New Jersey Supreme Court Affirms Jury's Role in Borrowed-Employee Disputes

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In *Pantano v. N.Y. Shipping Association*, 254 N.J. 101 (2023), the New Jersey Supreme Court considered whether the question of vicarious liability under the borrowed-employee doctrine, as governed by the test laid out in *Galvao v. G.R. Robert Construction Co.*, 179 N.J. 462 (2004), should be resolved by the court as a matter of law or by the jury as a question of fact.

The case arose when the plaintiff, a mechanic employed by Container Services of New Jersey (CSNJ), injured his foot while struggling to move a heavy piece of industrial equipment. A forklift operator, Lawrence Giamella, attempted help plaintiff. Then as Giamella operated the forklift, the equipment slipped off of the forklift and crushed plaintiff's foot. After multiple unsuccessful surgeries, plaintiff's foot was amputated.

Giamella was on the payroll of a company under the same ownership as CSNJ, called Marine Transport (MT). He was working on the site that day due to an arrangement between the two companies by which MT's mechanics performed mechanical work for CSNJ at a shipping yard on the Newark waterfront. The shipping yard is jointly leased and occupied by both companies. All workers at the shared workplace were supervised by a manager paid exclusively by CSNJ.

Plaintiff filed a personal injury suit against multiple defendants, including CSNJ and MT. MT moved for summary judgment, arguing that Giamella was a "borrowed servant" or "special employee" working for CSNJ at the time of the accident, and that MT therefore is not liable for plaintiff's injuries. The trial court denied MT's motion, finding that there were issues of material fact regarding Giamella's employment status with the company.

The test used to determine whether a worker is a borrowed-employee for purposes of vicarious liability was established in *Galvao*. This issue arises when an employer, known as a "general employer," loans a worker to another employer, known as a "special employer," for particular tasks or purposes. If this "borrowed" worker negligently injures another person, then courts must resolve whether the special employer, the general employer, or both, are liable. The *Galvao* test fused two historical inquiries for resolving whether a general employer would be liable for an employee's negligence in borrowed-employee cases. The "control test" is the threshold inquiry which can be established by showing that a general employer has either "on-spot" control, meaning the right to "direct the manner in which the business shall be done," or "broad" control based on factors such as the method of payment, who "furnishes the equipment," or who has the right of termination. If, and only if, the control test is satisfied, the analysis then moves to the business-furtherance prong. A plaintiff can satisfy the business-furtherance prong by showing that the negligent employee's duties are within the general contemplation of the general employer and that the general employer derives economic benefit by loaning its employee. In sum, if the general employer either did not expect or intend for the employee to perform the relevant project for the special employer or did not receive a benefit from the employee's work, then the employee is a borrowed employee, and the general employer is not liable. See *Galvao*, 179 N.J. at 474.

After a trial in which the jury found Giamella 70% percent liable, MT moved for judgment as a matter of law on the same borrowed-employee theory raised in its summary judgment motion. The trial judge granted the motion, holding that Giamella was a borrowed employee under the *Galvao* test.

Plaintiff appealed and the Appellate Division reversed, vacating the directed verdict and reinstating the jury verdict in plaintiff's favor. The Appellate Division held that the trial judge erred by weighing and analyzing the evidence under the *Galvao* factors. Instead, the panel held that the trial judge should have performed a directed verdict analysis in accordance with Rule 4:40-1's requirement that the court evaluate such a motion by viewing the trial proofs in the light most favorable to the non-moving party. Applying the directed verdict analysis under Rule 4:40-1, the Appellate Division found there was substantial evidence to support both prongs of the *Galvao* test. In particular, the panel found there was enough evidence for a jury to determine that MT retained sufficient control of Giamella. Regarding the business-furtherance prong, the panel found it inconceivable that MT would loan its employee to CSNJ for no financial benefit.

MT filed a petition for certification, arguing that the borrowed-employee question is a purely legal issue that should be decided by the court, not a jury, and that the Appellate Division erred by evaluating the issue with consideration for how a jury might consider or weigh the *Galvao* factors.

The Supreme Court granted MT's petition, limited to whether the borrowed-employee issue should be determined by the court as a matter of law or by the jury as an issue of fact. After reviewing pre-Galvao case law, the Court found that the issue historically had been a question of fact for the jury. The Court explained:

[The] tradition of presumptively deeming borrowed-employee disputes as questions of fact for a jury makes sense. In many instances, the general employer's witnesses and proofs will clash with those presented and relied upon by the opposing side. Factual disputes about control and business advantage can readily turn on the assessment of the credibility of competing witnesses. Juries are well-suited to making those assessments, as they are for a host of other factual disputes entrusted to them at trial.

[254 N.J. at 114.]

Nevertheless, the Court noted that there are times where a trial court may resolve the issue as a matter of law on a motion for summary judgment or a directed verdict, but only where the evidence is so one-sided that there are no genuine issues of material fact. Applying those principles to the facts before it, the Court determined that the evidence "pointed in both directions" and, therefore, was sufficient to support the jury's verdict. Accordingly, the Court affirmed the Appellate Division's decision and remanded to the trial court for the entry of a final judgment reinstating the jury verdict.

The Supreme Court's decision reaffirmed the traditional role of the jury as the factfinder in borrowed-employee disputes. In particular, the Court explained that such cases contain questions of fact regarding control, business advantages, and witness credibility that typically must be resolved by a jury. Going forward, borrowed-employee disputes are likely to be within the exclusive province of the jury, barring special cases where the evidence is one-sided in a particular party's favor. The Court may well have purposely reversed a trend where lower courts were routinely deciding borrowed-employee disputes as a matter of law under *Galvao*. Now, it will be much more difficult for defendants to win a borrowed-employee dispute on a motion for summary judgment or a directed verdict.