

**TORTS &
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Thomas B. Cronmiller, Chair
585.295.4424
tcronmiller@hblaw.com

Gary H. Abelson
Jessica M. Baker
Nikki L. Baldwin
Frank V. Balon
Robert A. Barrer
Neil D. Breslin
Samuel J. Burrmano
David B. Cabaniss
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Employer Found not Vicariously Liable for Employee Car Accidents in Employer's Parking Lot After the End of the Workday.

In *Prystajko v. Western New York Public Broadcasting Association*, the Fourth Department recently affirmed an order dismissing a cause of action seeking to hold the Public Broadcasting Association ("PBA") vicariously liable for injuries that a plaintiff sustained when a motor vehicle operated by an employee of the PBA struck the plaintiff's motor vehicle in a parking lot owned by the PBA. The employee, who had finished working for the day and was attempting to leave the parking lot on his way home, backed into the plaintiff's motor vehicle in order to avoid a collision with another vehicle that was backing away from a malfunctioning lift gate. The plaintiff sued the PBA on theories of respondeat superior and primary negligence. The lower court dismissed the vicarious liability cause of action for respondeat superior, but allowed the plaintiff to proceed with respect to the primary negligence cause of action.

On appeal, the Fourth Department held that the plaintiff's cause of action based on the theory of respondeat superior was properly dismissed by the lower court because, at the time of the accident, the employee was not acting "in the scope of" his employment. The Appellate Division, quoting its own 2007 decision in *Swierczynski v. O'Neill*, explained:

The doctrine of respondeat superior as it relates to an employee using his or her vehicle applies only where the employee is under the control of his or her employer from the time that the employee enters his or her vehicle at the start of the workday until the employee leaves the vehicle at the end of the workday, as in the case, for example, of a traveling salesperson or repairperson.

In *Prystajko*, the key fact was that the employee was on his way home at the time of the accident and was therefore not acting in furtherance of any duty owed to the defendant PBA, despite the fact that he was still in the PBA's parking lot. Accordingly, the Appellate Division held that as matter of law, PBA could not be vicariously liable for the plaintiff's injuries.

However with respect to the cause of action asserting primary negligence, the Appellate Division, by split decision, affirmed the lower court's decision allowing the plaintiff to proceed to a jury trial, finding an issue of fact with respect to whether the PBA knew of the malfunctioning gate on its property and whether it was foreseeable that a vehicle would back into another vehicle as a result of such a malfunction.

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The dissent, which would have dismissed the negligence cause of action against the PBA, found that the lift gate was not the cause of the accident, but merely furnished the condition or occasion for the accident, and that the “it was not reasonably foreseeable that a driver would back into a stopped motor vehicle in the parking lot in order to permit the vehicle at the exit to maneuver away from the exit.”

New York’s Highest Court Reverses Ruling that Imposed Forfeiture of \$750,000 for Failure to Timely Submit a Judgment.

Rule 202.48 of the Uniform Rules for the New York State Trial Courts requires the winner of a decision containing a directive to “submit” or “settle” the order or judgment to so act within sixty days. Under the Rule, failure to timely submit under such circumstances and without “good cause,” constitutes an abandonment of the judgment.

In a widely publicized 2007 decision in *Farkas v. Farkas*, which involved a contentious matrimonial matter, the First Department held that a \$750,000 award must be forfeited because the plaintiff failed to timely submit a judgment under Rule 202.48.

The Court of Appeals granted leave to appeal and recently issued its decision. New York’s Highest Court overturned the First Department’s decision on the basis that that an earlier decision of the trial court authorized the award “without further order.” In the eyes of the Court of Appeals, this language made the settlement process set forth in the Rule unnecessary.

To avoid the potential forfeiture of an award and favorable decision, the safer practice is to ensure that proposed orders are submitted with in the 60 day time period set forth in Rule 202.48. ■

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