IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

KENNETH L. LEFEBVRE, SR., and STEPHANIE LEFEBVRE,	:	
	:	C.A. No. 98C-01-026(WLW)
Plaintiffs,	:	
	:	
v.	:	
	:	
DELMAR APPLIANCE OF DELAWARE, INC., a corporation doing business in the State of Delaware, and FRANK MANDARANO,	:	
	:	
Defendants.	:	

Submitted: February 16, 2001
Decided: March 23, 2001

Upon Defendant Delmar Appliance of Delaware, Inc.'s Motion for Summary Judgment. Granted.

Bayard J. Snyder, Snyder & Associates, P.A., Wilmington, Delaware, attorneys for the Plaintiffs.

Louis B. Ferrara, Ferrara, Haley, Bevis & Solomon, Wilmington, Delaware, attorneys for the Defendants.

WITHAM, J.

Lefebvre v. Delmar Appliance, et al.
C.A. No. 98C-01-026
March 23, 2001

ORDER

1. On November 22, 1996, near the intersection of Routes 13 and 153 (Fork Branch Road), a collision occurred between the vehicles of Frank Mandarano ("Mandarano" or "Defendant") and Kenneth LeFebvre. Stephanie LeFebvre, wife of Kenneth LeFebvre, was a passenger in the LeFebvre ("Plaintiffs') vehicle at the time of the collision. In this civil action, Plaintiffs allege that their injuries were caused by the negligence of Mandarano. Plaintiffs also allege in the complaint that Delmar Appliance of Delaware, Inc. ("Delmar Appliance") is vicariously liable as the master/employer of Mandarano. Before the Court is Delmar Appliance's motion for summary judgment. Delmar Appliance claims that Mandarano was retired at the time of the accident and no longer employed by their company.

2. *Superior Court Civil Rule 56(c)* states that summary judgment should be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[1] Summary judgment cannot be granted unless after viewing the record in a light most favorable to the non-moving party, there are no material issues of fact.[2] The moving party bears the burden of showing that there are no material issues of fact; however, if the moving party "supports" the motion under the Rule, the burden shifts to the non-

[1] ***Sup. Ct. Civ. Rule 56(c).***

[2] ***Moore v. Sizemoore*, Del. Supr., 405 A.2d 679, 680 (1979).**

moving party to show that material issues of fact do exist.[3] In *Merrill v. Crothall-American, Inc.*, the court stated that the "role of a trial court when faced with a motion for summary judgment is to identify disputed factual issues whose resolution is necessary to decide the case, but not to decide such issues."[4] Summary judgment will not be granted in cases where the record indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law.[5]

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[3] ***Id.***

[4] ***Merrill v. Crothall-American, Inc.*, Del. Supr., 606 A.2d 96, 99 (1992).**

[5] ***Ebersole v. Lowengrub*, Del. Supr., 180 A.2d 467, 468-469 (1962).**

3. The issue before this Court is whether or not Delmar Appliance and Mandarano had a master/servant relationship or any type of agency relationship which could be used to establish vicarious liability. Vicarious liability in the master/servant (employer/employee) context arises through the doctrine of respondeat superior ("let the master answer").[6] Generally, "if the principal is the master of an agent who is a servant, the fault of the agent, if acting within the scope of employment, will be imputed to the principal by the doctrine of respondeat superior."[7] However, ownership of a motor vehicle at the time of an accident, by itself, is not enough to subject the owner to liability for negligence of the driver.[8] These principles were stated in *Finkbiner v. Mullins* as follows:

> Under the principle of respondeat superior, therefore, an owner of a motor vehicle is liable for the negligent operation of that vehicle by his agent or servant who at the time of the accident was engaged in the master's business or pleasure with the master's knowledge and direction. Conversely, in the absence of agency, an owner is not liable for injuries caused by its operation by another whom he merely permits to use the vehicle for the latter's own purposes.[9]

Therefore, the focus of vicarious liability is the relationship between the owner and

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[6] ***Fisher v. Townsends, Inc.*, Del. Super., 695 A.2d 53, 58 (1997); *Finkbiner v. Mullins*, Del. Super., 532 A.2d 609, 615 (1987).**

