IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JANE M. WEST, Individually and as Executrix of the ESTATE OF SOPHIE R. PIASCINSKI,	)	
Plaintiff,	)	
v.	)	C.A. No. 08C-11-220
RAYMOND FLONARD, RENAISSANCE FAMILY PHARMACY, LLC, INGLESIDE HOMES INC. and BOB SMITH CONTRACTORS, INC.,	)	Twelve Person Jury Demanded
Defendants.	)	

Date Submitted: January 15, 2010
Date Decided: March 11, 2010
Date Corrected: March 12, 2010

Upon Defendant Renaissance Family Pharmacy, LLC's Motion for Summary Judgment: **DENIED**

OPINION

Patrick J. Collins, Esquire, 8 East Thirteenth Street, P.O. Box 2865, Wilmington, Delaware, 19805, Attorney for Plaintiff.

Maria J. Poehner, Esquire, The Law Offices of Jeffrey H. Eiseman, 1000 West Street, Suite 1213, Wilmington, Delaware, 19801, Attorney for Defendant, Raymond Flonard.

Timothy S. Martin, Esquire, White and Williams, LLP, 824 North Market Street, Suite 902, P.O. Box 709, Wilmington, Delaware, 19899, Attorney for Defendant, Renaissance Family Pharmacy, LLC.

Thomas J. Gerard, Esquire, Marshall, Dennehey, Warner, Coleman & Goggin, 1220 North Market Street, P.O. Box 8888, Wilmington, Delaware, 19899, Attorney for Defendant Ingleside Homes, Inc.

Jurden, J.

I. INTRODUCTION

Before the Court is Renaissance Family Pharmacy LLC's ("Renaissance") Motion for Summary Judgment. In its motion, Renaissance argues that liability arising from a motor vehicle accident involving Raymond Flonard ("Flonard") should not be imputed to Renaissance under the theory of *respondeat superior* because at the time of the accident Flonard was a non-agent independent contractor for Renaissance.

For the reasons that follow, Renaissance's Motion for Summary Judgment is **DENIED.**

II. BACKGROUND

The instant Motion stems from a lawsuit which was filed on November 26, 2008 by Jane M. West ("Plaintiff") both individually and as Executrix of the Estate of Sophie R. Piascinski ("Decedent"). The lawsuit was filed as a result of a motor vehicle accident which occurred on August 22, 2008.

Plaintiff alleges the following.[1] At approximately 4:00 p.m. on August 22, 2008, Flonard was delivering prescription medication for Renaissance at a retirement home owned by Defendant, Ingleside Homes Inc. ("Ingleside"). The front entrance was blocked due to a construction project so Flonard parked his vehicle around a circular driveway. Due to a gearshift problem, Flonard placed

[1] *See* Complaint, D.I. 5.

the car in neutral and engaged the emergency brake instead of placing the car in park. He left the engine running. Flonard exited the vehicle and proceeded to go inside the retirement home to deliver the prescriptions. At this same time, a van operated by Ingleside, carrying residents of Ingleside, was situated about twenty feet downhill from Flonard's vehicle. Decedent was in the process of disembarking from the van using the van's hydraulic lift[2] when Flonard's vehicle began rolling down the hill, striking the hydraulic lift and Decedent and pinning Decedent between Flonard's vehicle and the van. An employee of the retirement home got into Flonard's vehicle and backed the vehicle off of Decedent. Decedent was taken to Christiana Hospital and died three days later.

Plaintiff further alleges Flonard was an employee of Renaissance when the accident occurred and that Renaissance is, therefore, liable for the alleged negligence of Flonard under the theory of *repsondeat superior*. Renaissance disagrees, arguing it is not liable because Flonard was a "non-agent independent contactor" at the time of this incident.

III. STANDARD OF REVIEW

On a motion for summary judgment, the Court examines "all facts in a light most favorable to the non-moving party, and determine[s] whether there is a

[2] The van operated by the retirement home was equipped with a hydraulic lift to lower its passengers to the ground to disembark from the vehicle.

genuine issue of material fact requiring a trial."[3] "When a motion for summary judgment is supported by evidence showing no material issues of fact, the burden shifts to the non-moving party to demonstrate that there are material issues of fact requiring trial."[4] "If, however, the record reveals that material facts are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record, then summary judgment will not be granted."[5]

IV. DISCUSSION

When analyzing questions of vicarious liability, several types of relationships may apply to the situation.[6] The principal/agent relationship is a general term.[7] Agents are either characterized as servants or independent contractors depending on the principal's right to control.[8] "An agency relationship is created when one party consents to have another act on its behalf, with the principal controlling and directing the acts of the agent."[9]

The relationship of a master/servant is one type of principal/agent relationship and it is synonymous with that of an employer/employee

[3] *Urena v. Capano Homes, Inc.*, 901 A.2d 145, 150 (Del. Super. 2006)(citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)).
[4] *Id*.
[5] *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).
[6] *Fisher v. Townsends*, 695 A.2d 53, 57 (Del. 1997).
[7] *Id.*
[8] *Id.* at 59.
[9] *Id.*at 57 (quoting *Sears Mortgage Corp. v. Rose*, 634 A.2d 74, 79 (N.J. 1993)).

