

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 28th day of January, 2022 are as follows:

BY Hughes, J.:

2021-CC-00224

TERRANCE BOLDEN, HEIDI BOLDEN, AND TAYLOR BOLDEN VS.
MICHAEL TISDALE, SMG, NEWELL D. NORMAND, AND
BUCCANEERS LIMITED PARTNERSHIP (Parish of Orleans Civil)

REVERSED; REMANDED WITH INSTRUCTIONS. SEE OPINION.

SUPREME COURT OF LOUISIANA

NUMBER 2021-CC-00224

TERRANCE BOLDEN, HEIDI BOLDEN, AND TAYLOR BOLDEN

VERSUS

**MICHAEL TISDALE, SMG, NEWELL D. NORMAND, AND
BUCCANEERS LIMITED PARTNERSHIP**

**ON SUPERVISORY WRIT TO THE ORLEANS CIVIL DISTRICT COURT,
PARISH OF ORLEANS**

HUGHES, J.

At issue on the motion for summary judgment filed in this case is whether the Tampa Bay Buccaneers football organization is vicariously liable, as an employer, for the alleged negligence of an off-duty Jefferson Parish sheriff's deputy, who was part of a motorcycle escort for the team's buses as they traveled from the Superdome to the New Orleans airport, when the motorcycle the deputy was riding collided with another deputy directing traffic on foot in an intersection. We hold that the un rebutted evidence presented by the defendants moving for summary judgment showed there was no employee-employer relationship between the deputy sheriff and the Buccaneers under the facts and circumstances of this case; therefore, we reverse the denial of the Buccaneers' motion for summary judgment and remand to the district court for entry of a summary judgment in favor of the defendants, for the following reasons.

FACTS AND PROCEDURAL HISTORY

In September of 2015 the Buccaneers played the New Orleans Saints in the New Orleans Superdome. In preparation for the game, the Buccaneers' Director of Football Security Operations, Andres Trescastro, contacted the New Orleans Police Department ("NOPD") to request motorcycle escorts, by off-duty law enforcement for officers, for the team's buses traveling in the New Orleans area, which were to

include an escort after the game when the team buses would travel from the Superdome to the Louis Armstrong International Airport. NOPD agreed to provide the necessary off-duty officers, along with officers from the Jefferson Parish Sheriff's Office ("JPSO"), for the Buccaneer team buses.

Following the September 20, 2015 game, off-duty NOPD and JPSO motorcycle officers commenced escorting the Buccaneers' buses from the Superdome to the airport, with uniformed JPSO Deputy Michael Tisdale operating a JPSO-owned motorcycle as the final motorcycle in the motorcade, following the last bus. After the Buccaneers' buses had cleared the intersection of Girod Street and Loyola Avenue, Deputy Tisdale's motorcycle was engaged in turning right from Girod Street onto Loyola Avenue when it collided with JPSO Deputy Terrance Bolden, who was on foot to provide pedestrian traffic control at the intersection.

As a result of injuries allegedly suffered in the accident, Deputy Bolden and his wife ("plaintiffs" herein) filed suit against several parties, including the defendants who filed the motion for summary judgment at issue, Buccaneers Limited Partnership and its insurers, Ohio Security Insurance Company, Liberty Mutual Insurance Company, and Nautilus Insurance Company (collectively referred to as "defendants" herein). Plaintiffs alleged that the Buccaneers were vicariously liable for the negligence of Deputy Tisdale and that Deputy Tisdale was acting within the course and scope of his employment with the Buccaneers.

Following discovery, the defendants moved for summary judgment, arguing Deputy Tisdale was not an employee of the Buccaneers and they could not be vicariously liable for his actions. The defendants further asserted that the Buccaneers did not exercise, and could not have exercised, control over the public safety and traffic regulation methods that the law enforcement personnel used in conducting the escort, which is exclusively reserved to law enforcement officers under Louisiana's Highway Regulatory Act, La. R.S. 32:1, et seq.

In support of their motion for summary judgment, the defendants introduced the depositions of Mr. Trescastro, JPSO Deputy Michael Tisdale, NOPD Lieutenant Kenny Prepetit, JPSO Sergeant Jeff Navo, JPSO Deputy Ben Green, and JPSO Deputy Jerry Bonds.

