Vermont Superior Court
Filed 10/19/26
Washington Unit

VERMONT SUPERIOR COURT
Washington Unit
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CIVIL DIVISION
Case No. 25-CV-02099

Parker Weber v. Ameriscape Inc, et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 8)
Filer: Beata Shapiro
Filed Date: July 30, 2026

The motion is GRANTED IN PART and DENIED IN PART.

I. Background

This case arises from a collision between a commercial vehicle driven by Satnam Singh and a passenger car driven by Rosetta Morse Weber. At approximately 6:46 AM on April 11, 2024, Mr. Singh was driving a 2019 Freightliner Cascadia tractor trailer southbound on Route 100 near Duxbury, Vermont, en route to Bisbee Hardware to deliver a load of mulch. At the same time, Ms. Weber was driving northbound on the same road. As Mr. Singh and Ms. Weber approached each other, Mr. Singh's truck crossed the center line and collided with Ms. Weber's vehicle. Ms. Weber was killed in the resulting accident. Plaintiff is Ms. Weber's widower and brought the present action, filed in May 2025, in his own name and as executor of Ms. Weber's estate.

Plaintiff alleges that Defendant Nolan Transportation Group (NTG) bears responsibility for the accident. Defendant has filed the present motion to dismiss for failure to state a claim. Defendant contends that on its face, the complaint fails to allege facts which establish each element of the claims, including facts supporting the allegation that Defendant caused the injury to the decedent.

II. Legal analysis

A. Standard of review

A motion to dismiss for failure to state a claim is disfavored and rarely granted. *Bock v. Gold*, 2008 VT 81, ¶ 4. The motion is only proper when it is "beyond doubt that there exist no facts or circumstances, consistent with the complaint that would entitle the plaintiff to relief." *Id.* However, a baseless claim is distinct from a factually underdeveloped one. *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 13. Because of this, the plaintiff only needs to allege facts sufficient to put

the defendant on notice of the claim and the grounds for it. *Bressler v. Keller*, 139 Vt. 401, 403 (1981).

When considering a 12(b)(6) motion to dismiss for failure to state a claim, the court assumes all facts in the pleadings to be true and makes all reasonable inferences in the plaintiff's favor. *Sutton v. Purzycki*, 2022 VT 56, ¶ 20. However, the court does not need to accept as true "conclusory allegations or legal conclusions masquerading as factual conclusions." *Colby*, ¶ 10.

B. Counts III, IV, V — Negligence and negligent hiring

Defendant argues that these counts should be dismissed because Plaintiff alleges that they are liable under the doctrine of *respondeat superior*, that there are no facts in the pleadings which support an employer-employee relationship with Mr. Singh, and that the facts instead support an independent contractor relationship.

Under respondeat superior, an employer is held liable for tortious acts of an employee committed during or incidental to the scope of employment. *Bruecker v. Norwich Univ.*, 169 Vt. 118, 122–23 (1999).

The "right to control" is the primary test to distinguish an employee from an independent contractor. "Right to control" in the context of respondeat superior means that employer dictates the means and methods of work as well as the final product. *Kuligoski v. Raposa*, 207 Vt. 43, 50 (2018).

The Restatement of Agency also lists several supplemental factors which point to an employment relationship when they exist alongside an agreement for or de facto close supervision. Given the alleged supervision in this case, the relevant factors here are the supplying of tools by the employer and regular payment by the employer. Restatement (Second) of Agency § 220 (1958).

Plaintiff provided the following facts in support of their contention that Defendant has an employer-employee relationship with Blackbird and Mr. Singh:

(1) Defendant contracted with Blackbird, who directly employed Mr. Singh, for the transportation of the mulch.

(2) The truck driven by Mr. Singh was collectively owned by Defendants, including NTG.

(3) Mr. Singh operated the Tractor-Trailer under the supervision of and for the benefit of all Defendants, including NTG.

(4) That Defendant NTG maintained regular contact with the other defendants to track the status of the mulch shipment (and by extension, Mr. Singh's location and travel routes).

(5) That Mr. Singh received payment from Defendant NTG for his services.

Taken together, the above facts support an inference, at this stage of the case, that Defendant had a de facto employer-employee relationship with Blackbird and Mr. Singh that would merit the imposition of respondeat superior liability, even if Mr. Singh was not formally listed as an employee of NTG.

