

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

THOMAS NEELY,)	
)	
Plaintiff,)	
)	
v.)	No. 3:05-CV-304
)	(Guyton)
FOX OF OAK RIDGE, INC. and)	
BENJAMIN H. CURD,)	
)	
Defendant.)	

**(SAMPLE) BRIEF IN SUPPORT OF PLAINTIFF, THOMAS NEELY’S MOTION
SUMMARY ADJUDICATION ON THE ISSUE OF VICARIOUS LIABILITY**

The Plaintiff, Thomas Neely, by and through counsel, respectfully submits this Brief Support of his Motion for Summary Adjudication on the Issue of Vicarious Liability.

PRELIMINARY STATEMENT

The Plaintiff, Thomas Neely (“Neely”), respectfully requests that the Court grant his Motion for Summary Adjudication on the Issue of Vicarious Liability and order that Defendant Fox of Oak Ridge, Inc. (“Fox”) shall be vicariously liable for any negligence of Defendant Benjamin Curd (“Curd”) relating to the accident that is the subject of this lawsuit. This motion is made pursuant to Federal Rule of Civil Procedure 56 on the ground there is no genuine dispute of fact that when the accident causing Neely’s injuries occurred, the other driver, Curd, was acting in the course and scope of his employment with Fox. Accordingly, as a matter of law, Fox is vicariously liable for any negligence of its employee, Curd. *Thurmon v. Sellers*, [62 S.W.3d 145, 152](#) (Tenn. Ct. App. 2001); *Tennessee Farmers Mut. Ins. Co. v. American Mut. Liab. Ins. Co.*, [840 S.W.2d 933, 938](#) (Tenn. Ct. App. 1992).

FACTS

The following facts were admitted to by Fox in response to requests for admission and are undisputed:

On July 12, 2004 a vehicle accident occurred involving Plaintiff, Thomas Neely and Defendant, Benjamin Curd. (Exhibit A, Fox's Responses to Plaintiff's Requests for Admission, ¶ 8, to Declaration of Ethan Fogle, Esq.). When the accident occurred, Curd was an employee of Fox. (Fogle Decl., Ex A, ¶ 9). Curd's job description at that time was "Driver/Porter." (Fogle Decl., Ex A, ¶ 10). Curd was driving a 1998 Chevrolet Van when the accident occurred. (Fogle Decl., Ex A, ¶ 11). When the accident occurred, Fox was the registered owner of the 1998 Chevrolet Van involved in the accident and Curd had picked up the van from a repair shop to return it Fox. (Fogle Decl., Exs. A, ¶¶ 12 & 13).

In addition, Curd testified in his deposition as follows:

Mr. English: On July 12, 2004 when the accident happened you were driving the Fox's van, correct?

Mr. Curd: Right

Mr. English: How did you come to be driving that van?

Mr. Curd: I went to pick up the van to have some work done on it, and as I was coming back from the repair shop it was raining.

Mr. English: And where were you going to take the van?

Mr. Curd: Back to Fox in Oak Ridge.

(Fogle Decl., Ex. B)

DISCUSSION

Summary adjudication of an issue should be granted where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” [Fed. R. Civ. P. 56\(a\)](#). A genuine dispute would exist only if “the evidence [were] such that a reasonable jury could return a verdict in favor of [Fox] on the issue of vicarious liability.” *Anderson v. Liberty Lobby, Inc.*, [477 U.S. 242, 248](#) (1986). Under Tennessee law, an employer will be held vicariously liable for injuries caused by an employee who was (1) engaged in the employer’s business, and (2) acting in the scope of employment. *Hamrick v. Spring City Motor, Co.*, [708 S.W.2d 383, 386](#) (Tenn. 1986). Generally, “[w]hen an employee’s job requires travel, an employer [will] be vicariously liable for the employee’s negligence while traveling [where] the employment created the necessity for travel.” *Tennessee Farmers Mut.*, [840 S.W.2d at 938](#). Moreover, “sections [55–10–311](#) and [55–10–312](#) of the Tennessee Code provide that proof of ownership and registration of a motor vehicle constitutes prima facie evidence that the vehicle was being operated for the vehicle owner's use and benefit and within the course and scope of employment.” *Thurmon v. Sellers*, [62 S.W.3d at 152](#). This prima facie evidence of vicariously liability can be overcome only “by uncontradicted evidence to the contrary coming from witnesses whose credibility is not in issue.” *Id.*

Here there is no genuine dispute of fact that when the accident occurred, Curd, a Fox employee, was engaged in his employer’s business and acting within the scope of employment. *Thurmon v. Sellers*, [62 S.W.3d at 152](#); *Tennessee Farmers*, [840 S.W.2d at 938](#); *see also Anderson v. Liberty Lobby, Inc.*, [477 U.S. at 248](#). Accordingly, as a matter of law, Fox is vicariously liable for any negligence of Curd relating to the accident. [Fed. R. Civ. P. 56\(a\)](#). Fox has admitted that when the accident occurred, it was the registered owner of the van Curd was

driving, which is prima facie evidence of Fox's vicarious liability ([Fogle Decl. Ex A, ¶ 12](#)). *Thurmon v. Sellers*, 62 S.W.3d at 152. Fox has presented no evidence to the contrary. *Id.* Just the opposite, Fox has admitted that on the date of the accident Curd was employed by Fox as a "Driver/Porter" and had picked up a Fox owned van from a repair shop to return the van to Fox. ([Fogle Decl. Ex A, ¶¶ 10 & 13](#)). These admissions are consistent with Curd's deposition testimony that when the accident occurred, he was driving the van from the repair shop back to Fox's premises ([Fogle Decl. Ex B](#)) – all of which show, without dispute, that Curd's job with Fox required travel and he was engaged in Fox's business at the time of the accident. *Id.*; *Tennessee Farmers*, 840 S.W.2d at 938.

CONCLUSION

For the above stated reasons, the Plaintiff, Thomas Neely, respectfully requests that the Court grant his Motion for Summary Adjudication on the Issue of Vicarious Liability and order that Defendant, Fox of Oak Ridge, Inc. shall be vicariously liable for any negligence of Defendant Benjamin Curd relating to the accident that is the subject of this lawsuit.

Respectfully submitted this 15th day of March, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2006 a copy of the foregoing Brief in Support of Plaintiff's Motion for Summary Adjudication on the Issue of Vicarious Liability was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

s\Ethan Fogle
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