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19-501 of the Maryland Security Guards Act

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RECENT DEVELOPMENT

ANTONIO V. SSA SEC., INC.: UPON EXHAUSTING ALL OTHER TOOLS OF STATUTORY INTERPRETATION, POLICY CONSIDERATIONS REVEALED THAT THE MARYLAND LEGISLATURE DID NOT INTEND TO ABROGATE THE COMMON LAW DOCTRINE OF RESPONDEAT SUPERIOR THROUGH THE ENACTMENT OF § 19-501 OF THE MARYLAND SECURITY GUARDS ACT.

By: David Bronfein

The Court of Appeals of Maryland held that the Maryland Security Guards Act, Section 19-501 of the Maryland Code, Business Occupations and Professions Article (“section 19-501”) does not expand a security guard agency’s liability for unauthorized employee conduct; rather, the statute remains consistent with the liability prescribed by Maryland’s common law doctrine of respondeat superior. *Antonio v. SSA Sec., Inc.*, 442 Md. 67, 90, 110 A.3d 654, 667 (2015). Finding the plain language, context, and legislative history of the statute to be ambiguous and unconvincing, the court was ultimately persuaded by policy considerations behind upholding the common law doctrine of respondeat superior. *Id.*

On December 6, 2004, two security guard employees of SSA Security, Inc. (“SSA”), a security guard agency, along with four co-conspirators, participated in the arson of several unoccupied homes. On December 3, 2004, Aaron Speed (“Speed”), one of the arsonists, employed as a security guard by SSA, left his post at the housing development project to stash fuel to use to set the fires. Additionally, while on-duty, Speed created a map of the neighborhood that indicated the targeted homes. William Fitzpatrick (“Fitzpatrick”), also employed by SSA, was on-duty the evening of the arson, but left his guard post early to enable Speed and the co-conspirators to commit the arson.

Several contract purchasers of the targeted homes (“Homeowners”) filed civil claims against SSA and the five convicted arsonists in the U.S. District Court for the District of Maryland. The Homeowners asserted that SSA, as the employer of two of the arsonists, was strictly liable under section 19-501 of the Business Occupations and Professions Article (“BP”). The district court granted SSA’s motion for summary judgment, finding that neither Maryland’s codification of the doctrine of respondeat superior nor the theories of direct negligence or vicarious liability applied to the instant case.

On appeal to the Court of Appeals for the Fourth Circuit, the Homeowners sought reversal of the district court’s decision. After affirming the summary judgment regarding the negligence claims, the Fourth Circuit concluded that the best course for resolution was to certify the question of law to the Court of Appeals of Maryland. The federal appellate court asked whether section 19-

501 expands a security agency's liability "beyond the common law principles of respondeat superior."

The Court of Appeals of Maryland began by explaining that its overarching goal is to "ascertain and implement the intention of the legislature." *Antonio*, 442 Md. at 74, 110 A.3d at 658. If the plain text is unambiguous, the court's inquiry ceases and the statute is interpreted as written. *Id.* (citing *Oaks v. Connors*, 339 Md. 24, 35, 660 A.2d 423, 429 (1995)). However, if the language is determined to be ambiguous, the court will utilize several alternative interpretation tools to determine the legislature's intent. *Id.* (citing *Witte v. Azarian*, 369 Md. 518, 525-26, 801 A.2d 160, 165 (2002)). Furthermore, the court will not presume abrogation of a foundational common law doctrine "unless the [l]egislature's intent to do so is clear." *Id.* (citing *Suter v. Stuckey*, 402 Md. 211, 232, 935 A.2d 731, 743-44 (2007) (internal citations omitted)).

Maryland's common law doctrine of respondeat superior holds employers liable for the actions of their employees that are within the scope of employment, meaning that the acts are both authorized by the employer and in furtherance of the employer's business. *Antonio*, 442 Md. at 75, 110 A.3d at 658 (citing *Barclay v. Briscoe*, 427 Md. 270, 283, 47 A.3d 560, 567-68, (2012) (internal citations omitted)). In other words, if an employee's acts fall outside the scope of their employment the acts are not attributable to the employer. *Id.* The Homeowners argued that section 19-501 expands the liability of security guard agencies to all acts of their employees while on duty. *Id.* at 76, 110 A.3d at 659 (emphasis added). To properly consider this contention, the court had to determine if the legislature intended to alter the common law doctrine by enacting section 19-501. *Id.* at 77, 110 A.3d at 659.