While Defendant argues that the existence of a contract supports an independent contractor relationship, a contract is not dispositive of that conclusion. A contract can just as easily confer a degree of control over Mr. Singh that would rise to the level of an employer-employee relationship. In this respect, Plaintiff is entitled to explore the details of the contract and the nature of the relationship through discovery and to test the truth of the asserted facts in his complaint to understand how both the contract and actual practice of the parties' relationship determined control and liability.

The allegations that Defendant owned the truck involved in the accident and that Mr. Singh operated it under their supervision and for their benefit similarly support an inference that Defendant had some right to control the means, method, and result of Mr. Singh's work. Taking the preceding facts as true, for the purpose of the motion, NTG's ownership of the truck indicates control over the means and method of transporting the mulch. Their supervision of Mr. Singh and their tracking of the shipment also support an inference that they may have been able to intervene should Mr. Singh's performance falter or the shipment be delayed. This type of intervention supports control over both the means and method and the result.

At this stage, Plaintiff has alleged sufficient facts to allow the respondeat superior claims to move forward. Further factual development is necessary to fully flush out the nature of the parties' relationship and the underlying levels of control NTG did or could have exercised over Mr. Singh.

Accordingly, the motion to dismiss as to counts III, IV, and V is DENIED at this time.

C. Counts I and II — wrongful death and survival action

Defendant argues that counts I and II should be dismissed because Vermont's wrongful death and survival action statutes, 14 V.S.A. § 1492 and § 1452, respectively, do not create independent causes of action and are therefore duplicative of Plaintiff's negligence claims. Mem. in Supp. of Mot. to Dismiss, at 6.

Plaintiff argues that there is no issue in allowing counts I and II to stand as organizational vehicles for the damages alleged, and alternatively argues that rather than being dismissed, counts I and II should be consolidated into the negligence claims. Opp. to Mot. to Dismiss, at 4.

NTG correctly states that the statutes allowing for wrongful death and survival actions do not create independent causes of action. *Clymer v. Webster*, 156 Vt. 614, 619–20 (1991). Instead, these statutes lay out what claims and damages survive the decedent. *Id*. The court acknowledges that counts I and II are not independent causes of action and are instead claims for

damages dependent upon a successful negligence claim. This means that the supporting facts needed to establish damages under counts 1 and 2 are the same as those needed to support the negligence claims.

The negligence claims in this case require further factual development, and the pleadings, as written do not make explicit that the Plaintiff is seeking the damages allowed under 14 V.S.A. § 1492 and § 1452, and so premature dismissal may prejudice Plaintiff. See *Estate of Mayotte v. D'Ottavio*, No. 25-CV-04864 (Vt. Super. Ct. Apr. 10, 2026), at 4. Therefore, dismissal of counts I and II is premature.

The court also views consolidation as somewhat of a misleading task. The law is clear that there are no separate claims for wrongful death. Instead, these counts are simply damages that Plaintiff may only be entitled to recover if he can establish both his underlying claims of negligence and his claim for respondeat superior liability. Given that the complaint is primarily intended for the purposes of notice, the Court sees little to be gained at this juncture in forcing Plaintiff to amend and clarify what is already apparent and acknowledged in this decision.

Accordingly, the motion to dismiss as to counts I and II is DENIED at this time.

D. Count VI — joint venture

Defendant argues that this count should be dismissed because Plaintiff's argument rests entirely on conclusory statements, and that the facts that are provided in the complaint contradict the allegation of a joint venture. Specifically, Defendant notes that the entire web of connections in this case arise from a series of commercial transactions. These transactions were that Ameriscape sold mulch to Bisbee Hardware, then hired Defendant to ship the mulch, and Defendant subsequently contracted with Blackbird to transport the mulch. None of these separate transaction constitute what the law would consider a "joint venture."

A joint venture is a special relationship of two or more parties to engage in and carry out a single business venture for joint profit. *Winey v. William E. Dailey, Inc.*,161 Vt. 129, 139 (quotations omitted). To amount to a joint venture, there must be an agreement to

(1) "share in profits and losses;

(2) A joint control or right to control;

(3) a joint proprietary interest in the subject matter;

(4) and a community of interest in the performance of the common purpose."

