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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2024-000335

Vernon R. Graham.....Respondent,

v.

Carolina Tractor & Equipment Company, Inc
and Lonnie D. Gates.....Defendants,

of which Carolina Tractor & Equipment Company, Inc.
is theAppellant.

**INITIAL BRIEF OF APPELLANT
CAROLINA TRACTOR & EQUIPMENT COMPANY, INC.**

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ISSUE ON APPEAL

Whether the Circuit Court erred in granting Respondent's motion for summary judgement under Respondent's theory of *respondeat superior* since there are genuine issues of material fact as to Gates' negligence?

STATEMENT OF THE CASE

Respondent filed their Complaint on December 16, 2021, alleging negligence by Defendant-Appellant Carolina Tractor & Equipment Company, Inc.¹ (hereinafter “Appellant”) and Defendant Lonnie D. Gates (“Gates”) stemming from a motor vehicle collision which allegedly caused injury and damages to Plaintiff-Respondent Vernon R. Graham (“Respondent”) on January 11, 2021, in Lexington County, South Carolina. R.* (Compl.). Gates was operating a vehicle owned by Appellant when he struck a vehicle operated by Respondent. Appellant and Gates failed to timely answer Respondent’s Complaint and therefore fell into default. The Circuit Court denied Gates’s Motion to Set Aside Default but granted Appellant’s Motion to Set Aside Default. R.* (Order, September 22, 2022). The following month, Appellant filed its Answer to Respondent’s Complaint. R.* (Appellant’s Answer).

On February 8, 2023, the Circuit Court granted Respondent’s motion for partial summary judgement against Appellant and Gates, finding that there were no genuine issues of material fact as to Gates’ negligence, and,

¹ Defendant Carolina Tractor & Equipment Company, Inc. (“Appellant”) was improperly identified in Plaintiff’s Complaint filed on December 16, 2021. At such time, Appellant’s proper name was Carolina Tractor & Equipment Company. Presently, Appellant’s proper name is Carolina 1926 LLC.

accordingly, Appellant was vicariously liable for Gates' negligence under the doctrine of *respondeat superior*. R.* (Order, February 8, 2024).

Appellant filed the instant appeal from Judge Pope's Order.

This appeal follows.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 524, 787 S.E.2d 485, 489 (2016). The appellate court, like the trial court, must view all ambiguities, conclusions, and all inferences arising in and from the evidence in a light most favorable to the non-moving party below. Young v. South Carolina Dept. of Disabilities and Special Needs, 374 S.C. 360, 365, 649 S.E.2d 488, 490 (2007) (citing Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001)).

STATEMENT OF FACTS

On January 11, 2021, in Lexington County, South Carolina, Gates was operating a vehicle owned by Appellant when he struck a vehicle operated by Respondent. In Respondent's deposition, he testified that Gates' vehicle was travelling at a speed of "at least 40 mph" when his vehicle was struck by Gates' vehicle. R.* (Appellant Memo. in Opp., Ex. A: Depo. Tr. of Respondent, p. 82, lines 8-23). However, in Gates' affidavits, he testified that he "bumped" Respondent's vehicle. R.* (Appellant Memo. in Opp., Ex. B: Gates' Aff., March 9, 2022, ¶ 2; and Ex. C: Gates' Aff., January 25, 2024, ¶ 7).

Gates testified that after exiting the ramp he brought his vehicle to a stop before the collision with Respondent's vehicle. R.* (Appellant Memo. in Opp., Ex. B: Gates' Aff., March 9, 2022, ¶ 1; and Ex. C: Gates' Aff., January 25, 2024, ¶ 4-6). Respondent testified that, as he observed Gates' vehicle coming around the ramp behind him, Respondent thought to himself, "I hope he stop. I hope he stop." R.* (Appellant Memo. in Opp., Ex. D: Depo. Tr. of Respondent, p. 55, lines 2-9).

