

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1321

ADAM GAUTREUX AND MARY GAUTREUX,
INDIVIDUALLY AND ON BEHALF OF
PATRICK PAUL GAUTREUX

VERSUS

T.T.C. ILLINOIS, INC, NEAL ARABIE,¹
GARY PITRE AND BRYAN GUILLOT

DATE OF JUDGMENT: May 4, 2007

ON APPEAL FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT
(NUMBER 131,137), PARISH OF TERREBONNE
STATE OF LOUISIANA

HONORABLE DAVID W. ARCENEUX, JUDGE

* * * * *

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T.T.C. Illinois, Inc., Neil Arabie,
Gary Pitre and Bryan Guillot

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Counsel for Plaintiffs/Appellants
Adam and Mary Gautreaux

* * * * *

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: AFFIRMED.

¹ We refer to this defendant as "Neil Arabie," which is how he identifies himself.

KUHN, J.

Plaintiffs-appellants, Adam and Mary Gautreaux, who filed this lawsuit individually and on behalf of their son, Patrick Paul Gautreaux, appeal the trial court's judgment, which grants summary judgment in favor of defendants, TTC Illinois, Inc. (TTC Illinois), Neil Arabie, Gary Pitre, and Bryan Guillot, based on a conclusion that the Gautreauxs' sole remedy for relief is workers' compensation benefits. In so concluding, the trial court reasoned that TTC Illinois was not the lending or general employer of Neil Arabie, Pitre, or Guillot so as to be vicariously liable under the doctrine of *respondeat superior* for their alleged torts. The trial court also determined that the Gautreauxs could not recover against Neil Arabie, Pitre, or Guillot individually because they were co-employees from whom recovery was not permitted under the Workers' Compensation Act.² We affirm in compliance with La. URCA Rule 2-16.1.B.

According to the allegations of the Gautreauxs' petition, Lanco Construction, Inc. (Lanco) was the general contractor on a project with Blockbuster Video to clear a site and construct a new Blockbuster store. Lanco contracted with Arabie Brothers Trucking, Inc. (Arabie Brothers) to perform site preparation work. Arabie Brothers in turn contracted with A & G Stump Removal to grind stumps remaining after trees had been cut down. Patrick, who worked for A & G Stump Removal, was sent by A & G Stump Removal to the Blockbuster site to grind stumps as directed by Arabie Brothers. At the site, in addition to grinding stumps, Patrick was requested by either Lanco or Arabie Brothers to cut

² See *Bazley v. Tortorich*, 397 So.2d 475 (La. 1981).

several trees. On January 27, 2000, Neil Arabie, Pitre, and Guillot, who were working at the direction of Arabie Brothers, assisted Patrick in a tree removal operation. While Patrick was cutting the tree, it unexpectedly began to fall. Although Patrick ran to avoid the tree, he was knocked to the ground and pinned under it.³

The Gautreauxs aver that Patrick suffered severe and disabling head injuries due to the negligence of Neil Arabie, Pitre, and Guillot. They further allege that at the time of the accident, these defendants were acting in the course and scope of their employment with TTC Illinois and, therefore, that TTC Illinois is vicariously liable to the Gautreauxs for damages under the doctrine of *respondeat superior*. The trial court granted defendants' motion for summary judgment and dismissed the Gautreauxs' claims.⁴

Employers are vicariously liable for the torts of their employees under La. C.C. art. 2320. Although Article 2320 provides that employers are only liable when they might have prevented the act which caused the damage, the courts of this state have consistently held that employers are vicariously liable for any torts occasioned by their employees. *Morgan v. ABC Manufacturer*, 97-0956, p. 5 (La. 5/1/98), 710 So.2d 1077, 1080; *see also* La. R.S. 9:3921 (providing in part, "every master or employer is answerable for the damage occasioned by his servant or employee in the exercise of the functions in which they are employed").

³ In *Arabie Brothers Trucking Co. v. Gautreaux*, 03-0120 (La. App. 1st Cir. 8/4/04), 880 So.2d 932, *writ denied*, 04-2481 (La. 12/10/04), 888 So.2d 846, another panel of this court held that Patrick was a borrowed employee of Arabie Brothers, who was liable to him for workers' compensation benefits.

⁴ The trial court's grant of summary judgment, dismissing the Gautreauxs' claims of independent negligence against TTC Illinois has not been appealed.

The master's vicarious liability for the acts of its servant rests not so much on policy grounds consistent with the governing principles of tort law as in a deeply-rooted sentiment that a business enterprise cannot justly disclaim responsibility for accidents which may fairly be said to be characteristic of its activities. *Morgan*, 97-0956 at p. 11, 710 So.2d at 1083. In situations where the general employer's business is to rent out his or her employees and equipment to others, the "general" or "lending" employer's business is being furthered even if he does not control the details of the actual work. Moreover, the special employer benefits: it is his work that is being done as well. In such situations, the relevant enterprise benefited by the work consists of the combination of the general and special employers. Thus, the two-master rule applies. *Morgan*, 97-0956 at p. 12, 710 So.2d at 1083.

The Gautreauxs contend the evidence establishes that TTC Illinois was a "lending" or "general" employer of Neil Arabie, Pitre, and Guillot. As such, they urge, the trial court erred in dismissing their claims against the defendants.

