

Order Prepared by the Court

WIGGINS PLASTICS, INC. AND
KNICKERBOCKER BED COMPANY,

Plaintiffs,

v.

COUNTY OF PASSAIC; PASSAIC COUNTY
BOARD OF CHOSEN FREEHOLDERS;
PASSAIC COUNTY BOARD OF
COMMISSIONERS; ASSUNCAO BROTHERS,
INC.; NGM INSURANCE COMPANY; JOHN
DOES 1 THROUGH 10 (fictitious names of
individuals whose identities are presently
unknown); JOHN DOES 11 THROUGH 20
(fictitious names of employees, agents,
representatives and/or assigns of the County of
Passaic and/or Passaic County Board of Chosen
Freeholders and/or Passaic County Board of
Commissioners and/or Assuncao Brothers, Inc.
and/or NGM Insurance Company, whose
identities are presently unknown) and ABC
CORPORATIONS 1-10 (fictitious names of
entities whose identities are presently unknown),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: PASSAIC COUNTY

DOCKET NO. PAS-L-2441-22

ORDER

THIS MATTER having been brought before the Court by the law office of Howarth & Associates, LLC, attorneys for Defendants, County of Passaic and Passaic County Board of Commissioners, improperly pled as Passaic County Board of Chosen Freeholders, for an Order for Summary Judgment to dismiss the Fourth Count of the Second Amended Complaint, and the Court having considered the moving papers, and having heard the argument of counsel, and for good and sufficient cause being shown;

IT IS on this 6th day of February, 2025,

ORDERED that Partial Summary Judgment be and hereby is **GRANTED**; and

IT IS FURTHER ORDERED that the Defendants' Motion is Granted, and the Fourth Count of Plaintiffs' Second Amended Complaint alleging vicarious liability against the County Defendants for the acts of the Defendant, Assuncao Brothers, Inc. be and the same is hereby dismissed with prejudice; and

IT IS FURTHER ORDERED that a service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts.

/s/ Darren J. Del Sardo

HON. DARREN J. DEL SARDO, P. J. Cv.

Opposed

Unopposed

SEE ATTACHED STATEMENT OF REASONS

**NOT TO BE PUBLISHED WITHOUT THE APPROVAL OF THE COMMITTEE ON
OPINIONS**

WIGGINS PLASTICS, INC. and
KNICKERBOCKER BED COMPANY,

Plaintiff(s),

v.

COUNTY OF PASSAIC, et al.,

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY
LAW DIVISION

DOCKET NO.: PAS L-2441-22

CIVIL ACTION - CBLP

OPINION

Decided February 06, 2025

Charles A. Yuen, Esq., of Charles Allen Yuen LLC, counsel for Plaintiffs Wiggins Plastics, Inc. and Knickerbocker Bed Company.

Michael A. Mattessich, Esq., of Howarth & Associates, LLC, counsel for Defendants County of Passaic and Passaic County Board of Commissioners.

Hon. Darren J. Del Sardo, P.J. Cv.

Pending before the Court is the Defendant, County of Passaic and Passaic County Board of Commissioners' motion for summary judgment, filed on December 6, 2024. Plaintiffs, Wiggins Plastics, Inc., and Knickerbocker Bed Company, filed an Opposition to the Motion on January 21, 2025. Defendant submitted a Reply Brief on January 23, 2025. Oral argument was heard on January 31, 2025. After careful consideration, the Court relies upon the following statement of reasons in support of its decision.

BACKGROUND

This matter arises from damages sustained by Plaintiffs at their property located at 180 Kingsland Road in Clifton, New Jersey, following the effects of Hurricane Ida on or about September 1, 2021. Plaintiffs allege that the flooding and subsequent damages were caused, in part, by negligent acts related to a bridge replacement project contracted by the County of Passaic to Defendant Assuncao Brothers, Inc. Plaintiffs' Fourth Count alleges vicarious liability for the County's supervisory role over the contractor. Defendants move for summary judgment, arguing that the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., immunizes the County from vicarious liability for the acts of independent contractors. Plaintiffs oppose the motion, asserting that material factual disputes remain and that the motion is premature due to incomplete discovery.