Mr. Trescastro testified that, prior to the September 2015 game, he submitted a written request for motorcade escort services that indicated the dates, times, and locations the Buccaneers would need, and he included some specific requests he believed would be helpful for the safe movement of the motorcade based on his prior experience as a law enforcement officer; his letter stated in pertinent part as follows:

It is requested that all buses be escorted from their point of origin to our destination with least amount [sic] of delays. When necessary, lights and sirens are requested to ensure safe travel through lights and turns in an effort to maintain the integrity of the escort keeping all buses together. [A]t any time if there are any Standard Operating Procedures that prohibit you from using lights or sirens, please let me know as soon as possible. Should you have any questions regarding this arrangement please do not hesitate to contact me....

Every means possible should be employed to ensure a safe and expedient thruway for the team's buses as we make our departure. We request when escorts witness vehicles penetrating into the escort party (between buses) that every means necessary will be employed to direct them out of the escort line. It is also requested that unmarked vehicles not be used as part of the escort party, due to the proven ineffectiveness of such vehicles.

(Emphasis added; original emphasis omitted.)

Regarding his letter, Mr. Trescastro testified in his deposition: "I give the day and times of our arrivals, our movements. ... And the rest ... law enforcement has always taken care of how they get us there ... whichever route. That's their responsibility. I never question that, nor do I really have any say-so in how they perform their duties. I can't respectfully." Mr. Trescastro explained: "I organize from the point of view of advising the visiting city jurisdiction ... how is it and what time is it that we're going to get there, what airport, where we're staying, what time we're playing, and ... after the game concludes, what airport we're going ... to fly back to Tampa." He further stated: "I rely on the expertise of the entities ... I go

through. I cannot tell them you're going to do this, this, this, because that would be a disrespect to that law enforcement, so I do not. All we request is an escort from Point A to Point B.”

After receiving the request for a motorcade escort, NOPD transmitted an “Escort Invoice” to the Buccaneers increasing the number of motorcycle officers from the number the Buccaneers had requested, on NOPD’s determination that additional officers were necessary, and billing the Buccaneers \$1,955. JPSO issued a separate invoice to the Buccaneers in the amount of \$600.

JPSO Sergeant Jeff Navo, who was a traffic supervisor at the time of his 2020 deposition, indicated that at the time of the 2015 accident at issue herein he was a deputy in the JPSO traffic division. Sergeant Navo stated that when a party requests a motorcycle escort, they specify a date, time, and location(s) for the private detail, but that all requests made are subject to the discretion of the law enforcement officers as to method and safety. Sergeant Navo testified that, regardless of the number of motorcycle officers *requested* for a motorcade escort, the law enforcement officers determine what number of motorcycle officers are necessary for safety, and the law enforcement officers ultimately increase or decrease the number of motorcycle officers that will be used as they deem necessary. Sergeant Navo also indicated that, whether or not a *request* is made that motorcycle officers use lights and sirens, lights are always used and sirens will only be used in the discretion of the officers, based on the safety assessments made by the officers. Sergeant Navo testified that the safety judgment of the law enforcement officers assigned to the escort detail always prevails over the *request* of the party to be escorted. Sergeant Navo further stated that the officers for a particular escort detail are selected by a JPSO traffic division clerk, who assigns the next available officer from an alphabetical list on a rotating basis. Sergeant Navo also stated that he is a JPSO instructor for motorcycle escort officers, and any officer who is assigned to operate a motorcycle is trained for escort

details. Sergeant Navo denied that there were any written JPSO Standard Operating Procedures for off-duty motorcade escort details, as all training is provided by the motorcycle instructors. With regard to payment for the off-duty officers on an escort detail, Sergeant Navo indicated that sometimes cash or check payment may be made directly to the officers working on the detail, while at other times a check is sent to JPSO for the total amount owed for the escort detail and JPSO then pays the individual officers. Sergeant Navo stated that private persons or companies cannot serve as motorcycle escorts, as such escorts can only be obtained through governmental agencies. When an NFL team is being escorted, Sergeant Navo indicated that there is very little conversation between the law enforcement officers providing motorcade escorts and the team officials, unless the official makes a request of some sort; otherwise, the team bus driver will usually blow his horn to indicate to the motorcycle officers that the buses are ready to go. Sergeant Navo further stated that he was not personally involved in the off-duty motorcade assigned to the Buccaneers in September of 2015, but he noted that JPSO Deputy Ben Green and JPSO Deputy Jerry Bonds (who both currently work for him) were on that motorcade detail. Sergeant Navo concluded his testimony by pointing out that motorcycle officers are not only concerned with the safety of those being escorted in a motorcade, but they are also concerned with the safety of the officers, other drivers, pedestrians, and everyone along the route; for this reason, even though the off-duty officers are being paid by the party being escorted, they must still refuse any requests by the escorted party that the officers deem unsafe.

