IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ZACHARY J. BAGDON,	)	
	)	
Plaintiff,	)	
	)	C.A. No. N11C-01-173 MMJ
v.	)	
	)	
JOSEPH J. POUSER, STONE CRAFTERS, INC., a Maryland corporation,	)	
	)	
	)	
Defendants.	)	

Submitted: February 20, 2012
Decided: March 5, 2012

On Defendant Stone Crafters, Inc.'s Motion for Summary Judgment
DENIED

MEMORANDUM OPINION

Kevin G. Healy, Esquire, Morris James LLP, Newark, Delaware, Attorneys for Plaintiff

David G. Culley, Esquire, Tybout, Redfearn & Pell, Wilmington, Delaware, Attorneys for Defendant Stone Crafters, Inc.

JOHNSTON, J.

This negligence action arises from a motor vehicle collision. Plaintiff Zachary Bagdon alleges that he sustained personal injuries after his vehicle was struck by a vehicle operated by Defendant Joseph Pouser. Bagdon also named Pouser's employer – Stone Crafters, Inc. ("SCI") – as a co-defendant under the theory of *respondeat superior*.

SCI filed this motion for summary judgment, arguing that Pouser was not acting within the course and scope of his employment with SCI at the time of the accident. SCI argues that because the doctrine of *respondeat superior* is inapplicable, SCI cannot be held vicariously liable.

The Court finds that a genuine issue of material fact exists as to whether Pouser was acting within the course and scope of employment with SCI at the time of the collision. Therefore, SCI's Motion for Summary Judgment must be denied.

FACTUAL BACKGROUND

On January 7, 2010, at approximately 3:49 p.m., Bagdon was driving eastbound on Valley Road in Hockessin, Delaware. As Bagdon proceeded through the intersection of Valley Road and Old Lancaster Pike, his vehicle was struck by Pouser's vehicle. According to Bagdon, the collision occurred as a result of Pouser's failure to remain stopped at the stop sign at the intersection.

Bagdon claims that, at the time of the accident, Pouser was acting within the course and scope of his employment with SCI. Pouser is the sole sales representative for SCI and typically works until 4:30 or 5:00 p.m. most weekdays. Pouser's primary job responsibility entails travelling to kitchen shops and small contractors to solicit business. Because the collision occurred during Pouser's "normal work hours" and in the "proximate vicinity of customers he would typically call," Bagdon seeks to hold SCI vicariously liable.

STANDARD OF REVIEW

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.[1] All facts are viewed in a light most favorable to the non-moving party.[2] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.[3] When the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.[4] If the non-moving party bears the burden of proof at trial, yet "fails to make a showing sufficient to establish

[1] Super. Ct. Civ. R. 56(c).
[2] *Hammond v. Colt Indus. Operating Corp.*, 565 A.2d 558, 560 (Del. Super. 1989).
[3] Super. Ct. Civ. R. 56(c).
[4] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

the existence of an element essential to that party's case," then summary judgment may be granted against that party.[5]

PARTIES' CONTENTIONS

SCI claims that it cannot be held vicariously liable for Pouser's alleged tortious conduct. Because Pouser was headed home at the time of the accident, SCI argues that he was not acting within the scope of his employment. In advancing this argument, Pouser relies on *Clough v. Interline Brands, Inc*., in which the Delaware Supreme Court declined to hold that an employee was acting within the scope of his employment while on his way home from his last sales visit.[6]

In response, Bagdon argues that the record supports a finding that Pouser was acting within the scope of his employment with SCI at the time of the accident.

DISCUSSION

The issue before the Court is whether SCI can be held vicariously liable for the alleged tortious conduct of Pouser. Vicarious liability, as it applies to an employer-employee relationship, arises through the doctrine of

[5] *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).
[6] 2007 WL 2323484, at *1 (Del.).

respondeat superior.[7] Under this doctrine, an employer can be held liable for the negligent acts of his employee only when such acts were committed within the scope of his employment.[8] The acts of an employee may be deemed to be "within the scope of employment" when they are "so closely connected with what he is employed to do, so fairly incidental to it, that they are to be regarded as methods elected by the [employee], even though improper, of carrying out the [employer's] business."[9]

Here, there is a factual dispute regarding whether Pouser was acting within the scope of his employment with SCI at the time of the collision. The record establishes that Pouser has given conflicting statements regarding where he was headed at the time of the accident. On November 30, 2010, Pouser was interviewed by Nationwide Insurance Company. Believing the accident occurred at 4:30 or 5:00 p.m., Pouser stated that he was heading home.[10] At a later deposition, when informed that the accident actually had occurred at 3:49 p.m., Pouser stated he believed that he "would have been headed home, possibly making one more stop in some [] local kitchen shops

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[7] *Hall v. Machulski*, 2010 WL 2735748, at *2 (Del. Super.) (citing *Fisher v. Townsends, Inc*., 695 A.2d 53, 58 (Del. 1997)).
[8] *Fields v. Synthetic Ropes, Inc*., 215 A.2d 427, 432 (Del. 1965); *Tell v. Roman Catholic Bishops of Diocese of Allentown*, 2010 WL 1691199, at *10 (Del. Super.).
[9] *Draper v. Olivere Paving & Constr. Co.,* 181 A.2d 565, 569 (Del. 1962).
[10] Pouser also was interviewed by Nationwide the day after the accident, January 8, 2010. During this interview, no responses were solicited from Pouser concerning where he was headed at the time of the accident.

in the Prices Corner area." Pouser then proceeded to identify several businesses in the area that he might have planned to visit.

Bagdon has testified that immediately following the accident, Pouser told Bagdon that Pouser was headed to another job site: "I just remembered he said he had somewhere else – the most [sic] thing I specifically remember is that he said he had somewhere else to go still … I am very confident in the conversation that he was going somewhere and it was work related."

Further, Pouser's reliance on *Clough v. Interline Brands, Inc.*[11] is misplaced. The case is distinguishable on the facts. In *Clough*, the travelling salesman-employee did not have a set work schedule; rather, his workday ended upon completion of his last sales visit.[12] Because the employee was involved in an accident *after* completing his last sales visit, the Delaware Supreme Court found that he was not acting within the scope of his employment at the time of the accident.[13]

In the case *sub judice*, the record establishes that Pouser had a set work schedule. Pouser testified that his workday customarily ended around 4:30 or 5:00 p.m. Because the accident occurred prior to the completion of Pouser's typical workday, a factual question exists as to whether he was still

[11] 2007 WL 2323484 (Del.).
[12] 2007 WL 2323484, at *1.
[13] *Id.*

acting within the scope of his employment with SCI at the time of the accident. Indeed, when Pouser learned that the accident occurred at 3:49 p.m., he testified that he may have been headed to visit other customer businesses in the area at the time of the accident.

CONCLUSION

Viewing the facts in the light most favorable to Bagdon, the nonmoving party, the Court finds that a genuine issue of material fact exists as to whether the alleged negligent conduct of Pouser occurred while he was acting within the course and scope of his employment with SCI.

THEREFORE, Stone Crafters, Inc.'s Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston