IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX AT KINGSHILL

WILSON LETT,	)	**CIVIL NO. 732/1995**
	)	
Plaintiff,	)	
	)	
vs.	)	**ACTION FOR DAMAGES**
	)	
NORBERT ROSADO, PAUL WIGHTMAN, HESS OIL VIRGIN ISLANDS CORP.,	)	
	)	
Defendants.	)	**NOT FOR PUBLICATION**

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CABRET, P.J.

MEMORANDUM OPINION
(May 31, 2002)

THIS MATTER is before the Court on the plaintiff's Motion to Lift a Stay in this action, as to Defendant Hess Oil Virgin Islands Corp.. The defendant opposes the motion. For the following reasons, the Court will grant the plaintiff's motion.

Statement of Facts and Procedural History

Plaintiff alleges he was injured in an accident, after being struck by a vehicle driven by Norberto Rosado ("Rosado"). Plaintiff filed this action in negligence against against Rosado, Paul Wightman ("Wightman") and Hess Oil Virgin Islands Corp. ("HOVIC"). In his second amended complaint, plaintiff alleges that Rosado was acting during the scope of employment with HOVIC at the time of the accident and that HOVIC was utilizing a vehicle owned by Wightman during the course of its business. Plaintiff also alleges negligent entrustment of the vehicle by both Wightman and HOVIC.

Wightman filed for bankruptcy after this action was filed, and this action was initially stayed under 11 U.S.C. 362. However, the bankruptcy court subsequently lifted that stay order and allowed the plaintiff to proceed against the co-defendants and against Wightman, only to the extent plaintiff only sought recovery of any available insurance proceeds and not against Wightman's personal assets. Subsequently, this court entered an order vacating the stay of this matter. The plaintiff later stipulated to a dismissal of this action as to Wightman. Thus, only Rosado and HOVIC remained as defendants.

On September 3, 1997, this Court (on petition from the lieutenant governor's office) entered an Order of Rehabilitation with regard to the insurance company under which Rosado is covered – Island National Insurance Co. That order stayed this action with regard to Rosado, as an insured of said insurance company. Rosado filed a Notice of Stay with the Court. HOVIC objected to the action being stayed only with regard to Rosado and moved to stay the entire action. Plaintiff did not object and, on October 21, 1997, this Court stayed all proceedings in this case.

Discussion

Plaintiff now moves to lift the stay with regard to HOVIC, citing the lack of action on the rehabilitation of Island National Insurance, the likelihood that the insurance matter will not be resolved anytime soon, and the prejudice to the plaintiff resulting from inaction in this case. HOVIC objects to lifting the stay on several grounds: 1) Plaintiff should have sought timely relief through a Motion for Reconsideration of the stay order; 2) lifting the stay as to Rosado would amount to a dismissal against that defendant, whom the defendant believes is an "indispensable party" and; 3) the stay, entered by the Honorable Edgar D. Ross, has no time limitations and cannot be lifted until further order of the court.

HOVIC argues that lifting the stay would be tantamount to a dismissal of this action against Rosado, which it contends is an indispensable party.[1] Defendant further asserts that, because the allegations against HOVIC lie in vicarious liability, those claims are dependent on Rosado's liability and cannot be pursued without Rosado as a party. Plaintiff counters that Rosado, though a "desirable" party, is not an indispensable one. Plaintiff further asserts that, this being a scope of employment case, the plaintiff may proceed only against HOVIC and need not secure a personal judgment against Rosado.[2] The central issue, then, is whether Rosado is an indispensable party to an action against his employer for harm done during the scope of his employment, requiring a continued stay of the entire action until Rosado's presence is assured, in order to ensure a fair disposition of this case.

The Federal Rules require that parties be joined in a single action if:

> (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

FED. R. CIV. P. 19 (a). In other cases, where the concerns noted in Rule 19 are not present, a litigant seeking a right to relief "jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences" may, but is not required to, join parties in one action. FED. R. CIV. P. 20 (a) ("Permissive Joinder"). The policies underlying the compulsory joinder rule are to prevent actions from proceeding against parties which would result in "partial or hollow rather than complete relief to the parties before the court" or which would result in repeated lawsuits on the same subject matter. *See* FED. R. CIV. P. 19, advisory committee notes to 1966 amendment (internal quotation marks omitted).

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1 Defendant's other arguments have no merit, because the plaintiff is not seeking reconsideration, but rather seeks to lift the stay.

2 The Defendant cites to no authority for the proposition that there can be no action against the master, in the absence of the servant, for harm resulting from the servant's conduct during the scope of his employment or resulting from the master's negligent entrustment.

The Restatement of Torts reflects the permissive joinder requirements for actions involving tortfeasors subject to joint and several liability. Where more than one tortfeasor contributes to another's harm in a single event, the Restatement permits an injured person to seek recovery, in a single action, from one or more of those tortfeasors. *See* RESTATEMENT (SECOND) OF TORTS § 882, at 328 (1979). The comment to the Restatement notes:

> The rule stated in this Section permits joining in one action any number of tortfeasors, <u>each of whom is responsible for the entire amount of damages</u> for which the action is brought. It applies when master and servant or principal and agent are both subject to liability for the tort of the servant or agent . . . .