JPSO Deputy Michael Tisdale testified, by deposition, that he had been a deputy sheriff for over seventeen years, working in the traffic department since 2009 as an accident investigator. Deputy Tisdale testified that he had been doing motorcycle escorts since 2010, and he was assigned to work the 2015 Buccaneer escort detail. Deputy Tisdale testified that, on the day of the accident, the motorcycle

officers were gathered behind the Superdome waiting for the team buses to leave for the airport. When the team was ready to go, Superdome security team members removed the barricades, and a team bus blew its horn to signal they were ready to go. Deputy Tisdale testified that the motorcycle officers are usually all “backed in at a particular location” and the officer closest to the starting point will take off first; it is their job to cover the intersections the buses will be proceeding through, so the motorcycles “leap frog” up, in turn, to cover the intersections. He also stated that, among the motorcycle officers in the escort detail, no one officer is in charge, since they all work together on a regular basis and everyone knows what to do. According to Deputy Tisdale, the motorcycle officers determine the route that is to be taken to the airport, and it is a standard route they have used for several years. Deputy Tisdale further stated that the only personal contact they have with a NFL team’s staff is when they get paid by the staff, immediately before the team buses leave the Superdome. Deputy Tisdale stated that, on September 20, 2015, the buses were being escorted out of the Superdome parking lot on Girod Street, heading toward Loyola Avenue, and that when he was preparing to make his turn onto Loyola Avenue, he saw Lieutenant Prepetit in the intersection giving him the thumbs up (meaning it was safe to enter the intersection) and, when he did so, plaintiff Deputy Bolden stepped into the intersection into his travel path and the collision at issue herein occurred.

NOPD Lieutenant Kenny Prepetit testified, during his 2017 deposition, that he had been employed by the New Orleans Police Department for nineteen years and, at the time of the accident at issue, he worked in the traffic department. Lieutenant Prepetit testified that, on the day of the accident, he was working a paid detail for “SMG” (the company managing the Superdome) at the intersection of Girod Street and Loyola Avenue, a detail he had worked for several years. Lieutenant Prepetit stated that he was the supervisor for that intersection, and he

assigned people to their positions, monitored all traffic and pedestrians, determined how to manage pedestrian and vehicular traffic before and after the game, and gave all the instructions to the other officers working in that intersection. Because an escort detail from the Superdome to the airport travels through two parishes (Orleans Parish and Jefferson Parish), Lieutenant Prepetit indicated that the escort detail is comprised of officers from both parishes. When the motorcade is ready to leave the Superdome parking lot, one of the Orleans Parish officers generally calls Lieutenant Prepetit to advise that the motorcade is on the way to his intersection. On receiving this information, Lieutenant Prepetit tells those working in his intersection to hold all traffic and pedestrians so the motorcade can pass through the intersection. On the day of the accident, Lieutenant Prepetit stated that all of the buses and motorcycle officers passed safely through the intersection, except Deputy Tisdale's motorcycle, which was bringing up the rear of the motorcade. Lieutenant Prepetit, also a motorcycle officer, knew that after the last bus passed through the intersection there would be one more motorcycle officer, and he had not released the intersection to other traffic before Deputy Tisdale entered it. Nevertheless, Lieutenant Prepetit testified that when Deputy Tisdale entered the intersection Deputy Bolden stepped into the street into the path of Deputy Tisdale's motorcycle, and the accident at issue occurred.

JPSO Deputy Jerry Bonds testified in his deposition that he worked as an escort in the September 2015 Buccaneer motorcade; however, he did not witness the accident in question. Deputy Bonds stated that he had been a motorcycle officer for over twenty years, and he had been involved in many motorcycle escorts. He indicated that motorcycle officers are assigned by JPSO to an escort detail from an alphabetical list, on a rotating basis. In the September 2015 Buccaneer motorcade, he stated that two NOPD motorcycle officers led the motorcade, followed by his fellow JPSO motorcycle officer Deputy Ben Green, and he followed Deputy Green.