The court commenced its legislative intent inquiry by examining the plain language of the statute. *Antonio*, 442 Md. at 77, 110 A.3d at 659. The text of section 19-501 at issue is: "while the employee is conducting the business of the agency." *Id.* at 77, 110 A.3d 659-60. The Homeowners argued that the meaning of the word "while" should be interpreted in a temporal sense to include all on-duty acts by an employee. *Id.* at 77, 110 A.3d at 660 (emphasis added). Alternatively, SSA argued that the legislature would have included explicit temporal language had it intended such an interpretation of the statute. *Id.* at 78, 110 A.3d at 660. The plain language of the statute failed to resolve § 19-501's ambiguity, so the court looked to other tools of statutory interpretation. *Id.* at 79, 110 A.3d at 661.

The court then assessed the statute within the context of the Maryland Code. *Antonio*, 442 Md. at 79, 110 A.3d at 661. Section 19-501 is part of the Maryland Security Guards Act (the "Act"), which defines and governs the licensing scheme of security guard agencies. *Id.* The majority of the Act establishes the process for procurement of a license. *Id.* The Homeowners argued that the absence of the term "scope of employment" from section 19-501 reveals that the General Assembly did not intend to codify the common law respondeat superior doctrine. *Id.* at 79-80, 110 A.3d at 661-62. This assertion stems from numerous Maryland Code provisions that do, in fact, use

the term “scope of employment” to implement the common law doctrine into the respective statutory scheme. *Id.* However, the court only viewed the absence of the term in isolation rather than against the broader legislative landscape; therefore, the court remained unconvinced that it displayed any “intent to abrogate the common law.” *Antonio*, 442 Md. at 80, 110 A.3d at 662.

Failing to unearth the legislature’s intent through a contextual analysis, the court inspected the statute’s legislative history. *Antonio*, 442 Md. at 81, 110 A.3d at 662. Section 19-501’s origin was the Md. Private Detectives Act § 13-601. *Id.* Prior to the enactment of section 13-601, Md. Code, Art. 56, § 81(a) (“Art. 56”), governed security guard agency liability. *Id.* at 83, 110 A.3d at 663. Although section 19-501’s language segued from section 13-601 and Art. 56, neither set of text nor their respective legislative histories indicate a clear legislative intent to abrogate the common law. *Id.* at 83-86, 110 A.3d at 663-65.

The court ultimately found its most persuasive evidence while analyzing the statute’s purpose in the underlying policy considerations. *Antonio*, 442 Md. at 88, 110 A.3d at 666. The court reiterated that when ambiguity clouds legislative intent, it is their duty to declare a rule based on “sound jurisprudential policy.” *Id.* (citing *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 493, 914 A.2d 735, 749 (2007)). The Homeowners maintained the best policy consideration is to expand an employer’s liability because it will incentivize employers to appropriately screen and manage their employees. *Id.* The court found this reasoning deficient in comparison to SSA’s policy consideration; specifically, that imposing all liability for employee conduct on security agencies could include acts completely unrelated to their employment. *Id.* at 88-89, 110 A.3d at 666. The Homeowners’ policy arguments failed to override the fundamental and centuries-long considerations contained within the common law doctrine of respondeat superior. *Id.* at 90, 110 A.3d at 667.

In *Antonio*, the Court of Appeals of Maryland held that the General Assembly did not intend to abrogate the common law doctrine of respondeat superior when it enacted section 19-501 of the Maryland Security Guards Act. *Antonio*, 442 Md. at 90, 110 A.3d at 667. Maryland practitioners should be particularly mindful of courts’ loyalty to foundational common law doctrines that are deeply engrained in the legal system. Courts will defer to the fundamental common law doctrine absent a clear legislative intent to abrogate.