

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

Dale Gillespie and Christine Gillespie, )

Plaintiffs, )

v. )

Robert Edmier, Thomas Edmier, Trail Quest, Inc., )  
and East Manufacturing Corp., )

Defendants. )

No. 21 L 7563

East Manufacturing Corp., )

Third-Party Plaintiff, )

v. )

Barge Terminal Trucking, Inc., and )  
Ken's Truck Repair Inc., )

Third-Party Defendants. )

**MEMORANDUM OPINION AND ORDER**

An employer may owe a duty to train and supervise even an experienced employee as to unusual or uncommon risks associated with the employee's occupation. Here, questions of fact remain as to whether an employer owed its employee a duty to train and supervise the employee in the use of a specially modified semi-tractor trailer. For that reason, the third-party defendant's summary judgment motion must be denied.

**Facts**

East Manufacturing Corporation constructed a Genesis II dump trailer that East sold to Ken's Truck Repair, Inc. Ken's modified the dump trailer by adding a three- to four-foot aluminum cap running from side to side at the front of the trailer. The aluminum cap was not structural and was not designed to support a person climbing on it; rather, the cap merely supported a tarp that could be extended the length of the trailer. The aluminum cap required anyone entering or exiting the trailer from the front to maneuver over the cap. Ken's modifications did not include safety handles, a full height ladder, or a catwalk to access the top of the trailer. After making its

modifications, Ken's sold the modified dump trailer to Trail Quest, Inc. Trail Quest is a company owned by Robert and Thomas Edmier. Trail Quest leases trucks to Barge Terminal Trucking, Inc., another company owned by the Edmiers.

Barge Trucking employed Dale Gillespie, a local truck driver who delivered construction and landscaping materials. Gillespie received his commercial driver's license in 1993 and started working at Barge Trucking in 1998. By 2012, Gillespie had been assigned the same tractor for four or five years, and depending on the material to be delivered, he would use one of two trailers, the modified Genesis II trailer being the larger one. Gillespie had used that trailer for about a year.

Gillespie did not believe the Genesis II trailer was safe because it did not have any safety apparatus on the front that he could use to climb to the top of the trailer and climb over the aluminum cap, get inside, exit the trailer, and climb back down. Gillespie had mentioned the trailer's lack of safety apparatus to the Edmiers four times after he started using the trailer. He told them the trailer lacked a catwalk, a full-length ladder from top to bottom with rails on the side, and a grab handle at the top. The Edmiers never modified the trailer to add these safety devices despite Gillespie having had two or three close calls from slipping on the ladder.

On February 14, 2012, Gillespie climbed up the ladder to get inside the trailer. Once he reached the top, Gillespie had to pull himself up with his hands to the lip of the trailer because there was no grab bar. He then had to slide over the aluminum cap so that he could get inside the trailer. Once Gillespie got inside the trailer, he raked down the load of mulch he was to deliver. After he had finished, Gillespie crawled back onto the aluminum cap and turned around on his hands and knees. He left his right knee on the top of the trailer and brought his left foot down onto the ladder's top step. When Gillespie brought his right knee down to place his right foot on the second step, his hands slipped off the aluminum cap because it was wet from condensation. Gillespie's right foot did not make it to the second step before his left foot slipped off the top step. He grabbed the first step with his right hand, but fell ten feet to the ground, landing on his feet. Gillespie immediately felt pain in his back and went down on his hands and knees. Gillespie worked the next day, February 15, 2012, but stopped after that because of back pain.

Gillespie testified that after he started working for Barge Trucking he received no manuals for the use of the Genesis II trailer, including guidelines or videos of how to access and get off the trailer. No one from Barge Trucking showed him how to climb onto the trailer safely using the steps or a ladder.

No one from Barge Trucking ever discussed the three-point control method of using steps or a ladder. No one from Barge Trucking told Gillespie to use the method he did to get down from the top of the Genesis II trailer. Barge Trucking's safety meetings did not include any discussion of how to access or exit the Genesis II trailer. The trailer had warning stickers that Gillespie had read, but there was no manual or other written materials to go with the warnings.

On July 22, 2013, Dale and Christine Gillespie filed suit against the defendants. On February 14, 2018, East filed a third-party complaint for contribution against Barge Trucking. The third-party complaint alleges that Barge Trucking owed a duty to train and supervise Gillespie and to ensure his safety. East claims that Barge Trucking breached its duties by failing to: (1) train Gillespie on how to use Barge Trucking's equipment safely; (2) instruct Gillespie as to the proper and safe method for performing his work; (3) take appropriate measures to ensure that Gillespie performed his work safely; (4) supervise Gillespie; (5) provide Gillespie with safe working conditions; and (6) warn Gillespie as to the potential risks of using trucks and trailers in the course of his employment.

