

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MATTHEW FORTUNE and DAWN)
FORTUNE, h/w)

Plaintiff,)
v.)

C.A. No. N24C-02-133 CLS

LLOYD ARCHER, JR., ROHANS)
BUS SERVICE, INC.,)
HARLEYSVILLE INSURANCE)
COMPANY, and THG TRANSPORT,)
INC.,)

Defendants.

Date Submitted: November 5, 2025

Date Decided: February 13, 2026

*Upon Consideration of the Defendant THG Transport, Inc. 's Motion for Summary Judgment. **DENIED in part, decision reserved as to remaining issue.***

ORDER

Samuel D. Pratcher, III, Esquire for PRATCHER KRAYER LLC, and Michael van der Veen, Esquire for VAN DER VEEN, HARTSHORN, LEVIN & LINDHEIM, *Attorneys for Plaintiffs.*

Paul D. Sunshine, Esquire for REGER RIZZO DARNALL, LLP, *Attorney for Defendants Lloyd Archer, Jr. & Rohans Bus Service, Inc.*

Eric Scott Thompson, Esquire for MARSHALL DENNEHEY, P.C., *Attorney for Defendant THG Transport, Inc.*

SCOTT, J.

Before the Court is THG Transport Inc.’s Motion for Summary Judgment as to all Plaintiffs’ claims against it. For the following reasons, THG Transport Inc.’s Motion for Summary Judgment is **DENIED in part, decision reserved as to remaining issue.**

FACTUAL AND PROCEDURAL BACKGROUND¹

On May 3, 2021, THG Transport, Inc. (“THG”) entered into a contract with Delaware State University (“DSU”) to provide DSU with ground transportation services for the university.² Under the contract, THG was permitted to subcontract with other companies if it could not fulfill its contractual obligations if it obtained DSU’s written approval.³

On February 9, 2023, DSU requested that THG transport the DSU bowling team to a competition in North Carolina on February 23, 2023.⁴ THG did not have the resources to service the trip, so it reached out to other companies to see if there was a provider that could fill in.⁵ Rohans Bus Service, Inc. (“Rohans”) agreed to fill in for the trip and THG sent Rohans a work order for the job that detailed the time and date of departure, the times and locations for transport while the team was in

¹ The facts are drawn from the Amended Complaint and all documents the parties incorporated by reference. The Court accepts these facts solely for the purpose of ruling on the Motion.

² *See generally* Def. THG Transport, Inc.’s Mot. for Summ. J., Ex. B, D.I. 56 (“THG Mot. for Summ. J.”).

³ THG Mot. for Summ. J., Ex. 2 ¶ 49.

⁴ *Id.* Ex. 4 at 35.

⁵ Def. Rohans Bus Serv., Inc.’s and Archer Lloyd Jr.’s Resp. to Mot. for Summ. J., Ex. C, D.I. 60 (“Rohans’ Resp.”); THG Mot. for Summ. J., Ex. 4.

North Carolina, the date and time for arrival back to DSU, and the charges and fees for the trip.⁶

Rohans' employee, Lloyd Archer, Jr. ("Archer"), drove the bus for the February 23 trip.⁷ While traveling south on I-85, Archer fell asleep while driving, causing the bus to crash.⁸ As a result, passenger and plaintiff, Matthew Fortune, sustained severe injuries.⁹

On February 13, 2024, Matthew Fortune and his wife, Dawn Fortune (collectively, "Plaintiffs"), filed a complaint against Archer, Rohans, and Harleysville Insurance Company, alleging claims for negligence and loss of consortium stemming from the bus crash.¹⁰ Plaintiffs then amended their complaint to add THG as a defendant.¹¹ In addition to Count V for loss of consortium, the Amended Complaint alleges that THG: (1) negligently subcontracted/hired Rohans, and (2) is "vicariously liable for the actions of its agent, Rohans[.]"¹²

⁶ THG Mot. for Summ. J., Ex. 4 at 35–36; Rohans' Resp., Ex. A at 5.

