

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