Id.

Additionally, all elements must be met for a joint venture to exist. *Id*. Essentially, the parties must be so closely aligned that their activities amount to a de facto partnership. *Id*.

Plaintiff provided several statements in support of their claim for a joint venture. These statements are:

(1) defendants were engaged in a joint venture to haul goods and material in interstate commerce for profit;

(2) defendants were aware that Mr. Singh was transporting the mulch shipment;

(3) Mr. Singh received payment from all defendants for the mulch shipment;

(4) Mr. Singh acted for the benefit defendants as their employee/agent in transporting the mulch;

(5) defendants had the right to control Mr. Singh and exercised that right;

(6) defendants controlled the tractor-trailer through Mr. Singh as an agent, employee, or servant and held him out as such, and

(7) defendants maintained contact to track the status of the mulch shipment.

Amended Complaint, ¶ 96-105.

In *Aranoff v. Bryan*, 153 Vt. 59, 62-63 (1989), the court found the statement that all defendants had "authority to discipline and terminate the employment of Petitioner" to be conclusory for the purpose of a 12(b)(6) motion to dismiss, because it stated a legal right to act on the petitioner without providing supporting facts.

Here, Plaintiffs' statement that defendants were engaged in a joint venture and that they had a right to control Mr. Singh are both conclusory because they state a legal right to act on to act on Mr. Singh. Additionally, the statement that defendants engaged in a joint venture is simply a restatement of the claim.

Therefore, these statements are conclusory and will not be considered.

Element 1: profit and loss-sharing

Merely receiving profits from a transaction is insufficient to establish that there is an agreement to share in profits and losses. *State of Vt. Envt'l Bd. v. Chickering*, 155 Vt. 308, 318 (1990).

Here, Plaintiff alleges that the defendants jointly paid Mr. Singh and that Defendant profited or expected to profit from the transaction. An agreement between defendants to pay Mr. Singh may be an agreement to share or pass along an expense, but it is not on its face an agreement to share in profits and losses. Additionally, there are no facts to support that Defendant's expected profit was part of a profit-sharing agreement rather than part of a simple commercial transaction. Finally, there are no facts alleged which suggest an agreement to share in losses.

Therefore, there are no facts supporting an agreement to share in profits and losses.

Elements 2, 3, and 4: joint control, proprietary interest, and community of common purpose

A joint venture is a higher bar for a relationship between parties than respondeat superior, which requires only that the employer control the means, method and result of the employee's work.

Here, Plaintiff states that defendants were aware Mr. Singh was transporting the mulch, that Mr. Singh acted for their benefit in transporting the mulch, and that they exercised control over the truck through Mr. Singh as an agent/employee and held him out as such, and that Defendant maintained contact with the other defendants to track the shipment. As analyzed above, these facts support an inference that defendant controls the means, method, and result of Mr. Singh's work under respondeat superior. However, they do not support the right to control in a joint venture, because they do not allege control that amounts to de facto partnership. Mere supervision of an individual does not amount to a de facto partnership. Similarly, they do not support an inference that the Defendants shared a joint proprietary interest or a community of common purpose, because they allege no connection beyond the supervision of Mr. Singh.

Therefore, there are no facts to support a joint control or right to control, a joint proprietary interest, or a community of interest in a common purpose.

Because no facts support the mandatory elements of the claim, Plaintiff has not stated a claim for joint venture.

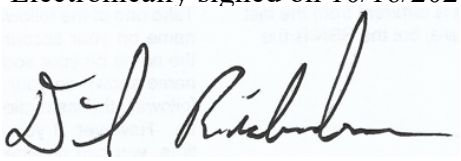
Since the standard for a 12(b)(6) motion to dismiss for failure to state a claim is that the Plaintiff has failed to put forth any facts to support the claim, dismissal is appropriate. See *Bock* at ¶ 4.

Accordingly, the motion to dismiss count VI is GRANTED.

ORDER

Based on the foregoing, Defendant's motion to dismiss is **Granted in Part and Denied in Part.** Plaintiff's joint venture claim (Count IV) against NTG is **Dismissed**.

Electronically signed on 10/16/2026 7:15 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge