

SUPREME COURT OF LOUISIANA

No. 01-C-2297

J. Jude QUEBEDEAUX and Wendy Quebedeaux

versus

**The DOW CHEMICAL COMPANY and John Dandridge, Reliance
Insurance Co. and Dorinco Reinsurance Co.**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF IBERVILLE**

WEIMER, J., additionally concurring

Vicarious liability based on respondeat superior simply has no application based on the facts of this matter.

The vicarious liability of the employer must be measured by the liability of the employee. When vicarious liability based on respondeat superior applies, the responsibility of the employer is coextensive with the responsibility of the employee who committed the tort. Based on the facts of this case, Dandridge could not be liable for tortious conduct relative to the termination because he had no authority to terminate Quebedeaux.¹ Thus, there is no vicarious responsibility to impose on the employer relative to the termination. “It goes without saying that if the employee is not guilty of tortious conduct in the alleged wrong [then] there is no vicarious responsibility on the employer.” 12 WILLIAM E. CRAWFORD, LOUISIANA CIVIL LAW TREATISE: TORT LAW § 9.11D (2000).

In this matter, the plaintiffs have demanded damages from the employer, not for wrongful termination, but based on vicarious liability due to the acts of a fellow employee. However, in demanding damages based on vicarious liability, the plaintiff must accept the limitations which accompany that theory of recovery. Vicarious

¹Dandridge did engage in tortious conduct relative to the battery.

liability limits the liability of the employer to liability for the acts of the employee.

Dandridge could not terminate Quebedeaux's employment—only Dow Chemical could do so. Thus, based on the concept of vicarious liability, Dow Chemical can not be liable for that which Dandridge could not do—terminate Quebedeaux.

Quebedeaux was found to be partially at fault for the altercation which resulted in his termination. This finding was made by an Employee Review Committee, by Dow Chemical, and by the jury. The jury determined Quebedeaux bore 35% of the fault for the altercation. Quebedeaux was not terminated because he was battered, he was terminated for his role in the incident. Thus, he was completely responsible for his termination. It would be illogical for an employee who was justifiably terminated by his employer to recover damages related to his termination from that former employer. Essentially, the plaintiff is attempting to do through a back door what he cannot do through the front door—hold Dow Chemical liable for damages related to his termination when he was justifiably terminated. Such a means of ingress cannot be sanctioned.

Based on the facts of this case, vicarious liability simply does not apply to impose liability on Dow Chemical for lost benefits and general damages arising out of Quebedeaux's termination.