Respondent testified that immediately before the collision, there were no cars in front of him. R.* (Appellant Memo. in Opp., Ex. E: Depo. Tr. of Respondent, p. 60, lines 12-15). Alternatively, Gates testified that there were

several vehicles ahead of him on the ramp waiting in traffic, one of which being a tractor-trailer in front of Respondent's vehicle. R.* (Appellant Memo. in Opp., Ex. C: Gates' Aff., January 25, 2024, ¶ 4-6).

Moreover, Gates testified that while he was on the exit ramp prior to the collision, the sunlight reflected off the tractor trailer's chrome doors and shined in his eyes. R.* (Appellant Memo. in Opp., Ex. C: Gates' Aff., January 25, 2024, ¶ 6 and 8). Likewise, Respondent testified that Gates told him the sun was in his eyes and he didn't see Respondent's car. R.* (Appellant Memo. in Opp., Ex. F: Depo. Tr. of Respondent, p. 112, line 15 – p. 113, line 13). Respondent quoted Gates as saying, "The sun was in my face," and "I couldn't see." R.* (Appellant Memo. in Opp., Ex. D: Depo. Tr. of Respondent, p. 55, line 15-17). Furthermore, Respondent testified that the sun can be in a position to be in a driver's eyes on that ramp in the morning. R.* (Appellant Memo. in Opp., Ex. F: Depo. Tr. of Respondent, p. 112, line 15 – p. 113, line 13).

Respondent testified that after the collision, Gates asked if he was all right, and Respondent responded that he was all right. R.* (Appellant Memo. in Opp., Ex. D: Depo. Tr. of Respondent, p. 55, line 10-12). Likewise, Gates testified that immediately after the collision, Respondent told Gates he was not injured; moreover, Gates testified Respondent did not appear to be injured. R.*

(Appellant Memo. in Opp., Ex. B: Gates' Aff., March 9, 2022, ¶ 3; and Ex. C: Gates' Aff., January 25, 2024, ¶ 8). The South Carolina Highway Patrol investigated and determined that Gates contributed to the collision by driving too fast for conditions. Respondent did not tell the responding South Carolina trooper that he was hurt or needed an ambulance. R.* (Appellant Memo. in Opp., Ex. B: Gates' Aff., March 9, 2022, ¶ 3; and Ex. C: Gates' Aff., January 25, 2024, ¶ 8; Ex. F: Depo. Tr. of Respondent, p. 69, line 22 – p. 70, line 4).

LAW/ANALYSIS

The Circuit Court improperly granted summary judgment in Respondent's favor on Respondent's claim of vicarious liability under the doctrine of *respondeat superior*. Appellant presented affidavits and other supporting documents in opposition to Respondent's Motion for Partial Summary Judgment which demonstrated that there were several material issues in dispute that needed to be resolved by a fact finder. A jury may reasonably draw inferences as to, *inter alia*, Gates' use of care in operating the vehicle and whether the collision caused Respondent's alleged bodily injuries. Further, Respondent's memorandum in support of their Motion for Partial Summary Judgment illogically applied our court's doctrine of *respondeat superior* to conclude that Appellant was barred from arguing on the merits Gates' alleged negligence due to his default status in the litigation.

I. There Are Genuine Issues of Material Fact for Trial

In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Cunningham ex rel. Grice v. Helping Hands, Inc., 352 S.C. 485, 491, 575 S.E.2d 549, 552 (2003). Moreover, since it is a drastic remedy,

summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues. Id. If triable issues exist, those issues must go to the jury. Worsley Companies, Inc. v. Town of Mount Pleasant, 339 S.C. 51, 55, 528 S.E.2d 657, 660 (2000).

A party opposing summary judgment must do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 461, 892 S.E.2d 297, 300 (2023) (citing Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)).

Because reasonableness depends upon the evidence and the rational inferences that may be drawn from it in its context, granting summary judgment *in a negligence case* is infrequent, for the court's duty at this stage is to presume the credibility of the evidence. Abdelgheny v. Moody, 432 S.C. 346, 349–50, 852 S.E.2d 225, 227 (Ct. App. 2020) (emphasis added). If a reasonable juror looking at the evidence in the light most favorable to the non-movant could draw more than one inference about a material fact from it, summary judgment must be denied. Id.