⁷ Amended Complaint, ¶ 7, D.I. 26 ("Amended Compl.").

⁸ *Id.*

⁹ *Id.*

¹⁰ *See generally* Complaint, D.I. 1 ("Compl.").

¹¹ *See generally* Amended Compl.

¹² *Id.* ¶¶ 34, 37, 39–43.

THG moved for summary judgment on all claims against it on September 19, 2025.¹³ Plaintiffs, and defendants Rohans and Archer (collectively, “Rohans”), oppose the motion.¹⁴ THG replied,¹⁵ and the matter is now ripe for decision.

STANDARD OF REVIEW

The burden of proof on a motion for summary judgment under Superior Court Civil Rule 56 falls on the moving party to demonstrate that “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”¹⁶ If the moving party satisfies its initial burden, the non-moving party must sufficiently establish the “existence of one or more genuine issues of material fact.”¹⁷ Summary judgment will not be granted if there is a material fact in dispute or if “it seems desirable to inquire thoroughly into [the facts] in order to clarify the application of the law to the circumstances.”¹⁸ “All facts and reasonable inferences must be considered in a light most favorable to the non-moving party.”¹⁹

¹³ See generally THG Mot. for Summ. J.

¹⁴ See generally Rohans’ Resp.; Pls.’ Resp. to Mot. for Summ. J., D.I. 59 (“Pls.’ Resp.”).

¹⁵ See generally THG Reply in Support of Mot. for Summ. J., D.I. 66 (“THG Reply”).

¹⁶ Super. Ct. Civ. R. 56(c).

¹⁷ *Quality Elec. Co., Inc. v. E. States Const. Serv., Inc.*, 663 A.2d 488, 1995 WL 379125, at *3–4 (Del. June 19, 1995) (TABLE); see also *Moore v. Sizemore*, 405 A.2d 679, 681 (Del. 1979).

¹⁸ *Ebersole v. Lowengrub*, 180 A.2d 467, 469–70 (Del. 1962); see also *CNH Indus. Am. LLC v. Am. Cas. Co. of Reading*, 2015 WL 3863225, at *1 (Del. Super. June 8, 2015).

¹⁹ *Nutt v. A.C. & S. Co., Inc.*, 517 A.2d 690, 692 (Del. Super. 1986) (citing *Mechell v. Plamer*, 343 A.2d 620, 621 (Del. 1975); *Allstate Auto Leasing Co. v. Caldwell*, 394 A.2d 748, 752 (Del. Super. 1978)).

DISCUSSION

The record on summary judgment includes the Amended Complaint, the contract between DSU and THG, portions of deposition transcripts, and the work order sent from THG to Rohans for the February 23 trip.

In its motion, THG argues that there is no master/servant relationship between Archer and THG.²⁰ THG further argues that there is no evidence supporting Plaintiffs' negligent subcontracting/hiring claim because it did not employ or subcontract with Rohans, nor was THG aware that Rohans, and therefore Archer, was an improper employee/contractor.²¹ Alternatively, THG claims that Plaintiffs' negligent subcontracting claim fails because expert testimony is required on the standard of care.²²

Plaintiffs, and Rohans contend that because THG used work orders in a similar manner to the one in this case to subcontract jobs under the contract with DSU in the past, and the work order controlled the manner and method of the job, the question of vicarious liability is one for the jury.²³ None of the parties in opposition to THG's motion addressed THG's argument regarding the negligent subcontracting claim.

²⁰ THG Mot. for Summ. J. ¶¶ 19–22.

²¹ *Id.* ¶¶ 26–28.

²² *Id.* ¶¶ 29–31.

²³ Pls.' Resp. ¶¶ 11–12; Rohans' Resp. at 5–6.