relationship.[10] All agents who are not servants are considered independent contractors.[11] Additionally, all non-agents who contract to do work for another are also referred to as independent contractors. As a result, both agent independent contractors and non-agent independent contractors exist.[12]

Under the doctrine of *respondeat superior*, liability will be imputed to a master for the wrongful acts of a servant, if the servant is acting within the scope of employment.[13] The wrongful acts of an independent contractor which are committed during the course of performance of the contracted work, however, will generally not be imputed to the contractee which contracted for the work.[14] There are exceptions to this general rule, one of which being that a contractee will be held liable for the torts of the independent contractor if the contractee retains control over the activities of the independent contractor.[15]

The Delaware Supreme Court has recognized the *Restatement (Second) of Agency* as "an authoritative source for guidance" in determining whether a person who acts for another is a servant or independent contractor.[16] The *Restatement*

[10] *Id.* at 58.
[11] *Id.*
[12] *Id.*
[13] *Id.* (citing *Fields v. Synthetic Ropes, Inc.*, 215 A.2d 427, 432 (Del. 1965)).
[14] *Id.* (citing *Schagrin v. Wilmington Med. Ctr., Inc.*, 304 A.2d 61, 63-64 (Del. 1973)).
[15] *Id.* (citing *O'Connor v. Diamond State Tel. Co.*, 503 A.2d 661, 663 (Del. Super. 1985); *Seeney v. Dover Country Club Apartments, Inc.*, 318 A.2d 619, 623 (Del. Super. 1974)).
[16] *Fisher*, 695 A.2d at 59.

(Second) of Agency[17] lists several "matters of fact" to be considered in deciding whether a tortfeasor is a servant or independent contractor. These factors include:

> (a) the extent of control, which by agreement, the master may exercise over the details of the work; (b) whether or not the one employed is engaged in a distinct occupation or business; (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (d) the skill required in the particular occupation; (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (f) the length of time for which the person is employed; (g) the method of payment, whether by the time or by the job; (h) whether or not the work is part of the regular business of the employer; (i) whether or not the parties believe they are creating the relation of master and servant; and (j) whether the principal is or is not a business.

The Supreme Court has further recognized that "no single rule could be laid down to determine whether a given relationship is that of a [servant to a master] as distinguished from an independent contractor."[18] Accordingly, each case depends on its own facts and "[t]hat determination is ordinarily made by the factfinder."[19]

Here, Renaissance argues that there is no genuine issue of material fact that Flonard was a non-agent independent contractor for Renaissance. In support of this argument, Renaissance relies on the following: (1) Flonard admitted in his deposition that he was hired as an independent contractor; (2) Flonard received a

[17] RESTATEMENT (SECOND) OF AGENCY § 220.
[18] *Fisher*, 695 A.2d at 59 (quoting *White v. Gulf Oil Corp.*, 406 A.2d 48, 51 (Del. 1979)).
[19] *Fisher*, 695 A.2d at 59.

1099 tax form for monies received from Renaissance and did not have taxes taken out by Renaissance; (3) Flonard was not offered or required to wear a Renaissance uniform while making deliveries; (4) Flonard was not provided an employee handbook or confidentiality agreement when he was hired; (5) Flonard did not receive any training; (6) Flonard was only requested to report to work around noon to begin deliveries but the start time and end time were flexible; (7) Flonard was not paid by the hour but by the day for the deliveries regardless of what time he finished or how many deliveries were made; (8) Renaissance did not dictate "dominating" control over the method and manner in which deliveries were made; Flonard established his own routes and had no true supervisor; and (9) Flonard supplied his own vehicle and his own insurance on the vehicle, was responsible for the maintenance and gas of the vehicle, and was not reimbursed for any mileage incurred.[20] Renaissance further argues that Flonard's status as a non-agent independent contractor at the time of the accident is exhibited by the fact that a few weeks after the accident Flonard was hired as an employee of Renaissance and was subsequently provided an employee handbook, was given benefits, received a pay increase, had taxes withheld, was given direct deposit and was required to sign a confidentiality agreement.[21]

[20] Motion for Summary Judgment at ¶4-8.
[21] *Id.* at ¶ 9.

In opposition, Plaintiff argues that a factual dispute exists when considering the factors set forth by Section 220 of the *Restatement (Second) of Agency*, and thus, summary judgment is inappropriate. The Court agrees.

Viewing the facts in a light most favorable to the non-moving party, and applying the factors set forth in Section 220, there is a genuine issue of material fact as to whether Flonard was an agent of Renaissance, an agent independent contractor or non-agent independent contractor.[22] Thus, Flonard's employment status at the time of the accident is a question for the jury to decide in this case.

V. CONCLUSION

Based on the foregoing, Defendant Renaissance's Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

cc: Prothonotary - Original

[22] Renaissance argues that there is no genuine issue of material fact because Flonard admitted through his deposition testimony and responses to Request for Admissions that he was an independent contractor. This is not determinative of his employment status. All factors set forth by the *Restatement* are to be considered. In addition, even if Flonard was found to be an independent contractor, an issue would still exist as to whether he was an agent or non-agent independent contractor.