Here, while Gates may in fact be in default, Appellant is not and, therefore, Appellant may present evidence disputing Respondent's claim of negligence on its employee Gates. Accordingly, there are several triable issues, *inter alia*, that must go to a jury as to Respondent's claim of negligence against Gates: (1) the speed of Gates' vehicle when it made contact with Respondent's vehicle; (2) whether Gates brought his vehicle to a complete stop on the exit ramp shortly before the collision; (3) whether the sunlight in Gates' eyes impaired his ability to see Respondent's vehicle; and (4) whether the collision caused Respondent's alleged injury.

In Respondent's deposition, he testified that Gates's vehicle was travelling at a speed of "at least 40 mph" when Gates' vehicle made contact with Respondent's. R.* (Appellant Memo. in Opp., Ex. A: Depo. Tr. of Respondent, p. 82, lines 8-23). However, in Gates's affidavits, he testified that he "bumped" Respondent's vehicle. R.* (Appellant Memo. in Opp., Ex. B: Gates' Aff., March 9, 2022, ¶ 2; and Ex. C: Gates' Aff., January 25, 2024, ¶ 7).

Moreover, Gates testified that after exiting the ramp he brought his vehicle to a stop before the collision with Respondent's vehicle. R.* (Appellant Memo. in Opp., Ex. C: Gates' Aff., January 25, 2024, ¶ 4-5). Respondent

testified that, as he observed Gates' vehicle coming around the ramp behind him, Respondent thought to himself, "I hope he stop. I hope he stop." R.* (Appellant Memo. in Opp., Ex. D: Depo. Tr. of Respondent, p. 55, lines 2-9).

Respondent testified that immediately before the collision, there were no cars in front of him. Graham Dep. 60:12-15. Alternatively, Gates testified that there were several vehicles ahead of him on the ramp waiting in traffic, one of which being a tractor-trailer in front of Respondent's vehicle. R.* (Appellant Memo. in Opp., Ex. C: Gates' Aff., January 25, 2024, ¶ 4-6).

Moreover, Gates testified that while he was on the exit ramp prior to the collision, the sunlight reflected off of the tractor trailer's chrome doors and shined in his eyes. R.* (Appellant Memo. in Opp., Ex. C: Gates' Aff., January 25, 2024, ¶ 6 and 8). Likewise, Respondent testified that Gates told him the sun was in his eyes and he didn't see Respondent's car. R.* (Appellant Memo. in Opp., Ex. F: Depo. Tr. of Respondent, p. 112, line 15 – p. 113, line 13). Respondent quoted Gates as saying, "The sun was in my face," and "I couldn't see." R.* (Appellant Memo. in Opp., Ex. D: Depo. Tr. of Respondent, p. 55, line 15-17). Furthermore, Respondent testified that the sun can be in a position to be in a driver's eyes on that ramp in the morning. R.* (Appellant Memo. in Opp., Ex. F: Depo. Tr. of Respondent, p. 112, line 15 – p. 113, line 13).

Respondent testified that after the collision, Gates asked if Respondent was all right, and Respondent responded that he was all right. R.* (Appellant Memo. in Opp., Ex. D: Depo. Tr. of Respondent, p. 55, line 10-12). Likewise, Gates testified that immediately after the collision, Respondent told Gates he was not injured; moreover, Gates testified Respondent did not appear to be injured. R.* (Appellant Memo. in Opp., Ex. B: Gates' Aff., March 9, 2022, ¶ 3; and Ex. C: Gates' Aff., January 25, 2024, ¶ 8). Furthermore, Respondent did not tell the SC trooper that he was hurt or needed an ambulance. R.* (Appellant Memo. in Opp., Ex. B: Gates' Aff., March 9, 2022, ¶ 3; and Ex. C: Gates' Aff., January 25, 2024, ¶ 8; Ex. F: Depo. Tr. of Respondent, p. 69, line 22 – p. 70, line 4.)

The aforementioned evidence and all the inferences that can be reasonably drawn from it must be viewed in the light most favorable to the non-moving party, in this case the Appellant. A jury may reasonably draw inferences as to, *inter alia*, Gates' use of care in operating the vehicle and whether the collision caused Respondent's alleged bodily injuries. Given that these triable issues must be considered by a jury, summary judgment was not appropriate as to Respondent's first cause of action.

II. Respondent’s *respondeat superior* Argument is an Incorrect Application of the Doctrine

Respondent’s motion for partial summary judgment relied heavily on Gates’ default status in its *respondeat superior* argument—an incorrect application of the doctrine. As the United States Supreme Court has held, “[a] judgment by default only admits for the purpose of the action the legality of the demand or claim in suit: it does not make the allegations of the declaration or complaint evidence in an action upon a different claim.” Cromwell v. Sac Cty., 94 U.S. 351, 356-57 (1876). No South Carolina case has addressed the effect of a default judgment against an agent where a plaintiff invokes the doctrine of *respondeat superior*. However, when there is no South Carolina case directly on point, our courts may look to persuasive authority from other jurisdictions. State Farm Mutual Automobile Insurance Company v. Goyeneche, 429 S.C. 211, 224, 837 S.E.2d 910, 917 (S.C. Ct. App. 2019) (citing Williams v. Morris, 320 S.C. 196, 200, 464 S.E.2d 97, 99 (1995)).

i. Respondent’s Reliance on Lonnie Grant’s Default Is Misguided.

Other jurisdictions, including our sister states, offer guidance for situations where an agent is in default and such nonparticipation has been imputed on the agent’s principle under the doctrine of *respondeat superior* to

establish vicarious liability. See Allstate Ins. Co. v. Hayes, 442 Mich. 56, 73-74, 499 N.W.2d 743, 751 (1993) (Holding that a traditional rule of default provides that the default of one party is not an admission of liability on the part of a non-defaulting co-party); Rogers v. J.B. Hunt Transport, Inc., 466 Mich. 645, 652, 649 N.W.2d 23, 26–27 (2002) (“Because [Agent’s] nonparticipation was not in the course of his employment . . . extending liability to [Principle] for [Agent’s] nonparticipation is beyond the scope of vicarious liability. [A]n employee’s refusal to participate in litigation is not a characteristic risk of operating a trucking business. Accordingly, such nonparticipation is not something that an employer can reasonably be expected to deter or fairly be expected to absorb as a cost of doing business.”); Leavitt v. Siems, 130 Nev. 503, 330 P.3d 1, 10 (2014) (finding a default judgment entered against an employee physician of eye clinic could not be used to impose vicarious liability on eye clinic as an answering employer codefendant who was contesting liability with regard to patient’s medical malpractice action); W. Heritage Ins. Co. v. Superior Court, 199 Cal. App.4th 1196, 132 Cal. Rptr. 3d 209 (2011) (“It is an established principle of law that admissions implied from the default of one defendant ordinarily are not binding upon a codefendant who, by answering, expressly denies and places in issue the truth of the

allegations thus admitted by the absent party.”); Morehouse v. Wanzo, 266 Cal. App. 2d 846, 852-853, 72 Cal. Rptr. 607, 611 (1968) (“The general contractor, as an employer liable under the doctrine of respondeat superior, may take advantage of any favorable aspects of the judgment against the employee, but he is not bound by the issues resolved against the employee by the latter's default.”); Dade Cty. v. Lambert, 334 So. 2d 844, 847 (Fla. Dist. Ct. App. 1976) (finding that county could not be held vicariously liable based on its employee's failure to plead, and stating “[t]he default of one defendant, although an admission by him of the allegations of the complaint, does not operate as an admission of such allegation as against a contesting co-defendant”); Peek v. Southern Guaranty Ins. Co., 240 Ga. 498, 499, 241 S.E.2d 210, 212 (1978) ([A]n admission predicated upon a default is operative against the particular party who makes default, and does not bind a co-defendant who appears and contests the litigation.”); Delpiano v. JPMorgan Chase Bank, N.A., 345 Ga. Ct. App. 151, 154, 812 S.E.2d 506, 508-509 (2018) (“party cannot rely on default judgment against one defendant to obtain judgment authorizing foreclosure against co-defendant who had denied complaint allegations and raised affirmative defenses to claims”).

