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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0926-21**

**LUIS DOMINGUEZ and  
ROSALBA DOMINGUEZ,  
his wife, per quod,**

**Plaintiffs-Appellants,**

**v.**

**HIRE EDGE CONSULTING,  
INC., and HUMBERTO CAMPOS,**

**Defendants-Respondents.**

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Submitted October 17, 2022 – Decided November 2, 2022

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey, Law  
Division, Essex County, Docket No. L-2063-19.

Ginarte Gallardo Gonzalez Winograd, LLP, attorneys  
for appellants (Joseph A. Reardon, III and Robert J.  
Ciampaglio Jr., on the brief).

Harwood Lloyd, LLC, attorneys for respondents  
(Gregory J. Irwin, of counsel and on the brief).

## PER CURIAM

Plaintiffs Luis Dominguez and Rosalba Dominquez<sup>1</sup> appeal from a November 5, 2021 order granting summary judgment to defendants Hire Edge Consulting, Inc. (HEC) and Humberto Campos.<sup>2</sup> We affirm.

On July 25, 2018, plaintiff suffered an injury while working for Port Logistics Group (PLG). On that date, Campos, a special employee, worked at PLG as a switcher. A switcher, or "truck jockey," is someone who moves empty trailers. In 2011, an employment agency placed Campos with PLG to work as a switcher. Campos did not recall the name of the original employment agency.

In 2015, PLG and HEC, a different employment agency, entered into a Professional Services Agreement (Agreement). Under the Agreement, HEC would supply workers to PLG. Around that time, PLG instructed Campos to complete an application with HEC if he wished to continue working at PLG. Campos completed HEC's application form and continued working for PLG as a special employee.

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<sup>1</sup> Rosalba Dominguez asserted a per quod claim seeking damages for injuries suffered by her husband. We use the term plaintiff to refer solely to Luis Dominguez.

<sup>2</sup> Plaintiffs do not challenge that portion of the November 5, 2021 order granting summary judgment to Campos.

Pursuant to the Agreement, PLG supervised the day-to-day activities of employees who worked at its facility, including dress requirements, working hours, facility safety procedures, and employee discipline. Under the Agreement, if PLG decided to terminate an employee, it would notify HEC in writing and request that HEC replace the employee. Pursuant to the Agreement, HEC conducted reference checks, criminal background checks, and drug testing of individuals assigned to work for PLG. The Agreement also addressed billing procedures and employee compensation, providing:

[PLG] agrees to pay [HEC] for the Services during the term hereof . . . . [HEC] shall accurately complete and submit to [PLG] time records, in the form specified by [PLG], approved by [HEC] and by [the PLG] project administrator. [PLG] shall pay [HEC] within fifteen (15) days after receipt of such approved time sheet. [HEC] shall [pay] the Personnel to work only such number of hours as are approved in advance by [PLG].

According to the deposition testimony of a PLG representative, HEC had no staff at PLG's facility and PLG employees supervised all operations, including the movement of trucks at the site. Campos had no direct contact with anyone at HEC's office. Campos did not speak with HEC's staff or receive any job training or instructions from HEC.

On the accident date, plaintiff directed Campos to back a tractor trailer into PLG's loading dock. At the time of the accident, plaintiff was moving a

conveyor system onto the loading dock. In moving the conveyor system, plaintiff walked backwards and accidentally fell off the loading dock. Plaintiff fell directly behind the trailer driven by Campos and became pinned to the loading dock when Campos backed up the truck. Because plaintiff was positioned in Campos' blind spot, Campos did not see plaintiff fall. Plaintiff sustained severe injuries as a result of the accident.

On or about March 15, 2019, plaintiffs filed a personal injury lawsuit. On or about July 23, 2019, plaintiffs amended the complaint, adding Campos and HEC as defendants. After completing discovery, Campos and HEC filed a motion for summary judgment, which plaintiffs opposed.

On November 5, 2021, Judge Bruce D. Buechler heard oral argument and granted summary judgment to defendants. In his oral decision, the judge found HEC did not exercise control over Campos' actions and thus was not vicariously liable to plaintiffs.

The judge cited Campos' deposition testimony, finding the following facts were undisputed: Campos "never met with anybody at [HEC]"; "never had regular contact with anyone at [HEC]"; "[HEC] did not provide any training to Mr. Campos"; "[HEC] did not provide any instructions to Mr. Campos as to how

he should do his work"; "[HEC] didn't speak to . . . Mr. Campos"; and "Mr. Campos did not interview with [HEC] before he was employed."

Regarding the relationship between HEC and PLG under the Agreement, the judge stated:

[PLG] paid money to [HEC] for the services of Mr. Campos, which would include enough money to pay his payroll, his benefits, et cetera, as well as presumably additional profits for [HEC]. And, in turn, [HEC] paid his compensation, his worker's compensation, other taxes, as well as provide[d] him with a tax form, all related to his compensation.

The judge expressed "everything with regard to [Campos'] employment relationship was through [PLG]." The judge found the only thing Campos "effectively received [from HEC] was his compensation and worker's compensation insurance and benefits . . . ."

The judge also explained:

[W]hile Mr. Campos may have been paid by [HEC] and theoretically retained the right to termination, it was really [PLG] who furnished all the equipment, which was really the trucks that Mr. Campos drove, and exercised its right of termination. . . . [T]here was no relationship beyond simply literally mere paperwork between Mr. Campos and [HEC].

