

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND DEPARTMENT

Baldassarre v. Morwil Supermarket, Inc.

203 A.D.2d 221 (N.Y. App. Div. 2d Dep't 1994) · Decided April 4, 1994

SUMMARY

The court reversed an order granting summary judgment to Met Food Corp. in a personal-injury action arising from the sexual assault and beating of a grocery-delivery customer. It held that triable issues existed as to whether Met Food Corp. clothed the supermarket and delivery service with apparent authority, making summary judgment inappropriate.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Per Curiam; Thompson, J.P.; Pizzuto, J.; Santucci, J.; Goldstein, J.
JURISDICTION	New York
DECIDED	April 4, 1994
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from an order granting Met Food Corp.'s motion for summary judgment dismissing the complaint insofar as asserted against it.
STANDARD OF REVIEW	Summary judgment is appropriate only where there is no triable issue of fact; the motion is reviewed as a matter of law on the record.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Florence Baldassarre, Plaintiffs v. Met Food Corp., s/h/a Met Food

TOPICS

- personal injury
- negligence
- negligent hiring
- summary judgment
- civil procedure

PRACTICE AREAS

- Torts
- Civil procedure

QUESTIONS PRESENTED

1. Whether triable issues of fact existed regarding whether Met Food Corp. clothed the supermarket and its delivery service with apparent authority.
2. Whether summary judgment dismissing the plaintiffs' claims against Met Food Corp. was appropriate.

HOLDINGS

1. Evidence that Met Food Corp. intentionally created the impression that the supermarket belonged to a Met Food chain, assisted with advertising and circulars bearing the Met Food name, and was relied upon by the plaintiff created a triable issue of fact as to whether Met Food Corp. clothed the supermarket with apparent authority.
2. Summary judgment in favor of Met Food Corp. was inappropriate because triable issues of fact existed concerning apparent authority.

KEY QUOTATIONS

“We find that triable issues of fact exist regarding whether Met Food Corp. clothed the supermarket with apparent authority” (222)

“Therefore, summary judgment in favor of defendant-respondent was inappropriate.” (222)

FACTUAL BACKGROUND

Florence Baldassarre, who was homebound while recovering from a broken leg, ordered groceries by telephone from a neighborhood supermarket using the Met Food name. A delivery man identifying himself as being from Met Food entered her apartment and sexually assaulted and beat her. The plaintiffs presented evidence that Met Food Corp. helped advertise and prepare circulars for the store, that the store advertised phone orders and delivery under the Met Food name, and that Baldassarre relied on the name in allowing the delivery man to enter.

PROCEDURAL HISTORY

The plaintiffs commenced a personal-injury action against, among others, Met Food Corp., alleging negligence in hiring the delivery man and liability under apparent authority. Supreme Court, Kings County, granted Met Food Corp.'s motion for summary judgment. The Appellate Division reversed and denied the motion.

DISPOSITION

reversed

CASES CITED

- Fogel v Hertz Intl., 141 A.D.2d 375
- Hannon v Siegel-Cooper Co., 167 N.Y. 244

OPINION

PER CURIAM.

—In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Kings County (Ramirez, J.), dated June 11, 1992, which granted the motion of the defendant Met Food Corp., s/h/a Met Food, a subsidiary of White Rose Food Corp., for summary judgment dismissing the complaint insofar as it is asserted against it.

Ordered that the order is reversed, on the law, with costs, and the motion is denied. The plaintiff Florence Baldassarre, who was homebound recovering from a broken leg, called her neighborhood Met Food Supermarket and ordered a grocery delivery to her apartment. A delivery man arrived, and after announcing he was from Met Food, gained entrance to Mrs. Baldassarre's apartment, whereupon he proceeded to sexually assault and brutally beat her.

The plaintiffs commenced this action against, among others, the defendant-respondent alleging, inter alia, negligence in the hiring of the delivery man. The plaintiffs claim that the defendant-respondent Met Food Corp., is liable under the doctrine of apparent authority.

The defendant-respondent moved for summary judgment, asserting that it did not own the subject store, and exercised no control over either the supermarket or its delivery service. It alleged that its parent corporation White Rose Food Corp. owns the trade name "Met Food" and that it merely sells groceries to supermarkets who use the Met Food name and logo as an identifying mark.

The plaintiffs, however, presented evidence that the defendant-respondent intentionally sought to create the impression to the public that the store in question belonged to a Met Food chain of supermarkets in order to enhance the defendant-respondent's profits.

The defendant-respondent assisted in advertising and in preparation of circulars for the store, all bearing the Met Food name. The supermarket advertised for "phone orders and delivery" in the telephone directory under the name Met Food. When the plaintiff Florence Baldassarre called that telephone number provided, the telephone was answered by an employee who called the store Met Food.

The delivery man also announced that he was from Met Food. Mrs. Baldassarre maintained that she believed she was dealing with Met Food, a large supermarket chain, that the delivery man was a Met Food employee, and that she relied on the Met Food name in allowing him to enter her apartment.

We find that triable issues of fact exist regarding whether Met Food Corp. clothed the supermarket with apparent authority (see, *Fogel v Hertz Intl.*, 141 AD2d 375; *Hannon v Siegel-Cooper Co.*, 167 NY 244). Therefore, summary judgment in favor of defendant-respondent was inappropriate. Thompson, J. P., Pizzuto, Santucci and Goldstein, JJ., concur.