Boddie v Guerra
2025 NY Slip Op 34266(U)
November 10, 2025
Supreme Court, New York County
Docket Number: Index No. 157323/2023
Judge: Leticia M. Ramirez
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LETICIA M. RAMIREZ**, *Justice* **PART** **29**

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LUCILLE BODDIE,

Plaintiff,

- v -

RAFAEL GUERRA, DELY PRADO DE GUERRA and 560 MEAT & PRODUCE CORP. DBA C-TOWN FRESH MARKET,

Defendants.

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INDEX NO. 157323/2023

MOTION DATE 05/19/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 75, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105

were read on this motion to/for JUDGMENT - SUMMARY.

Defendant 560 Meat & Produce Corp. d/b/a C-Town Fresh Market (hereinafter "C-Town") moves pursuant to *CPLR § 3212* for an Order granting it summary judgment on the issue of lability dismissing plaintiff's complaint and all cross claims against it. In turn, plaintiff cross-moves pursuant to *CPLR § 3212* for an Order granting her summary judgment against the defendants and opposes C-Town's motion. In turn, defendants Rafael Guerra and Dely Prado de Guerra (hereinafter "Rafael" and "Dely Prado") oppose plaintiff's and C-Town's motions.

Plaintiff commenced this action on July 21, 2023, to recover from personal injuries allegedly sustained on February 11, 2023, when she was struck by a vehicle operated by Rafael while he was employed by C-Town and plaintiff was walking the sidewalk abutting C-Town's premises at 560 West 125th Street, New York, NY 10027. After issue was joined by Rafael and Dely Prado on August 23, 2023, and C-Town on September 17, 2023, a preliminary conference was held on May 20, 2024, a compliance conference on August 28, 2024, and a status conference on February 5, 2025. Plaintiff filed the Note of Issue on March 17, 2025, and the within motions ensued.

C-Town argues plaintiff's first cause of action should be dismissed because Rafael was not acting within the scope of his employment at the time he was operating the motor vehicle. Specifically, C-Town argues that Rafael was commuting to work at the time the accident occurred, and therefore relevant caselaw establishes that this activity does not fall within the scope of his employment. C-Town further contends that plaintiff's second cause of action should be dismissed because there is no evidence demonstrating it failed to maintain the walkways in good and safe condition and plaintiff essentially withdrew these allegations in her Bill of Particulars. In opposition, plaintiff asserts that denial of C-Town's motion is warranted because C-Town's counsel had asserted in a previous motion that issues of fact remained as to whether Rafael was acting within the scope of his employment. Even if denial is not warranted on this basis, plaintiff argues that issues of fact still remain to preclude summary judgment where the evidence shows Rafael was acting within the scope of his employment when he decided to travel to C-Town's second location to check its meat inventory. Lastly, plaintiff contends Rafael created a dangerous condition on the sidewalk when he decided to pull his vehicle onto the sidewalk to perform a U-turn. In turn, Rafael and Dely Prado oppose C-Town's motion by adopting and incorporating all of plaintiff's arguments except the argument which contends Rafael created a dangerous condition on the sidewalk.

In reply, C-Town contends that Rafael and Dely Prado are solely responsible for the accident, as Rafael was not operating the vehicle within the scope of his employment.

Plaintiff's cross-motion argues that she is entitled to summary judgment against Rafael for violating *VTL § 1225-a* when he decided to drive onto the sidewalk and struck plaintiff. Plaintiff also contends that summary judgment is warranted against Dely Prado as the owner of the vehicle Rafael was driving under *VTL § 388*. Finally, plaintiff states summary judgment is also warranted against C-Town under the doctrine of *respondeat superior*.

On November 10, 2023, Rafael appeared for a deposition where he stated he's a butcher at C-Town in-charge of the meat department. He mainly works at the 125th Street location between St. Nicholas and Audubon, but he also works "a couple of hours" at C-Town's 128th Street location. Rafael has been working for C-Town for approximately 13 years and is in-charge of "anything that has do to with the meat area," including ordering the meat and taking deliveries of it. His work hours are usually from 8 am to 5pm Mondays through Saturdays, but he doesn't have a set schedule to be at one store or the other. He "[has] a schedule, but [he] can work six hours, [he] can work five hours, [he] can work 10 hours … [he gets] paid to do [his] job … [i]t's not really a set schedule." Normally, Rafael arrives before 8am to park his car and then waits for the street sweeper to pass before he enters the store and begins to work. Very rarely has he begun work before 8am. Only when there is an emergency and he must wash the walk-in freezer, then he goes in at 6am.