RESTATEMENT § 882, comment b (emphasis added). The illustrations to Section 882 further support the <u>permissive</u>, rather than mandatory, joinder of a master and servant, and refute the defendant's argument that Rosado is an indispensable party subject to compulsory joinder. As the Restatement illustrates: "A employs B, a servant, who negligently runs over C. C is entitled to maintain an action against A or B or against either of them." *Id.* at illus. 1; *see also,* 7 CHARLES WRIGHT AND ALLAN MILLER, FEDERAL PRACTICE AND PROCEDURE § 1623 (2001); *see also* FED. R. CIV. P. 19, advisory committee notes to 1966 amendment (acknowledging the "well-settled authorities holding that a tortfeasor with the usual joint and several liability is merely a permissive party to an action against another with like liability" and that joinder of such tortfeasors is regulated by Rule 20) (citations and internal quotation marks omitted). The case law also supports this result in actions involving a principal/master and an agent/servant.

In *Hall v. National Service Industries, Inc.*, 172 F.R.D. 157, 159-60 (E.D.Pa. 1997), on facts strikingly similar to those now before this court, the court had occasion to decide whether an employee must be joined in an action against an employer based on vicarious liability principles. That Court held that the employee need not be joined in such a case, consistent with authorities which hold that joinder is not required of a principal and agent. *Id.* (citations omitted). There, the court allowed the plaintiff to proceed in the negligence action only against the principal/employer, holding that the employee was not an indispensable party within the meaning of Rule 19 (a). *Id.* (action for respondeat superior and negligent entrustment of vehicle to servant).

Similarly, in *Murphy v. Newport Waterfront Landing, Inc.*, 806 F.Supp. 322, 325 (D.R.I.1992), the Court permitted a negligence and vicarious liability claim to proceed against the employer, despite the fact that the claim against its doorman was dismissed for lack of jurisdiction, holding that the doorman was not an indispensable party. In so holding, the Court noted that an "employee is not a necessary party to a suit against his employer under respondeat superior", in line with "the well established principle that a person has a joint action against the master and his servant for the injuries resulting from the negligence or wrongful act of the servant under the doctrine of respondeat superior, or he may bring his suit against either the servant or the master." *Id.* (citations omitted; internal quotation marks omitted). The court noted that the plaintiff could have brought suit solely against the employer from the outset. *Id.*

A similar result was reached in *Toogood v. Owen J. Rogal, D.D.S., P.C.,* 764 A.2d 552, 558 (Pa.Super. 2000), where the court permitted a vicarious liability negligence claim to proceed against the principal doctor (employer), despite his employee doctor's death. *Id.* at 559 (holding that "[w]hen one defendant's tort liability is vicariously based on *respondeat superior,* the other parties are not initially required to pursue their rights of recovery, contribution or indemnification from the servant whose operative negligence led to the plaintiff's injury by joining that servant.") (quoting *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 507 A.2d 1, 11-12 (1986); distinguishing *Mamalis v. Atlas Van Lines, Inc.*, 522 Pa. 214, 560 A.2d 1380 (1989), in which plaintiff was barred from asserting claim against principal, after full satisfaction of claim by agent for the harm, which extinguished the entire claim).

Here, as the Restatement and the other authorities noted above illustrate, Plaintiff may proceed against the employer *or* the employee, either of which may be held liable for the entire harm. The concerns noted in Federal Rule of Civil Procedure 19 (a) are not present, because there is no risk of double recovery, inconsistent results or multiplicity of lawsuits on the same subject matter. This is because the plaintiff can enjoy only one satisfaction, from either party, for the harm alleged and would be barred from later bringing a separate action against the other party to recover for the same harm. *See, e.g.* RESTATEMENT § 885. Moreover, if the employer is found liable for a judgment based on its employee's conduct, it may then seek contribution or indemnity from the employee for any amounts paid on such judgment. *See* RESTATEMENT §§ 886A(1), 886B (2)(a). Finally, HOVIC -- not Rosado -- may be held directly liable for negligent entrustment of the vehicle to Rosado. Thus, because complete relief is available regardless of whether either or both master and servant are parties to this litigation, and where HOVIC is not subject to double liability, this case does not implicate the concerns of Federal Rule of Civil Procedure 19 which would compel a finding that Rosado is indispensable to this action. Given the foregoing, and in the absence of authority from the defendant to the contrary, the Court concludes that the plaintiff could properly proceed against HOVIC, despite the continued stay as to Rosado.

Conclusion

An action against an employer for the conduct of an employee during the scope of employment, under respondeat superior principles, may be brought solely against the employer and need not include the employee. Indeed, an employer may be held solely liable for the entire harm caused by its employee under such circumstances. Additionally, joint and several liability principles permit only one satisfaction for a single harm and, therefore, pose no risk of duplicitous litigation or multiple and inconsistent obligations. Moreover, an action for negligent entrustment is one against the employer, based on its conduct. For the foregoing reasons, the employee, Norberto Rosado, cannot be said to be an indispensable party. Accordingly, this action may proceed against HOVIC. An appropriate order follows.

MARIA M. CABRET
Presiding Judge

ATTEST:
DENISE D. ABRAMSEN
Clerk of the Court
By: ______________
Deputy Clerk
Dated: 6/3/03