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## NEW JERSEY

### Summary Judgment: No Principal-Agent Relationship



**Christina Rogers-Spang**

Rawle & Henderson LLP was recently granted summary judgment in a case involving the fact-sensitive question of whether an agency relationship existed between co-defendants. The co-defendants were an individual and our client, the owner of a used car auto dealership. The Court granted our Motion for Summary Judgment, holding that agency did not exist.

Plaintiff Joe filed a lawsuit against Defendant Bob and Used Car Dealership Defendant (“Dealership”), all fictitious names, to recover damages for injuries allegedly sustained in a December 2011 motor vehicle accident. In the December 2011 accident, Defendant Bob was operating a vehicle he owned when he was involved in an accident with Plaintiff Joe, a pedestrian. While Defendant Bob owned the vehicle, it bore the license plates of Dealership, a used car dealer.

Defendant Bob purchased the vehicle with the intent of showing it to his friend, the owner of Dealership, to see whether he would want to buy the vehicle. Defendant Bob understood that there was a chance that the owner of the Dealership would not want to buy the vehicle. Defendant Bob asked the owner of the Dealership whether he could borrow one of the dealer plates to bring the vehicle to the Dealership. Defendant Bob had borrowed Dealership’s dealer plates previously to transport vehicles. Defendant Bob was never employed by Dealership. If Defendant Bob found a vehicle that the Dealership might be interested in buying, Defendant Bob would not get a percentage from the sale of the vehicle to Dealership.

On the day of the accident, Defendant Bob contacted the owner of the Dealership regarding the vehicle. Defendant Bob described the vehicle to the owner of the Dealership. The owner of the Dealership indicated that he would be interested in looking at the vehicle.

Defendant Bob got a dealership plate from the Dealership, returned home with the plate and put it on the vehicle that he wanted to show the owner of the Dealership. As Defendant Bob was driving the vehicle to the Dealership, the accident occurred.

We made a Motion for Summary Judgment on the basis that there was not an agency relationship between Defendant Bob and the owner of Dealership. Further, we argued that the Dealership was not vicariously liable for Defendant Bob's actions. The Court noted that, ordinarily, "whether an employer employee relationship exists is a factual question for the jury to decide, but if there are no disputed facts or inferences that may be drawn from undisputed facts regarding the employment relationship – summary judgment may be granted." *Bennet v. T&F Distrib. Co.*, 117 N.J. Super. 439, 441, 285 A.2d 59 (App. Div. 1971)

"To establish a master's liability for the acts of his servant, a plaintiff must prove (1) that a master-servant relationship existed and (2) that the tortious act of the servant occurred within the scope of his employment." *Carter v. Reynolds*, 175 N.J. 402, 409, 815 A.2d. 460 (2003). The Court further found that "the relationship of

master and servant is not capable of an exact definition... [and] must be determined in the light of the totality of the facts surrounding the relationship." *Gilborges v. Wallace*, 153 N.J. Super. 121, 132, 379 A.2d. 269 (App. Div. 1977) (citing *Andryishyn v. Ballinger*, 61 N.J. Super. 386, 391, 160 A.2d. 867 (App. Div. 1960)). The Court noted that New Jersey also applies a "catch all" factor stating that courts should consider "such factors as may be reasonably considered in determining whether the entity for which the services are being performed controls, or has the right to control, the entity performing the services." *Model Jury Charges* (Civil) 5.10(A)(11).

In the end, the Court ruled that the facts in this case did not support a principal-agent relationship between Defendant Bob and Dealership. The owner of the Dealership did not direct Defendant Bob or have the ability to control him. The Court found that the "loaning of the dealer plates and a vague interest in possibly buying a used car was the extent of Dealership involvement." This was not enough to support a claim of an agency relationship between Defendant Bob and Dealership and not enough to find Dealership vicariously liable for the actions of Defendant Bob. The Court granted the Motion for Summary Judgment as to Dealership.

**Christina M. Rogers-Spang** is Of Counsel to the firm in our New Jersey office. She concentrates her practice on the defense of commercial motor vehicles and their insurers. She is experienced in the area of employment litigation and provides counseling to clients on employment matters arising under numerous state and federal statutes including the FMLA, ADA, ADEA, Title VII and New York State and New York City civil rights laws. Christina has represented public and private sector clients in federal and state court, as well as before administrative agencies. In addition, she is experienced in the areas of product liability and premises liability. Christina earned her law degree from Pace University School of Law. While attending Pace University School of Law, Christina was an Articles Editor on the *International Law Review* and a member of the Moot Court Board. She earned her Bachelor of Science degree, *cum laude*, from the State University of New York at Albany. She is admitted to practice in the state courts of New Jersey, Pennsylvania, and New York.

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