I. Vicarious Liability Claim

The issue here is whether Rohans was a servant or independent contractor for THG. The distinguishing factor between a master/servant relationship and an independent contractor relationship is dependent on the right of control a principal may exercise over the performance of contractual services.²⁴ “A master/servant relationship exists if the principal assumes the right to control the time, manner, and method of executing the work, as distinguished from the right to require only certain results in conformity with the contract.”²⁵

Generally, whether a person is a servant or independent contractor is a question of fact reserved for the factfinder.²⁶ Accordingly, there is no brightline rule for determining whether a relationship should be characterized as a master/servant or independent contractor relationship.²⁷ The *Fisher* Court, however, instructs trial courts and the trier of fact to use the Section 220 of the Restatement (Second) of Agency factors as guidance:

(a) the extent of control, which, by the agreement, the master may exercise over the details of the work; (b) whether or not the one employed is engaged in a distinct occupation or business; (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (d) the skill required in the particular occupation;

²⁴ *Fisher v. Townsends, Inc.*, 695 A.2d 53, 59 (Del. 1997).

²⁵ *Acree v. Bayhealth Medical Center, Inc.*, 2023 WL 2700208, at *5 (Del. Super. Mar. 29, 2023) (citing *Fisher*, 695 A.2d at 59).

²⁶ *Fisher*, 695 A.2d at 59.

²⁷ *Acree*, 2023 WL 2700208, at *5 (citing *Fisher*, 695 A.2d at 61).

(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (f) the length of time for which the person is employed; (g) the method of payment, whether by the time or by the job; (h) whether or not the work is part of the regular business of the employer; (i) whether or not the parties believe they are creating the relation of master and servant; and (j) whether the principal is or is not in business.²⁸

Drawing all reasonable inferences in favor of the nonmoving party, the Court agrees with Plaintiff that there is a triable issue of fact under the circumstances of this case. THG avers that there was no master/servant relationship because it only relayed the trip requirements provided by DSU, it did not control or supervise Archer, and the equipment and service was wholly provided by Rohans for the trip.²⁹ Rohans argues that the work order establishes a “direct relationship” between THG and Archer given that THG previously reduced subcontracting jobs consistent with Paragraph 49 of the DSU contract to work orders like the one here.³⁰ Plaintiffs and Rohans further claim that the “amount of detail” in the work order shows that THG exercised the right to control time, manner, and method of Rohans’ execution of the trip.³¹

While the facts relied upon by each party are supported by the record, the Court cannot make a legal determination on this record as a more thorough inquiry

²⁸ *Fisher*, 695 A.2d at 59 (citing *White v. Gulf Oil Corp.*, 406 A.2d 48, 51 (Del. 1979)); see Restatement (Second) of Agency § 220 (1958); *Acree*, 2023 WL 2700208, at *5.

²⁹ THG Mot. for Summ. J., Ex. C.

³⁰ Rohans’ Resp. at 4, 6, Ex. A at 10; THG Mot. for Summ. J., Ex. 2 ¶ 49.

³¹ Rohans’ Resp., Ex. C; Pls.’ Resp. ¶ 12, Ex. C at 1, 3.

into the facts is necessary to appropriately balance the Section 220 factors. Nonetheless, the facts as asserted favor both a master/servant relationship and an independent contractor relationship sufficient to generate a material issue of fact for the jury to consider. As such, the jury will determine whether Rohans was in a servant or independent contractor relationship with THG by balancing the Section 220 factors. Thus, summary judgment is inappropriate.

II. Negligent Subcontracting

Plaintiffs allege that independent of vicarious liability, THG is liable for negligently subcontracting/hiring Rohans. A negligent hiring claim holds an employer liable for employing “improper persons involving risk of harm to others.”³² Delaware law also recognizes negligence in selection of a contractor under the Restatement (Second) of Torts § 411.³³ Section 411 provides that,

An employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor

- (a) to do work which will involve a risk of physical harm unless it is skillfully and carefully done, or
- (b) to perform any duty which the employer owes to third persons.

³² *Cook v. J and V Trucking Co.*, 2021 WL 1292796, at *5 (Del. Super. April 7, 2021).

³³ *Fisher v. Reid*, 1996 WL 453444, at *5 (Del. Super. June 19, 1996).