In support of their entitlement to dismissal from this lawsuit, defendants placed into evidence the affidavits of Sandy Arabie, the president of Arabie Brothers, and Paul J. Richards, the in-house counsel for TTC Illinois at that time of the accident. Sandy Arabie attested that Neil Arabie was hired by Arabie Brothers in September 1995 as a superintendent; Gary Pitre was hired by Arabie Brothers in January 1999 as a mechanic/shop worker. Both men were Arabie Brothers' employees on the date of the accident. According to Sandy Arabie, he hired and selected Neil Arabie and Pitre. And it was Arabie Brothers who had the full authority to hire, fire, discipline, promote, or demote Neil Arabie and Pitre.

Arabie Brothers supervised, directed and controlled all of their work activities and provided those defendants with all the equipment they used in the performance of their work duties.

Sandy Arabie explained that Arabie Brothers maintained the personnel files, time records, and DOTD and drug screen records for Neil Arabie and Pitre. In 1996, Arabie Brothers entered into a Service Agreement with TTC Illinois and that agreement was in effect on January 27, 2000. The contract created a standard weekly procedure for Arabie Brothers to fax to TTC Illinois a list of the number of hours each employee worked as well as the employee's employment category. A contractually-specified multiplier was applied to the hours worked by each and TTC Illinois would invoice Arabie Brothers for the gross payroll. Arabie Brothers would then forward a check for the total amount of the invoice to TTC Illinois, who issued individual payroll checks to each Arabie Brothers' employee. In so issuing, TTC Illinois would pay all taxes, withholdings, and insurance premiums. The Arabie Brothers' president noted that TTC Illinois did not provide health insurance or any other benefit to Arabie Brothers' employees. He also pointed out that TTC Illinois was never involved in directing, supervising, or controlling the work activities of Neil Arabie or Pitre. Attached to his affidavit was a copy of the Service Agreement. And the personnel files of Neil Arabie and Pitre, which included records of fax transmissions wherein Arabie Brothers advised TTC Illinois of the number of hours each employee had worked, were also admitted into evidence.

The affidavit of Richards conformed in its explanation of the standard procedure created by the Service Agreement between Arabie Brothers and TTC

Illinois. Richards stated, "[TTC Illinois] handled the payroll and insurance administration for [Arabie Brothers]," noting that after TTC Illinois had invoiced Arabie Brothers, the latter "would forward a check to [TTC Illinois] and [TTC Illinois] would handle issuing the payroll check, paying taxes and social security and insurance premiums for workers' compensation coverage." According to the former in-house counsel, the sole involvement TTC Illinois had with Neil Arabie and Pitre was in issuing payroll checks based on information provided by Arabie Brothers and payment of attendant withholding taxes and compensation insurance premiums.

Based on this showing, we agree with the trial court that the Gautreauxs failed to demonstrate that TTC Illinois was the general or lending employer of Neil Arabie or Pitre so as to warrant imposition of vicarious liability under La. C.C. art. 2320. The defendants established that the activities undertaken by Neil Arabie and Pitre at the time of the accident were not characteristic of TTC Illinois as a business enterprise. Unlike the temporary services provider the *Morgan* court concluded was the general employer of the alleged tortfeasor, this record establishes that TTC Illinois did not hire, supervise, or maintain any right of control over either Neil Arabie or Pitre. And unlike the agreement under scrutiny in *Morgan*, the Service Agreement between Arabie Brothers and TTC Illinois did not include any stipulation requiring the latter to "recruit, screen, test, provide orientation, assign, and continually monitor the performance" of Neil Arabie or Pitre. Indeed, all the evidence in the record reflects that these sorts of duties were undertaken exclusively by Arabie Brothers. In *Morgan*, the temporary services provider retained the ultimate and overriding authority over employees it hired and

loaned out. But the evidence before us establishes that it was Arabie Brothers -- not TTC Illinois -- who had the ultimate and overriding authority over Neil Arabie and Pitre. The record shows that Arabie Brothers determined which employees would be on the payroll and simply sent those names to TTC Illinois, who issued paychecks. Thus, unlike the temporary service provider in *Morgan*, whose loaned employees the court noted were "its stock in trade," TTC Illinois's relationship with Arabie Brothers is that of a payroll service provider. The trial court correctly granted summary judgment insofar as TTC Illinois's liability for the alleged negligence of Neil Arabie and Pitre.

Turning now to the alleged negligence of Guillot, Sandy Arabie's affidavit established that on January 27, 2000, Guillot was a contract laborer doing work for Arabie Brothers. Because he was not considered an employee by Arabie Brothers, Sandy Arabie stated that unlike full time employees, Guillot's payroll was not handled by TTC Illinois. It was not until May 2000 that TTC Illinois began servicing Guillot's payroll. Sandy Arabie attested that TTC Illinois was never involved in directing, supervising, or controlling the work activities of Guillot. With this showing, defendants established there was no connexity between TTC Illinois and Guillot. And because the Gautreauxs offered nothing to establish any relationship between Guillot and TTC Illinois, the imposition of vicarious liability under the doctrine of *respondeat superior* is not warranted. Thus, the trial court correctly granted summary judgment against TTC Illinois insofar as liability for Guillot's alleged negligence as well.

Accordingly, the trial court's judgment is affirmed in compliance with La. URCA Rule 2-16.1.B. Appeal costs are assessed against Adam and Mary Gautreaux, individually and on behalf of Patrick Paul Gautreaux.

AFFIRMED.