Rafael testified that his wife, Dely Prado, is the owner of the Ford Explorer 2003 he was driving when the accident occurred. He stated that he is on the insurance and has permission to use it. The accident occurred at approximately 7:40 in the morning and he had not started work yet. In describing the accident, he testified that upon arriving to the 125th Street location he decided to go to C-Town's second location at 128th Street. So, he made a U-turn by backing into the C-Town driveway and that's when he hit the plaintiff who was coming out of the projects. Rafael stated that he did not see plaintiff because she is "very small, she's short." An ambulance was called to the area and a report was made. At the time of the accident, Rafael was coming to work from his home.

Rafael stated that, even though he arrived at the 125th location, he decided to drive to the 128th location to check the meat as part of his responsibilities for the day. It was his decision to drive to the 128th location as the manager for both stores because he has the "green light to go from one [store] to the other one as [he] deem[s] necessary." Rafael stated that his decision to work at one store versus the other is determined by him, but he makes this decision on behalf of his employer. C-Town does not provide Rafael with fuel, motor vehicle insurance coverage, nor has an ownership interest in the vehicle Rafael was driving.

On October 1, 2024, Kristin Ramirez appeared for a deposition. Ms. Ramirez has been the Vice President of Operations of C-Town's 125th Street location since 2016. Mr. Cesar Ramirez, Ms. Ramirez's father, is the President and owner of the 125th Street location. He is also the co-owner of the 128th Street location and the President and owner of a third C-Town located at 1662 Huntington Station. Ms. Ramirez stated that the general manager of the 1662 and 125th Street locations is Steven Rosario while the general manager of the 128th Street location is Johenny Tejada.

Ms. Ramirez's duties include overlooking finances, day-to-day office activities, any incoming employees and interviews. She stated she is familiar with C-Town's premises and the location of the driveway at the 125th Street location, which C-Town leases from the landlord. The driveway is used for commercial deliveries. Ms. Ramirez confirmed Rafael is the manager of the meat department of the 125th Street location and he also works at the other two C-Town locations. C-Town does not provide Rafael with a car, gas, or reimbursements for mileage to travel between the different locations. Yet, it would be under

Rafael's discretion to determine where to spend his time in terms of fulfilling his responsibilities at each location. It was also under Rafael's discretion to determine the time to travel between the different locations on any particular day. Rafael's work hours are from 8:30 am to roughly 5pm to 5:30pm, sometimes 6pm. There is a facial recognition clock where he clocks in at the initial store he works in for that day. Yet, it would be Rafael's discretion to determine whether to be at work earlier or to stay later. Ms. Ramirez didn't witness the accident nor recall the date she became aware of it. However, she reviewed C-Town's surveillance footage, where she observed Rafael backing into the driveway and hitting plaintiff.

On April 18, 2024, plaintiff appeared for a deposition where she stated she has resided at 125th Street for 62 years. She recalled being involved in the accident on February 11, 2023, around 10am. The accident occurred within minutes of her leaving her home, as she was on her way to C-Town to perform her grocery shopping. The C-Town is located half a block from her home and is on the same side of the street as her apartment complex. Regarding the accident, plaintiff stated she did not see the vehicle. She first noticed she was involved in an accident when she felt it. She was walking on the sidewalk with the driveway on her left. While she was looking straight ahead and pushing her personal shopping cart, she felt a heavy impact from the rear of a vehicle on her right hip, knocking her down. Prior to the accident, she did not see any warning signs that an accident may occur.

To prevail on a motion for summary judgment, the moving party must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor (*Winegard v. New York Univ. Med. Ctf.,* 64 N.Y.2d 861 [1985]; *Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). Absent such prima facie showing, the motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 [1984]). However, "[o]nce the movant makes the required showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial" (*Dallas-Stephenson v. Waisman,* 39 A.D.3d 303, 306 [1st Dept. 2007], citing *Alvarez,* 68 N.Y2d. at 324).

"On a motion for summary judgment, the court's function is issue finding, not issue determination, and any questions of credibility are best resolved by the trier of fact" (*Martin v. Citibank*, *N.A.,* 64 A.D.3d 477, 478 [1st Dept. 2009]; *see also Sheehan v. Gong,* 2 A.D.3d 166, 168 [1st Dept. 2003]. And "all of the evidence must be viewed in the light most favorable to the opponent of the motion" (*People v. Grasso*, 50 A.D.3d 535, 544 [1st Dept. 2008]).