The standard of care for both a negligent hiring and a negligent subcontracting claim is that of a reasonably prudent person under the circumstances.³⁴ The dispositive factor is whether the employer/contractee was aware of negligent conduct by the employee or third-party contractor³⁵

In THG's view, it is entitled to summary judgment on this claim because Rohans was not an agent or servant of THG. Therefore, THG "did not know, and could not have known about any characteristic that made [Rohans' employee, Archer,] unfit to drive the bus on the day of the accident."³⁶ THG does not rely on any evidence in support of its argument because it posits that there is none.

Whether Plaintiffs' claim is for negligent hiring or subcontracting, THG is not entitled to summary judgment on this record. As discussed above, the relationship between Rohans and THG raises a genuine issue of material fact. A review of the record also indicates that before asking a bus company to fill in for their contractual obligations with DSU, THG reviews a company's insurance policies and SAFER

³⁴ *Reid*, 1996 WL 453444, at *6 (citing Restatement (Second) of Torts § 411 cmt. c (1965)); *Cook*, 2021 WL 1292796, at *5.

³⁵ *Fanean v. Rite Aid Corp. of Del., Inc.*, 984 A.2d 812, 826 (Del. Super. 2009) (quoting *Matthews v. Booth*, 2008 WL 2154391, at *3 (Del. Super. May 22, 2008)) (internal quotation marks omitted); *Reid*, 1996 WL 453444, at *6 (finding that the defendant was not entitled to summary judgment on the plaintiff's negligent subcontracting claim under Section 411 because the record suggested that the defendant "turn[ed] a blind eye to the known negligent operations of [a] third-party contractor").

³⁶ THG Mot. for Summ. J. ¶ 27–28.

records.³⁷ This raises questions of whether THG reviewed Rohans' insurance and SAFER records, what the contents of these records were, and whether the contents would lead a reasonable person to conclude that THG unreasonably risked injury by failing to employ a competent contractor. There also may be additional information THG was made aware of based on its history with Rohans.³⁸ None of these questions, however, can be answered on the record provided.

Finally, THG claims that Plaintiffs' negligent subcontracting/hiring claim fails because expert testimony is necessary to establish the standard of care required by a commercial bus company "before giving a job for one of its clients to another bus company[.]"³⁹

A claim for negligent hiring/subcontracting measures the standard of care by that of a reasonably prudent person under the circumstances. Generally, a "jury will . . . decide the standard of care when the facts are within their common knowledge."⁴⁰ "Only when the standard of care requires resort to technical or other complex principles, or is applicable to a professional, must the plaintiff establish the standard of care through expert testimony."⁴¹

³⁷ Rohans' Resp., Ex. A at 7–8. A SAFER record is a "catalog [showing whether] a company is satisfactorily safe[.]" *Id.*

³⁸ *Id.* at 3–7.

³⁹ THG Mot. for Summ. J. ¶ 30.

⁴⁰ *Raid v. Brandywine Valley SPCA, Inc.*, 319 A.3d 878, 889 (citing *Ridgeway v. Acme Markets, Inc.*, 194 A.3d 372, 2018 WL 4212140, at *2 (Del. Sept. 5, 2018)).

⁴¹ *Id.* (citing *Ridgeway*, 2018 WL 4212140, at *3 & n.18).

Despite THG's argument, it does not explain why the standard of care required to give a job for one of its clients to another bus company implicates technical or other complex principles or otherwise requires the court to treat THG as a professional. Moreover, Plaintiffs and Rohans did not respond to this argument.

Thus, the Court requests that the parties provide supplemental briefing on the issue of whether expert testimony is required to establish the standard of care necessary for a commercial bus company to hire or subcontract another bus company. THG must file its response by **Friday, March 6, 2026**. Plaintiffs' and Rohans' responses are due no later than **Friday, March 27, 2026**.

CONCLUSION

For the foregoing reasons, Defendant THG Transport, Inc.'s Motion for Summary Judgment is **DENIED in part, decision reserved as to remaining issue.**

IT IS SO ORDERED.

/s/ Calvin Scott
Judge Calvin L. Scott, Jr.