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

Eric Myers and Christine Myers as co-special administrators of the estate of Amanda Christine Myers, deceased,	)	
Plaintiffs,	)	
v.	)	No. 20 L 13572
Cormick J. O'Connell, individually, and as agent, servant and/or employee of Reyes Holdings, L.L.C.; Reyes Holdings, L.L.C.; California Tire Shop, Inc. d/b/a Sierra Tire Shop & Auto Repair and Sierra Management I, LLC d/b/a Sierra Tire Shop & Auto Repair,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

The *Neff* rule precludes a plaintiff from maintaining a direct negligence claim against an employer if it admits *respondeat superior* liability for its employee's conduct that causes a plaintiff's injury. The defendant corporation in this case concedes it is vicariously liable for its employee's negligence, if any, and the plaintiff has failed to allege an exception to the *Neff* rule's application. The defendant's motion to dismiss count three must, therefore, be granted.

Facts

On June 2, 2020, Amanda Christine Myers was driving a 2017 Ford Escape westbound on Interstate 290 near the intersection with Wolf Road in Chicago. At the same time, Cormick O'Connell was driving his 2009 Nissan Versa eastbound

Interstate 290 as an employee of Reyes Holdings, L.L.C. The front driver's side wheel on O'Connell's vehicle became loose and disconnected. The wheel bounced over a concrete traffic barrier and struck Myers' vehicle. Myers died from the impact.

On December 21, 2020, Eric and Christine Myers, as co-special administrators of Amanda's estate, filed an 11-count wrongful death complaint. In count two, the Myers allege Reyes is vicariously liable for O'Connell's negligent acts and omissions. In count three, the Myers allege Reyes is directly negligent for: (i) allowing O'Connell to drive an unsafe vehicle on its behalf; (ii) failing to implement adequate safety policies for, and provide adequate training to, its employees regarding the maintenance and operation of vehicles driven on its behalf; and (iii) failing to take reasonable steps to ensure that vehicles driven on its behalf are in a safe operating condition.

On February 3, 2021, Reyes answered the complaint and filed affirmative defenses. Reyes admitted that on June 2, 2020, O'Connell was Reyes's employee and was acting within the course and scope of his employment with Reyes. On February 4, 2021, Reyes filed a motion to dismiss count three. The parties subsequently submitted response and reply briefs.

Analysis

Reyes seeks to dismiss count three pursuant to Code of Civil Procedure section 2-619(a)(9). 735 ILCS 5/2-619(a)(9). A section 2-619 motion admits the legal sufficiency of the complaint but raises defects, defenses, or some other affirmative matter appearing on the face of the complaint or established by external submissions defeating the plaintiff's claim. *Ball v. County of Cook*, 385 Ill. App. 3d 103, 107 (1st Dist. 2008). If the affirmative matter involves issues of law and easily proved issues of fact, a section 2-619 motion is an appropriate vehicle to resolve those issues at the outset of the litigation. *Henry v. Gallagher*, 383 Ill. App. 3d 901, 903 (1st Dist. 2008). The phrase "affirmative matter" means "some kind of defense 'other than a negation of the

essential allegations of the plaintiff's cause of action.'" *Smith v. Waukegan Park Dist.*, 231 Ill. 2d 111, 120-21 (2008) (quoting *Kedzie & 103rd Currency Exch. v. Hodge*, 156 Ill. 2d 112, 115 (1993)). A court considering a section 2-619 motion must construe the pleadings and supporting documents in the light most favorable to the plaintiff, accepting as true all well-pleaded facts in the complaint and drawing all reasonable inferences in the plaintiff's favor. *Capeheart v. Terrell*, 2013 IL App (1st) 122517, ¶ 11. A party moving for dismissal under section 2-619 "has the burden of proof on the motion, and the concomitant burden of going forward." *Reynolds v. Jimmy John's Enters.*, 2013 IL App (4th) 120139, ¶ 37.

Reyes argues that count three must be dismissed for two reasons. First, Reyes has conceded vicarious liability for O'Connell's alleged negligent conduct in count two, rendering count three duplicative. Second, the allegations of count three sound in negligent entrustment, training, or supervision and are precluded by the *Neff* rule. *See Neff v. Davenport Packing Co.*, 131 Ill. App. 2d 791 (3d Dist. 1971).