[7] ***Fisher* at 58.**

[8] ***Finkbiner* at 615.**

[9] ***Id.***

operator of the vehicle and not merely ownership of the vehicle. While in some jurisdictions proof of ownership is enough to establish a *prima facie* case that an agency relationship existed, Delaware law requires that there "be some affirmative evidence of the relation of master and servant, and that the servant was acting within the scope of his master's employment at the time of the injury complained of before there can be recovery."[10]

4. Based on the above standard, the Plaintiffs must have some affirmative evidence that an agency or master/servant relationship existed between Mandarano and Delmar Appliance and that Mandarano was performing some activity for the corporation at the time of the accident. Defendants deny that any such relationship existed at the time of the accident or has for a number of years. Plaintiffs argue two theories to establish vicarious liability. First, Plaintiffs claim that Mandarano was doing his master's pleasure in that Delmar Appliance knew that Mandarano would use the company car for pleasure. Second, Plaintiffs argue that the tax records of Delmar Appliance show that the company acted like Mandarano was an agent/employee doing their business or pleasure and the company should be bound by those actions.

[10] ***Finkbiner* at 617.**

5. First, the fact that Delmar Appliance and Joanne Mandarano knew that Mandarano used the car for his pleasure does not establish vicarious liability. Under Delaware law, Plaintiffs must prove two things. First, Plaintiffs must prove that an agency relationship existed between Delmar Appliance and Mandarano at the time of the accident; and second, Plaintiffs must then prove that Mandarano was "engaged in the master's business or pleasure with the master's knowledge and direction." [11] In Mandarano's deposition, he testified that he is a 38% stockholder of Delmar Appliance,[12] but that he has not been an officer of the company since 1980. Mandarano also testified that he had not performed any work for Delmar Appliance since 1989; however, Plaintiffs claim that he has done some consulting work. Mandarano shares use of the car which was purchased by Delmar Appliance in 1989 with his wife Joanne, the current President of Delmar Appliance. Plaintiffs further argue that some type of agency relationship existed because the expenses of the car were paid by Delmar Appliance. The previous employment and expense payments show ownership, but they do not establish an agency relationship. Mandarano testified that on the day of the accident he was driving home from Spence's Bazaar, a flea market and auction, which has been his usual practice throughout his retirement.

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[11] ***Finkbiner* at 615.**

[12] **Joanne Mandarano, Defendant's wife, testified that he is actually a 33% stockholder.**

Plaintiffs have not offered any proof or support for their allegation that Mandarano was an agent of Delmar Appliance engaged in the company's business or pleasure at the time of the accident.

6. Second, the tax records of Delmar Appliance are not evidence of an agency relationship that will estop Delmar Appliance from claiming that no agency relationship existed. Plaintiff argues that quasi-estoppel applies to the actions of Delmar Appliance. According to the deposition of Joanne Mandarano, the corporation did not file an IRS 1099 form for the amount of personal use of the car by her husband, but instead deducted all of the car's expenses as a business expense. Plaintiffs argue that these tax decisions show that Delmar Appliance acted as if Mandarano was an employee of the corporation; therefore, the corporation should not now be able to avoid liability by claiming that no agency relationship existed. Again, the tax records of Delmar Appliance establish the corporation as the owner of the vehicle, but they do not prove that an agency relationship existed, nor do they prove that when the accident occurred Mandarano was performing his master/employer's business or pleasure. Even if the Court was willing to accept that the corporation should be quasi-estopped from denying the existence of an agency relationship based on their tax reporting, the Plaintiffs must have some support or basis for asserting that Mandarano was doing the corporation's business or pleasure to avoid summary judgment. No proof has been presented to the Court that Mandarano was engaged in any activity for the alleged master/employer at the time of the accident. In fact, from the uncontroverted deposition testimony it appears that Mandarano was enjoying his

retirement at a flea market the day of the accident. No quasi-estoppel theory can be shown from the facts presented to the Court.

Therefore, no material issue of fact exists concerning any master/servant relationship between the two defendants, and Defendant Delmar Appliance's motion for summary judgement is **granted**.

IT IS SO ORDERED.

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Judge

dmh
oc: Prothonotary
xc: Order Distribution
File