On May 17, 2022, Barge Trucking filed a motion seeking summary judgment on East's third-party complaint for contribution. The parties fully briefed the motion and provided various exhibits as part of their submissions.

### Analysis

Barge Trucking brings its summary judgment motion pursuant to the Code of Civil Procedure. The statute authorizes the issuance of summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002). If a defendant presents facts that, if not contradicted, are sufficient to support summary judgment as a matter of law, the nonmoving party cannot rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). Rather, a plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions,

admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.*

Barge Trucking argues that it owed Gillespie no duty. Duty is a question of law to be decided by the court. *Burns v. City of Centralia*, 2014 IL 116998, ¶ 13. To determine if a duty exists, a court is to analyze whether a relationship existed between the plaintiff and the defendant for which the law would impose a duty on the defendant for the plaintiff's benefit. *See Doe-3 v. McLean Cty. Unit Dist. No. 5 Bd. of Directors*, 2012 IL 112479, ¶ 22 (quoting *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 436 (2006)). The "relationship" is "a shorthand description for the analysis of four factors: (1) the reasonable foreseeability of the injury, (2) the likelihood of the injury, (3) the magnitude of the burden of guarding against the injury, and (4) the consequences of placing the burden on the defendant." *Id.* (citing *Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶ 18). A court's analysis of the duty element focuses on the policy considerations inherent in these four factors and the weight accorded to each based on the case's particular circumstances. *Id.*

Barge Trucking argues specifically that it owed Gillespie no duty because he was an experienced truck driver who knew the usual and common risks inherent in his occupation. In support of its argument, Barge Trucking relies on the Restatement (Second) of Agency. *See* Restatement (Second) of Agency, § 510 & cmt. *a*. Barge Trucking does not, however, cite to any case applying section 510 to a tort case, let alone any case suggesting that section 510 has been adopted into Illinois common law. Even if section 510 were relevant here, there exists a question of fact as to whether Gillespie knew of the usual and common risks inherent in gaining access to and exiting a trailer that lacked a catwalk, a full-length ladder from top to bottom with rails on the side, and a grab handle at the top. Although entering and exiting a trailer was a usual and common risk, the Genesis II trailer had an atypical, non-structural aluminum cap that Gillespie had to climb over to get into and out of the trailer. Whether Barge Trucking should have instructed Gillespie on how to enter and exist the trailer from the front given the existence of the aluminum cap or provide another access point—for example, at the rear of the trailer—are legitimate questions.

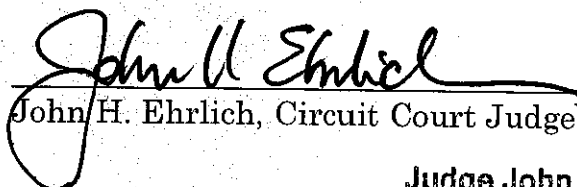
It is certainly reasonably foreseeable that Gillespie could be injured in attempting to get in or out of the Genesis II trailer without any training. The foreseeability element is especially pertinent in this case because the aluminum cap hindered Gillespie's exit out of the trailer and condensation on the cap caused his hands to slip. It also does not appear that getting into and out of the trailer got any easier over time. It is also likely that an injury would occur from entering and exiting a trailer with an aluminum cap and no safety apparatus absent any training or supervision by Barge Trucking. The magnitude of the burden of guarding against the injury is not substantial given that Barge Trucking held regularly scheduled safety meetings and Gillespie had told the Edmiers of the lack of safety apparatus on the trailer. Finally, the consequences of placing the burden on Barge Trucking are reasonable given that it owns the trailer on which Gillespie was injured.

Barge Trucking next argues that it is entitled to summary judgment because East's contribution claim is derivative of Gillespie's negligence claim against East. It is notable that this argument, too, fails to cite a single case supporting East's proposition. Equally notable is that East glosses over Gillespie's specific causes of action in the underlying case. Although Gillespie's complaint included a negligence cause of action in count one, Gillespie did not direct that count against East. The only count directed against East was count two, a cause of action for strict products liability. This court previously ruled that Gillespie's amended complaint adding a negligence count against East was, first, untimely since it came after the statute of limitations had expired and, second, did not relate back to the strict products claim. Those rulings have no effect on the viability of East's third-party claims for contribution from Barge Trucking, and there is nothing in either the statute, 740 ILCS 100/2, or the cases interpreting it that would invalidate East's claims against Barge Trucking.

### Conclusion

For the reasons presented above, it is ordered that:

Barge Trucking's summary judgment motion is denied.

  
John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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