In finding no material issue of fact precluded the entry of summary judgment based on the evidence, and relying on Galvao v. G.R. Robert Construction Co., 179 N.J. 462, 472-73 (2004), the judge concluded:

Turning, first, to the factual allegations regarding the first prong of the Galvao test. The defendant argues that plaintiff cannot show either direct or broad control. Plaintiff states that it's a disputed material fact as to whether [HEC] had broad control over Campos. The [c]ourt disagrees. It's undisputed that [HEC] did not provide any training to Mr. Campos. It's undisputed that the money that is paid to Mr. Campos was really paid by [PLG] who paid [HEC], who then provided a physical check . . . . See Exhibit D, Section 4 to the payments [section] of the [A]greement.

It's undisputed that [HEC] was never on the [PLG] job site, never checked in with Mr. Campos about its day-to-day activities and never directed or had any communications with Mr. Campos as to safety or any aspect of how he performed his job. [PLG], not [HEC], provided Mr. Campos with all of the instructions for what he did each day as a yard switcher. [PLG] provided the truck cabs and trailers. Mr. Campos reported to the plaintiff and Allen at [PLG]. Campos had no connections or communications with [HEC] concerning his employment.

The record before the [c]ourt is undisputed that each of the prongs of the Galvao test demonstrate that [HEC] as Mr. Campos' general employer had no control over [Campos], meaning both direct and broad control, both direct and broad control were exercised by [PLG], not [HEC]. Thus, the [c]ourt concludes [HEC] cannot be held vicariously liable for the alleged negligence of Mr. Campos based on the holding in the Galvao case.

On appeal, plaintiffs assert summary judgment was improper under the test established in Galvao v. G.R. Robert Construction Co. Ibid. Plaintiffs contend HEC exercised broad control over Campos' work activities and Campos was furthering HEC's business interests at the time of the accident. Plaintiffs also claim there were genuine questions of material fact regarding HEC's control over Campos sufficient to preclude the entry of summary judgment as a matter of law.

We disagree and affirm for the cogent reasons expressed by Judge Buechler on November 5, 2021. We add only the following comments.

In Galvao, our Supreme Court established a two-prong test to determine whether a general employer can be held vicariously liable for the alleged negligence of a special employee. First, the court must determine whether the general employer retained control of its special employee while the employee was loaned to another company. Id. at 472. If control is established, the court must ascertain whether the employee was furthering the business of the general employer. Ibid.

Control may exist where the employer retains either direct "on-spot"<sup>3</sup> control or "broad" control. Id. at 472. An employer with broad control wields considerable influence over an employee's entire work assignment and the court may infer the employer's right to control the employee. Ibid. To establish broad control, the court may consider factors such as the "method of payment[,] who furnishes the equipment, and [the] right of termination." Ibid. (quoting Wright v. State, 169 N.J. 422, 437 (2001) (alterations in original) (internal quotation marks omitted)).

Based on the undisputed facts presented in support of, and in opposition to, the summary judgment motion, the judge correctly concluded HEC did not exercise broad control over Campos. The facts as stated by Judge Buechler regarding the relationship between HEC and Campos demonstrated the lack of any control, let alone broad control, by HEC concerning Campos or his day-to-day work for PLG. Therefore, the judge properly determined HEC could not be vicariously liable for plaintiff's injuries.

We also reject plaintiffs' argument that there were material disputed facts in the summary judgment motion record such that a jury must determine whether

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<sup>3</sup> The parties agree HEC did not retain on-spot control over Campos at the time of the accident.



HEC retained broad control over Campos. In reviewing a summary judgment motion, the trial court must draw all inferences in the light most favorable to the non-moving party when deciding whether there are genuine issues of material fact to preclude summary judgment as a matter of law. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995); R. 4:46-2. To defeat a summary judgment motion, "[Rule] 4:46-2(c)'s 'genuine issue [of] material fact' standard mandates that the opposing party do more than 'point[] to any fact in dispute.'" Globe Motor Co. v. Igdaley, 225 N.J. 469, 479 (2016) (quoting Brill, 142 N.J. at 529) (alterations and emphasis in original). "[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome the motion." Puder v. Buechel, 183 N.J. 428, 440-41 (2005) (citations omitted). "[A]n opposing party who offers no substantial or material facts in opposition to the motion cannot complain if the court takes as true the uncontradicted facts in the movant's papers." Baran v. Clouse Trucking, Inc., 225 N.J. Super. 230, 234 (App. Div. 1988) (citing Judson v. Peoples Bank & Tr. Co. of Westfield, 17 N.J. 67, 73 (1954)).

Here, plaintiffs rely on the term "employee" in the Agreement as evidence of HEC's purported broad control over Campos. However, when read in the context of the entire Agreement, the term "employee" did not connote any broad

control by HEC over Campos' day-to-day activities. The Agreement expressly stated PLG "shall be responsible for the day[-]to[-]day supervision of all Personnel." There is nothing in the record to demonstrate that HEC retained the type of broad control over Campos as required under Galvao to impose vicarious liability against HEC.

Based upon our review of the record, and giving plaintiffs the benefit of all favorable inferences, Judge Buechler correctly determined there were no genuine issues of material fact. Moreover, the judge appropriately applied the legal test in Galvao in granting defendants' summary judgment motion. There are no competent facts in the record to suggest HEC exercised any control over Campos' day-to-day activities or the performance of his work at PLG to warrant imposition of vicarious liability on HEC as a matter of law.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION