

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D80992  
C/jr

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Argued - December 10, 2025

CHERYL E. CHAMBERS, J.P.  
HELEN VOUTSINAS  
JANICE A. TAYLOR  
PHILLIP HOM, JJ.

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2025-04342

DECISION & ORDER

Lois M. Rosenblatt, etc., plaintiff, v Ever E. Mora, et al.,  
defendants third-party plaintiffs-respondents, et al.,  
defendants; Lots O Bagels, third-party defendant-appellant.

(Index No. 721935/22)

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Congdon, Flaherty, O’Callaghan, Fishlinger & Pavlides, Uniondale, NY (Michael T. Reagan of counsel), for third-party defendant-appellant.

Landman Corsi Ballaine & Ford P.C., New York, NY (Matthew R. Hughes of counsel), for defendants third-party plaintiffs-respondents.

In an action to recover damages for personal injuries and wrongful death, the third-party defendant appeals from an order of the Supreme Court, Queens County (Karina E. Alomar, J.), dated March 27, 2025. The order, insofar as appealed from, denied that branch of the third-party defendant’s motion which was pursuant to CPLR 3211(a)(7) to dismiss the third-party cause of action for contribution.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the third-party defendant’s motion which was pursuant to CPLR 3211(a)(7) to dismiss the third-party cause of action for contribution is granted.

In October 2022, the plaintiff commenced this action to recover damages for personal injuries and wrongful death on behalf of the estate of Alfredo Cabrera Licona (hereinafter the plaintiff’s decedent) against, among others, the defendants Ever E. Mora and Anheuser-Busch Distributors of New York, Inc. (hereinafter Anheuser-Busch). The plaintiff alleged that the plaintiff’s decedent, while operating an electric scooter, was struck by a motor vehicle operated by Mora.

Thereafter, Mora and Anheuser-Busch (hereinafter together the third-party plaintiffs) commenced a third-party action against Lots O Bagels (hereinafter Bagels), the plaintiff's decedent's employer at the time of the accident, inter alia, for contribution. The third-party plaintiffs alleged that Bagels was negligent in supervising and training the plaintiff's decedent, which was a proximate cause of the accident. Bagels moved, among other things, pursuant to CPLR 3211(a)(7) to dismiss the third-party cause of action for contribution. In an order dated March 27, 2025, the Supreme Court, inter alia, denied that branch of the motion. Bagels appeals.

"To sustain a third-party cause of action for contribution, a third-party plaintiff is required to show that the third-party defendant owed it a duty of reasonable care independent of its contractual obligations, if any, or that a duty was owed to the plaintiffs as injured parties and that a breach of that duty contributed to the alleged injuries" (*Santoro v Poughkeepsie Crossings, LLC*, 180 AD3d 12, 17 [alteration and internal quotation marks omitted]). "All that is required for contribution is that two people be held liable for the same personal injury" (*id.* [internal quotation marks omitted]; see *Green Bus Lines v Consolidated Mut. Ins. Co.*, 74 AD2d 136, 147-148).

Where a negligence claim relates to an employer's supervision of an employee, the complaint must include allegations that: "(1) the employer had actual or constructive knowledge of the employee's propensity for the sort of behavior which caused the injured party's harm; (2) the employer knew or should have known that it had the ability to control the employee and of the necessity and opportunity for exercising such control; and (3) the employee engaged in tortious conduct on the employer's premises or using property or resources available to the employee only through their status as an employee" (*Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 157; see *Brauner v Locust Val. Cent. Sch. Dist.*, 234 AD3d 914, 915). "The employer's negligence lies in having placed the employee in a position to cause foreseeable harm, harm which would most probably have been spared the injured party had the employer taken reasonable decisions respecting the hiring, . . . retention, or supervision of the employee" (*Brauner v Locust Val. Cent. Sch. Dist.*, 234 AD3d at 915; see *Spina v Browning Hotel Props., LLC*, 230 AD3d 613, 614).

Here, there are no allegations in the third-party complaint that Bagels had actual or constructive knowledge of the plaintiff's decedent's propensity for the conduct resulting in his injury, or that Bagels knew, or should have known, that the plaintiff's decedent was performing his delivery job in a dangerous or negligent manner (see *Ponce v Miao Ling Liu*, 123 AD3d 786, 787; *Seldin v Smith*, 76 AD3d 623, 625). Similarly, the third-party complaint does not state how the plaintiff's decedent's operation of the scooter was negligent or dangerous. Accordingly, the third-party complaint failed to set forth nonconclusory factual allegations, which, if true, would establish the existence of a connection between Bagels's purported negligent supervision and training and the accident (see *25-86 41st St., LLC v Chong*, 235 AD3d 813, 816; *Santoro v Poughkeepsie Crossings, LLC*, 180 AD3d at 18-21).

While the third-party plaintiffs correctly contend that, "in the proper case, a party can seek contribution from a plaintiff's employer if the plaintiff's injuries stem in part or in whole from a lack of training or other independent actions on the part of an employer" (*Stroschine v Prudential-Bache Sec.*, 207 AD2d 828, 829; see *Lattanzi v International Bus. Machs. Corp.*, 237 AD2d 259, 260), here, the third-party complaint did not include allegations which, even if taken as

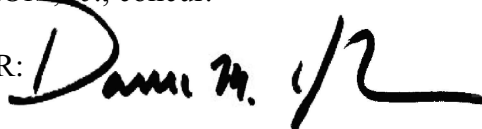
true, stated such a case.

Accordingly, the Supreme Court should have granted that branch of Bagels's motion which was pursuant to CPLR 3211(a)(7) to dismiss the third-party cause of action for contribution (see *25-86 41st St., LLC v Chong*, 235 AD3d at 816; *Santoro v Poughkeepsie Crossings, LLC*, 180 AD3d at 21; *Ponce v Miao Ling Liu*, 123 AD3d at 787).

In light of our determination, we need not reach Bagels's remaining contention.

CHAMBERS, J.P., VOUTSINAS, TAYLOR and HON. JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", followed by a large, stylized flourish or checkmark.

Darrell M. Joseph  
Clerk of the Court