ii. Appellant should not be precluded from arguing Gates' alleged negligence on the merits.

Following these aforementioned principles, courts have held that a default judgment against an agent under the doctrine of *respondeat superior* should not preclude its principle from litigating the agent's alleged negligence on the merits. See United Salt Corp. v. McKee, 96 N.M. 65, 628 P.2d 310, 313 (1981) (holding that an employer is not foreclosed from litigating issues of negligence, *respondeat superior*, and damages based on an employee's default); See also Balanta v. Stanlaine Taxi Corp., 307 A.D.2d 1017, 763 N.Y.S.2d 840, 842 (N.Y. App. Div. 2003) (stating that “[t]he granting of a default judgment against [the employee] does not preclude [the employer] from contesting the issue of [the employee's] negligence”). “[C]ourts should closely scrutinize default judgments to prevent harsh results and drastic action. It is the policy of the law to favor the trial of cases on the merits.” Ex parte Trustgard Insurance Company, 442 S.C. 485, 511, 900 S.E.2d 448, 461 (2023) (quoting Renney v. Dobbs House, Inc., 275 S.C. 562, 567, 274 S.E.2d 290, 292 (1981)).

Our South Carolina Supreme Court has made clear that the doctrine of *respondeat superior* provides that the *employer* is called to answer for the

tortious acts of his servant when those acts occur in the course and scope of the employee's employment. James v. Kelly Trucking Co., 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008) (emphasis added). It has not held that an employee possesses the authority to answer on the employer's behalf or foreclose the employer's ability to defend itself on the merits where there is an entry of default against the employee because of his nonparticipation in litigation.

Here, Respondent's interpretation of *respondeat superior* as it relates to Appellant's vicarious liability disregards our state court's longstanding precedent: the principle answers for the agent's actions on their own behalf. See James, 377 S.C. at 661, S.E.2d at 329. In contrast, Respondent's interpretation suggests that the principle is not only answerable for injuries caused by their agents, but that agents may answer and admit liability on the principle's behalf. This unwisely detaches the doctrine from its public policy rationale which assumes that principles are better suited to absorb liability. Affirming Respondent's theory of *respondeat superior* to establish vicarious liability poses unfair, inconsistent results for principles whose agents fail to participate in litigation.

CONCLUSION

Because Appellant's affidavits and other supporting documents in opposition to Respondent's Motion for Partial Summary Judgment demonstrate that there were several material issues of fact in dispute that must be resolved by a fact finder, the Circuit Court erred in granting Respondent's Motion. Further, Respondent's memorandum in support of their Motion illogically concludes that Gates' nonparticipation in the litigation barred Appellant from arguing on the merits Gates' alleged negligence and therefore the trial court's reliance on this argument was improper. Based on the foregoing, Appellant respectfully requests that this Court reverse the Order granting Respondents' Motion for Partial Summary Judgment by Judge Pope and remand this matter to the circuit court.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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**INITIAL BRIEF OF
APPELLANT CAROLINA
TRACTOR & EQUIPMENT
COMPANY, INC.**

Columbia, South Carolina
July 3, 2024

THE STATE OF SOUTH CAROLINA
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Carolina Tractor & Equipment Company, Inc
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of which Carolina Tractor and
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I hereby certify that I have caused to be served Initial Brief of Appellant Carolina Tractor & Equipment Company, Inc. upon all parties, by electronic mail to all counsel of record on July 3, 2024, addressed to the following:

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