Deputy Bonds stated that no particular officer of the escort was in charge of the detail, since they all knew what to do. Deputy Bonds denied having any personal contact with the Buccaneer organization members, except possibly being paid by a Buccaneer staffer for the job. Deputy Bonds denied that any Buccaneer staffer had anything to do with how the escort was conducted, since that was entirely up to the law enforcement officers making up the escort detail, who exclusively determined the route and other means of getting the buses to the airport.

In his deposition testimony, JPSO Deputy Ben Green agreed that he worked as an escort in the September 2015 Buccaneer motorcade; however, he did not witness the accident in question. Deputy Green stated that he had been doing motorcycle escorts for over ten years, and he had been involved in many motorcycle escorts. Deputy Green indicated that motorcycle officers are assigned by JPSO to an escort detail from an alphabetical list, on a rotating basis. Deputy Green stated that no particular officer of the escort detail was in charge of the detail, since they all knew what to do. Those officers who preferred to lead the motorcade would do so, and the others would follow. Deputy Green indicated that these types of motorcades usually follow the same route and that intersections were sometimes covered by traffic officers along the way but, if they were not, the motorcycle officers would “leap frog” to cover unmanned intersections. Although Deputy Green testified that he did not personally know the traffic officers covering intersections, he would usually recognize their faces as the same traffic officers would often work on game days. Deputy Green denied having any contact with Buccaneer staffers on the day of the 2015 accident, and he denied that the team staffers ever have any input on choosing the route to be taken to the airport.

The plaintiffs introduced no evidence, in connection with the motion for summary judgment at issue, to oppose that submitted by the defendants. However, they did reference evidence filed by the defendants, including requesting that the

district court consider evidence contained in the record filed in connection with a prior motion for summary judgment. In particular, the plaintiffs cited the January 17, 2018 affidavit of Captain Greg Lonero, asserting that the facts stated therein created a question of material fact, stating in pertinent part:

1. I am currently employed by Joseph P. Lopinto, III, interim Sheriff of the Parish of Jefferson, as successor to Newell Normand, the former sheriff of the Parish of Jefferson (hereinafter “Sheriff Lopinto”). At the time of the September 20, 2015 accident which is the subject of the captioned matter, I was employed by Newell Normand, Sheriff of the Parish of Jefferson (hereinafter “Sheriff Normand”) as the commander of the Traffic Division for the Jefferson Parish Sheriff’s Office.”
2. All paid private details requiring a motorcycle escort are administered through the Traffic Division. At the time of the September 20, 2015 accident, this policy was in place.
3. A paid private detail is off duty employment performed by a Jefferson Parish police officer. This off duty employment is unrelated to the police officer^[1]s employment with Sheriff Lopinto and is not in the course and scope of the police officer^[2]s employment with Sheriff Lopinto. At the time of the September 20, 2015 accident, this off duty employment was unrelated to the police officer^[2]s employment with Sheriff Normand and was not in the course and scope of the police officer^[1]s employment with Sheriff Normand.
4. At the time of the September 20, 2015 accident, Deputy Michael Tisdale (hereinafter “Deputy Tisdale”) was off duty and was performing a private paid detail for the Buccaneers Limited Partnership (hereinafter “the Buccaneers”). This paid private detail was unrelated to Deputy Tisdale’s employment with Sheriff Normand and was not in the course and scope of Deputy Tisdale’s employment with Sheriff Normand. The private paid detail which Deputy Tisdale was performing for the Buccaneers consisted of participating in a motorcycle escort of buses transporting the Buccaneer team buses to Louis Armstrong New Orleans International Airport.
5. It is the current policy of the Traffic Division for the Jefferson Parish Sheriff’s Office and it was the policy at the time of the September 20, 2015 accident that all paid private details involving motorcycle escorts comply with the following instructions of the entity for which the private paid detail is performed (a) utilize the type of vehicle required by the entity, (b) adhere to the dates, times and locations as so directed by the entity, and (c) payment for the services rendered pursuant to the paid private detail.
6. During the time frame of September 19, 2015 through September 20, 2015, the motorcycle escorts performing the private paid details for the Buccaneers complied with the Buccaneers^[1] instructions (a) by utilizing the type of vehicle required by the Buccaneers, (b) by adhering to the dates when the escorts were to be present, (c) by adhering to the times when the escorts were to be present, (d) by

being present at the locations designated, and ([e]) by making payment for the services rendered pursuant to the paid private detail.