Under the common-law doctrine of *respondeat superior,* an employer … may be held vicariously liable for torts, including intentional torts, committed by employees acting within the scope of their employment (*Rivera v. State of New York,* 34 N.Y.3d 383, 389, 142 N.E.3d 641, 119 N.Y.S.3d 749 [2019] *see also Judith M. v Sisters of Charity Hosp.*, 93 NY2d 932, 933, 715 NE2d 95, 693 NYS2d 67 [1999], citing *Riviello v Waldron*, 47 NY2d 297, 304, 391 NE2d 1278, 418 NYS2d 300 [1979]; *Jones v State of New York*, 33 NY2d 275, 307 NE2d 236, 352 NYS2d 169 [1973]). "[T]he employer may be liable when the employee acts negligently or intentionally, so long as the tortious conduct is generally foreseeable and a natural incident of the employment" (*Rivera, supra,* at 34 N.Y.3d at 389 *citing Judith M.*, 93 NY2d at 933). Liability attaches "for the tortious acts of . . . employees only if those acts were committed in furtherance of the employer's business and within the scope of employment" (*Rivera, supra,* at 34 N.Y.3d at 389 *citing Doe v Guthrie Clinic, Ltd.*, 22 NY3d 480, 484, 982 NYS2d 431, 5 NE3d 578 [2014], quoting *N.X. v Cabrini Med. Ctr.*, 97 NY2d 247, 251, 765 NE2d 844, 739 NYS2d 348 [2002]). Thus, if an employee "for purposes of [their] own departs from the line of . . . duty so that for the time being [their] acts constitute an abandonment of . . . service, the [employer] is not liable" (*Rivera, supra,* at 34 N.Y.3d at 389 *citing Judith M.*, 93 NY2d at 933 [internal quotation marks and citations omitted]).

"In determining whether an employee acted within the scope of employment for purposes of vicarious liability, we consider, among other factors, "the connection between the time, place and occasion for the act; the history of the relationship between employer and employee as spelled out in actual practice; whether the act is one commonly done by such an employee; the extent of departure from normal methods of performance; and whether the specific act was one that the employer could reasonably have anticipated" (i.e., whether it was foreseeable)" (*Rivera, supra,* at 34 N.Y.3d at 389 *citing Riviello*, 47 NY2d at 303; *see Judith M.*, 93 NY2d at 933).

Whether an employee acted within the scope of employment is a fact-based inquiry (*Riviello*, 47 NY2d at 302-303). However, the question may be resolved on summary judgment, particularly when the material facts are undisputed (*see Joseph v City of Buffalo*, 83 NY2d 141, 629 NE2d 1354, 608 NYS2d 396 [1994]; *Zuckerman v City of New York*, 49 NY2d 557, 562-564, 404 NE2d 718, 427 NYS2d 595 [1980]).

Here, the Court finds that Rafael was acting within the scope of his employment when, after arriving for work at the 125th Street location, he decided to travel to the 128th Street location to check on the meat inventory at that location. Contrary to C-Town's contention that Rafael was commuting to work—and therefore, this act falls outside the scope of his employment—the parties' deposition establish that Rafael arrived to the 125th Street location and then decided, per his duties as the manager of the meat department, to go to the 128th Street location to check on the inventory there. This act was performed in furtherance of C-Town's business and the act of traveling to and from each location was a foreseeable and natural incident of Rafael's employment. Specifically, Ms. Ramirez's deposition demonstrated that Rafael had the discretion to travel to and from each location to complete his duties and that it was also within Rafael's discretion to determine what time he would travel to each location. Finally, both parties' deposition established that it was also within Rafael's discretion what time he would commence work on a given day (i.e., whether he would begin work earlier or stay later). Even though Rafael usually began work around 8:00am and he would clock in on the facial recognition clock to begin work, the material facts of this case demonstrate that Rafael was acting within the scope of his employment. Additionally, in analyzing the factors enunciated by *Rivera* and *Riviello*, the history of the relationship between the parties, the commonality of the act performed by Rafael (i.e., traveling from one location to the other to perform his duties), and the foreseeability of the act itself all weigh in favor of establishing that Rafael was acting within the scope of his employment.

Therefore, C-Town's motion seeking an order dismissing plaintiff's first cause of action is denied and plaintiff's motion seeking summary judgment on this cause of action is granted.

