MEMORANDUM

SUPREME COURT KINGS COUNTY

CIVIL TERM PART 13

Debbie Reeves

Plaintiffs,

-against-

Cathedral of Deliverance,

Defendants.

DATED: April 19, 2004

BY: H. KRAMER J.

INDEX NO. 15876/2002

The following papers have been read on this motion:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed) _____	_____
Opposing Affidavits (Affirmations) _____ _____	_____
Reply Affidavits (Affirmations) _____	_____
_____(Affirmation) _____	_____
Other Papers _____	_____

The complaint alleges that plaintiff sustained an injury to her knee when an evangelist, who was conducting a prayer line service on the defendant's premises, placed her hand on the plaintiff's forehead and, using "extra force" on this occasion, propelled plaintiff to the ground.

Defendant moves for summary judgment claiming, inter alia, that the evangelist was not an employee of the defendant and as such defendant was not responsible for her conduct. Plaintiff counters saying that the defendant, as a landowner was obligated to keep its property in reasonably safe condition and was obligated to insure that plaintiff was safeguarded from injury by employing "catchers" or using other methods since the defendant knew or should have known that people tended to fall during the course of such services. Plaintiff further argues that if the evangelist was an independent contractor, the defendant is liable because it knew or had reason to know of special dangers inherent in the work.

The only witness to this particular event was the plaintiff herself. In her uncontradicted testimony, plaintiff described the evangelist's touch as an extra heavy

push, something she had not experienced before although she had participated in prayer lines on other occasions. Although on other occasions the plaintiff had fallen because she was touched by the spirit, on this occasion she attributed her fall to the extra heavy push. The evangelist was not available and there were no depositions from any one other than the plaintiff who may have witnessed the events. The founding bishop of the congregation, who was present at the time of the event, had a stroke in 2002 and has retired. His grandson, Reverend Wagnon, who currently leads the congregation was not present at the time.

According to Reverend Wagnon, the evangelists, "receive no medical benefits. They receive a percentage of money that comes in through the offering. They are there for a short period and then they are gone." An evangelist is like a speaker who comes in and then goes and may appear at many different churches within the gospel fellowship. They go anywhere where they have an open door.

The evangelist's "push" as described by the plaintiff was not within the ordinary practice of the prayer service as plaintiff had experienced it in the past. Reverend Wagnon described the normal touch of an evangelist as being just a "split second" touch, whereas plaintiff described what happened in this case as being an extra heavy push– a push heavy enough to throw her down on her knees. This evangelist had conducted services on the defendant's premises on other occasions, according to the plaintiff, and this had not happened before.

The Court of Appeals has examined the relevant factors that create an employer-employee relationship for vicarious liability purposes. Lazo v. Mak's Trading Co. Inc., 84 N.Y.2d 896(1994). Here, as In Lazo, the "alleged tortfeasor "came and went as [s]he . . . pleased, worked at [her] own convenience, [was] free to hold other employment, were never placed on defendant's payroll, received no fringe benefits, and had no taxes withheld from the flat rate, single payment [she received]." Id, at 897. Nor was there evidence here that the defendant exercised any actual or constructive control over "the performance and manner in which the work of [this evangelist] was performed," Id., in that there is no evidence that this evangelist or any other visiting evangelist was told what to do or say in the conduct of the prayer service.

Accordingly, there is no evidence adduced to support any question of fact that

could lead to the conclusion that defendant supervised this evangelist's activities so as to impose vicarious liability upon the defendant as her employer.

Nor can liability be imposed upon the defendant under the exception to the independent contractor rule because the record does not raise a question of fact with regard to any negligence of the defendant in selecting, instructing or supervising her, or that the evangelist was involved in performing inherently dangerous work, Maristany v. Patient Support Services, 264 A.D.2d 302 (lst Dept. 1999); Kenneth R. v. Roman Catholic Diocese of Brooklyn, 229 A.D.2d 159(2d Dept. 1997), and it is undisputed that this particular evangelist, who was apparently a member of the gospel fellowship had appeared on a number of prior occasions to conduct services on the defendant's premises and conducted them in an uneventful manner.

Furthermore, whether the evangelist is considered an employee of the defendant or an independent contractor is of little moment for our analysis since the push she gave, as described by the plaintiff, is an intentional tort and an employer cannot be held responsible for the intentional, unforeseeable torts of its employees which were not undertaken within the scope of employment and were not authorized by the employer or within the employee's discretionary authority. See Lazo v. Mak's Trading Co. Inc., supra, 84 N.Y.2d at 899(concurring opinion of Titone, J.);Forester v. State, 169 Misc.2d 531(N.Y. Ct. Cl. 1996).

Finally, according to the plaintiff's uncontradicted testimony, the injury did not result from "any unsafe condition that the landowner left uncorrected on his land, but rather was a direct result of the [conduct of the evangelist] while engaged in an activity for which the . . . plaintiff volunteered." Farley v. Smith, 172 A.D.2d 800, 801(2d Dept. 1991).

Accordingly, the defendant's motion for summary judgment is granted and the complaint is dismissed.

This constitutes the decision and order of the Court.

J.S.C.

HON. JUSTICE HERBERT KRAMER