STANDARD

Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). The trial court's "function is not . . . to weigh the evidence and determine the truth . . . but to determine whether there is a genuine issue for trial." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. at 520 (1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)). The trial judge must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the nonmoving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Ibid. When the facts present "a single, unavoidable

resolution" and the evidence "is so one-sided that one party must prevail as a matter of law," then a trial court should grant summary judgment. Ibid.

"A party may defeat a motion for summary judgment by demonstrating that the evidential materials relied upon by the moving party, considered in light of the applicable burden of proof, raise sufficient credibility issues to permit a rational fact finder to resolve the alleged disputed issue in favor of the nonmoving party." D'Amato v. D'Amato, 305 N.J. Super. 109, 114 (App. Div. 1997) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995)). The trial court's "function is not . . . to weigh the evidence and determine the truth . . . but to determine whether there is a genuine issue for trial." Brill, supra, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)).

The trial judge must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Ibid. When the facts present "a single, unavoidable resolution" and the evidence "is so one-sided that one party must prevail as a matter of law," then a trial court should grant summary judgment. Ibid. Where there is a motion for summary judgment, "[i]t is incumbent upon [the party opposing the motion] to make an affirmative demonstration . . . that the facts are not as the movant alleges." Spiotta v. William H. Wilson, Inc., 72 N.J. Super. 572, 581 (App. Div. 1962).

While a motion for summary judgment "may be made as early as twenty days from the service of the complaint. R. 4:46-1, nevertheless, case law has made plain, a matter is not 'ripe' for summary judgment where discovery is incomplete." J. Josephson, Inc. v. Crum & Forster Ins. Co., 293 N.J. Super. 170, 203 (App. Div. 1996). "When critical facts are peculiarly within the moving party's knowledge, it is especially inappropriate to grant summary judgment when

discovery is incomplete.” Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 193 (1988). “[A party] must have a reasonable opportunity to obtain facts not available to it other than through formal discovery.” Wilson v. Amerada Hess Corp., 168 N.J. 236, 253 (2001).

DECISION

The Court has reviewed Defendants' motion for summary judgment seeking dismissal of the Fourth Count of Plaintiffs' Second Amended Complaint, which alleges vicarious liability against the County of Passaic. The central issue before the Court is whether the County can be held vicariously liable for the alleged negligent acts of Assuncao Brothers, Inc. (“Assuncao”), an independent contractor engaged in the Kingsland Road Bridge replacement project.

Under the New Jersey Tort Claims Act (“TCA”), public entities may be held vicariously liable for the wrongful acts of their employees pursuant to N.J.S.A. 59:2-2(a), which states that “[a] public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment.” However, the TCA expressly excludes independent contractors from the definition of a “public employee.” N.J.S.A. 59:1-3. This distinction is established in case law, which has consistently held that public entities are not liable for the actions of independent contractors. See McCormick v. State, 446 N.J. Super. 603, 611 (App. Div. 2016) (“In keeping with the thrust of the Act, Courts have refused to adopt any theory of liability that would make public entities responsible for the acts of nonemployee third parties.”); Gomes v. Cty. of Monmouth, 444 N.J. Super. 479, 491 (App. Div. 2016).

Here, Plaintiffs have conceded that Assuncao was an independent contractor. Despite this concession, they have not identified any applicable exception that would impose liability on the

County, nor have they presented specific facts that could establish vicarious liability and preclude summary judgment at this stage. Plaintiffs cite Chatman v. Hall, 128 N.J. 394 (1992), but that case only affirms the principle that a public entity can be vicariously liable only if its employee is liable. Moreover, Plaintiffs have not demonstrated that the County had a nondelegable duty that would impose liability despite Assuncao's status as an independent contractor. The Plaintiff also relies on Majestic Realty Associates, Inc. v. Toti Contracting Co., 30 N.J. 245 (1959), but that case predates the Tort Claims Act and is inapplicable.

For these reasons, the Court finds that Defendants are entitled to summary judgment with respect to the Fourth Count of Plaintiffs' Second Amended Complaint and their motion is **GRANTED**. Plaintiffs may continue to pursue any remaining claims against the County as set forth in the other Counts of their Complaint.