Next, the Court finds C-Town has demonstrated its *prima facie* entitlement to summary judgment dismissing plaintiff's second cause of action based on premises liability. Specifically, the evidence demonstrates that Rafael utilized the driveway to perform a U-turn, thereby striking plaintiff with his vehicle in the act. Plaintiff's accident was not due to any defect or dangerous condition existing on the premises. While C-Town argues that Rafael, by backing into the driveway, created a dangerous condition on the sidewalk and cites *Abramson v. Janowski's Hamburgers, Inc.,* 216 A.D.3d 605 (2nd Dept. 2023) in support, the Court finds that C-Town's argument unavailing and the caselaw inapplicable to the facts of this case. In *Abramson,* plaintiff's injury was caused when she tripped and fell on a crack existing on the sidewalk. There, the Second Department found that there was sufficient evidence to raise a triable issue of fact as to whether the defendants created the dangerous condition (i.e., the crack) when their 18-wheel tractor-trailers made deliveries in the street and utilized the sidewalk to maneuver into the driveway. Here, the accident was not caused by a crack on the premises nor does the fact that Rafael utilized the driveway to perform a U-turn raise a triable issue of fact to defeat C-Town's *prima facie* showing. Therefore, plaintiff's second cause of action must be dismissed.

Lastly, plaintiff seeks summary judgment against Rafael for violating *VTL §1225-a* when he allegedly drove onto the sidewalk and struck plaintiff. Plaintiff also seeks summary judgment against Dely Prado as vicariously liable for plaintiff's accident as the owner of the vehicle.

VTL § 1225-a states that "[n]o person shall drive a motor vehicle on or across a sidewalk, except that a vehicle may be driven at a reasonable speed, but not more than five miles per hour, on or across a sidewalk in such manner as not to interfere with the safety and passage of pedestrians thereon, who shall have the right of way, when it is reasonable and necessary:
(a) to gain access to a public highway, private way or lands or buildings adjacent to such highway or way;
(b) in the conduct of work upon a highway, or upon a private way or lands or buildings adjacent to such highway or way, or
(c) to plow snow or perform any other public service, for hire, or otherwise, which could not otherwise be reasonably and properly performed."

VTL § 388 establishes, in relevant part, that "[e]very owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle …, by any person using or operating the same with the permission, express or implied, of such owner."

Here, the Court finds that plaintiff has failed to establish her *prima facie* entitlement to summary judgment under *VTL § 1225-a* by failing to demonstrate that Rafael drove on the sidewalk. The evidence demonstrates that Rafael used C-Town's driveway to perform a U-turn, thereby striking plaintiff. On the other hand, the record establishes that Dely Prado is the owner of the subject vehicle, and therefore under *VTL § 388* she would be vicariously liable for the accident.

Accordingly, it is

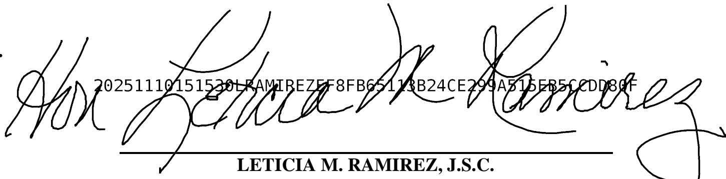
ORDERED: C-Town's motion pursuant to *CPLR § 3212* for an Order granting it summary judgment on the issue of lability dismissing plaintiff's complaint and all cross claims against it, is denied;

ORDERED: Plaintiff's cross-motion seeking an order granting her summary judgment on her first cause of action is hereby granted;

ORDERED: Plaintiff's cross-motion seeking an order granting her summary judgment is also granted to the extent that defendant Dely Prado is vicariously liable under *VTL § 388*;

ORDERED: Plaintiff's cross-motion is otherwise denied.

This constitutes the Decision and Order of this Court.



11/10/2025
DATE

LETICIA M. RAMIREZ, J.S.C.

CHECK ONE:	☐	**CASE DISPOSED**		X	**NON-FINAL DISPOSITION**	
APPLICATION:	☐	**GRANTED**	☐ **DENIED**	X	**GRANTED IN PART**	☐ **OTHER**
	☐	**SETTLE ORDER**		☐	**SUBMIT ORDER**	
CHECK IF APPROPRIATE:	☐	**INCLUDES TRANSFER/REASSIGN**		☐	**FIDUCIARY APPOINTMENT**	☐ **REFERENCE**