident that occurred on November 14, 2018. Accordingly, the summary judgments entered in favor of Majestic and Parks are affirmed.

SC-2023-0520 -- AFFIRMED.

SC-2023-0572 -- AFFIRMED.

Parker, C.J., and Wise, Stewart, and Cook, JJ., concur.