The *Neff* rule provides that direct claims for negligent entrustment against an employer must be dismissed if the employer concedes *respondeat superior* liability for its employee's alleged negligent conduct that injured the plaintiff. *Ledesma v. Cannonball, Inc.*, 182 Ill. App. 3d 718, 727-28 (1st Dist. 1989). Illinois courts have expanded the *Neff* rule to other direct negligence claims, including negligent supervision, hiring, training and retention. *See Gant v. L.U. Transport, Inc.*, 331 Ill. App. 3d 924 (1st Dist. 2002) (*Neff* rule applies to negligent hiring and retention claims); *McQueen v. Green*, 2020 IL App (1st) 190202, ¶¶ 42-46 (declining to treat negligent training claims differently under *Neff* rule); *Meyer v. A&A Logistics, Inc.*, 2014 U.S. Dist. LEXIS 100625, at *7-10 (N.D. Ill. 2014) (*Gant* extends to negligent training and supervision claims). The court in *Neff* explained the rationale for the rule:

> [I]ssues relating to negligent entrustment become *irrelevant* when the party so charged has admitted his responsibility for the conduct of the negligent actor. *The liability of the third party in either case is predicated initially upon the negligent conduct of the driver and absent the driver's negligence the third party is not liable.* Permitting evidence of collateral misconduct such as other automobile accidents or arrests for violation of motor vehicle laws would obscure the basic issue, namely, the negligence of the driver, and would inject into the trial indirectly, that which would otherwise be irrelevant.

131 Ill. App. 2d at 792-93 (emphasis added).

The *Gant* court echoed the holding that direct negligence claims are irrelevant and potentially prejudicial, but went further in its reasoning. The court held that direct negligence claims should be dismissed for three additional reasons. First, such claims are duplicative and unnecessary given that an employee's negligence is imputed to the employer. 331 Ill. App. 3d at 928-29 (quoting *McHaffie v. Bunch*, 891 S.W.2d 822, 826 (Mo. 1995)). Second, allowing both theories of employer liability—*respondeat superior* and direct negligence—to go to the jury create the possibility that a greater percentage of fault is attributed to the employer, thus leading to an illogical result. *Id.* at 929. Third, submitting a direct negligence claim to a jury after the employer has admitted *respondeat superior* liability wastes the court's and litigants' energy, time, and resources. *Id.*

The Myers respond that the *Neff* rule is inapplicable because count three alleges Reyes's independent acts of direct negligence as opposed to O'Connell's. According to the Myers, counts two and three allege different negligent acts and omissions, meaning that count three does not duplicate count two. In support, the Myers rely on *Swanson v. Murray Bros., LLC.* 2021 U.S. Dist. LEXIS 37123 (C.D. Ill. Mar. 1, 2021). In that case, the court denied the defendant-employer's motion to dismiss direct negligence counts based on the *Neff* rule because "[s]tretching *Neff* and *Gant* to

stand for Defendant's proposition that an employer can never be found liable for its own independent negligent acts that cause a plaintiff injury is too far reaching." *Id.* at 22.

As a federal district court decision, *Swanson* is neither precedential nor controlling authority. *County of Du Page v. Lake Street Spa, Inc.*, 395 Ill. App. 3d 110, 122 (2d Dist. 2009). More significant is that the case is factually and legally distinguishable. In *Swanson*, the defendant-employer admitted vicarious liability for the allegedly negligent driving of its employee, but the plaintiff also raised a cause of action based on willful and wanton conduct. Contrary to *Swanson*, the Meyers have not brought such a cause of action. The *Swanson* court acknowledged this difference, writing that, "[a]n exception to this [*Neff*] rule has been made for willful and wanton conduct claims against an employer even after the employer admits the *respondeat superior* relationship." *Id.* at 22 (citing *Neuhengen v. Global Experience Specialists, Inc.*, 2018 IL App (1st) 160322, ¶ 90 ("We recognize the general rule that under *Neff* allegations of an employer's negligence should be dismissed when an employer admits an agency relationship because the allegations of direct negligence are duplicative of the admitted agency liability. However, there is no sound reason for such a rule where a plaintiff has pled a viable claim for punitive damages based on allegations of willful and wanton conduct against an employer for its independent actions in hiring and retaining an employee or entrusting a vehicle to an unfit employee.") (emphasis added)). The *Swanson* court further recognized that the facts alleged, if true, could establish the defendant-employer's negligence irrespective of the employee's conduct. The court ultimately held the *Neff* rule did not preclude the plaintiffs' direct negligence claims against defendant-employer. *Id.* at 21-23.

In this case, the Meyers have not brought a willful and wanton cause of action against Reyes. *Neff* is, therefore, not being improperly applied in this case. Further, the Meyers have not alleged any other exception to the *Neff* rule that might apply under the factual scenario presented.

Conclusion

For the reasons presented above, it is ordered that:

1. Reyes's motion is granted;
2. Count three is dismissed with prejudice;
3. The parties are to submit an agreed case management order on or before May 21, 2021.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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