The district court denied the defendants' motion for summary judgment, and the appellate court denied the defendants' writ application. See **Bolden v. Tisdale**, No. 2015-10094, 2020 WL 7571082 (La. Orl. Civ. D. Ct. 11/5/20) (unpublished), writ denied, 20-C-0677 (La. App. 4 Cir. 1/15/21) (unpublished) (Ledet, J., dissenting: "I would find that [the] Buccaneers established its lack of control sufficient to warrant finding it was not Mr. Tisdale's employer and that it is entitled to summary judgment. Accordingly, I would reverse the trial court's judgment."). This court granted the defendants' writ application. **Bolden v. Tisdale**, 21-00224 (La. 4/13/21), 313 So.3d 1222.

The defendants contend that the "trial court and Fourth Circuit erred when they denied the motion for summary judgment when the undisputed material facts and relevant legal authority establish that JPSO Deputy Tisdale was not an employee of [the Buccaneers] at the time of the accident and that [the Buccaneers] cannot be vicariously liable for any alleged negligence of JPSO Deputy Tisdale in the commission of the law enforcement motorcade." Contrarily, the plaintiffs urge this court to uphold the denial of the defendants' motion for summary judgment, asserting that when this court "reviews the entire record and considers the law on these important questions, it should conclude, as the lower courts did, that the Buccaneers had the right to control the motorcade that they arranged and that seriously injured Deputy Bolden."

LAW AND ANALYSIS

This court applies a de novo standard of review in considering lower court rulings on summary judgment motions. **Bufkin v. Felipe's Louisiana, LLC**, 14-0288, p. 3 (La. 10/15/14), 171 So.3d 851, 854; **Catahoula Parish School Board v. Louisiana Machinery Rentals, LLC**, 12-2504, p. 8 (La. 10/15/13), 124 So.3d 1065,

1071. Thus, we use the same criteria that govern the district court’s consideration of whether summary judgment is appropriate. **Id.** Pursuant to La. C.C.P. art. 966(A)(3)-(4), a court must grant a motion for summary judgment if the pleadings, memoranda,¹ affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. **Bufkin**, 14-0288 at p. 3, 171 So.3d at 854; **Catahoula**, 12-2504 at p. 8, 124 So.3d at 1071. The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by Article 969; the procedure is favored and shall be construed to accomplish these ends. La. C.C.P. art. 966(A)(2).

The burden of proof rests with the mover; nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover’s burden on the motion does not require him to negate all essential elements of the adverse party’s claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party’s claim, action, or defense. La. C.C.P. art. 966(D)(1). The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. **Id.** “When a motion for summary judgment is made and supported as provided [in La. C.C.P. art. 967(A)²], an adverse party may

¹ See La. C.C.P. art. 966(A)(3) (“[A] motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.”); La. C.C.P. art. 966, 2015 Revision Comment (c) (“Although a memorandum is not a pleading or evidence, it is a proper document that can be used by a party to advance his arguments in support of or in opposition to the motion. See, e.g., Meaux v. Galtier, 972 So.2d 1137 (La. 2008).”).

² See La. C.C.P. art. 967(A) (“Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The supporting and opposing affidavits of experts may set forth such experts’ opinions on the facts as would be admissible in evidence under Louisiana Code of Evidence Article 702, and shall show

not rest on the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided [in La. C.C.P. art. 967(A)], must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be rendered against him.” La. C.C.P. art. 967(B).

The question presented in the instant case is whether any *material* questions of fact remain.³ The defendants contend that the evidence presented demonstrates that the Buccaneers requested a motorcycle escort for its team buses on the specified dates, times, and locations in the New Orleans area, along with several other requests as to the number of motorcycles, use by the motorcycle officers of lights and sirens, and that other motorists be kept out from between the motorcade vehicles; however, the Buccaneers maintain that aside from the specified dates, times, and locations the requests made were merely requests that could have been granted, modified, or denied at the discretion of the law enforcement officers who were conducting the motorcade escorts. The plaintiffs claim the motorcycle officers became employees of the Buccaneers while they conducted the motorcade escorts because the Buccaneers had the right to control the activities of the motorcade escorts. Thus, the propriety of a motion for summary judgment in favor of the Buccaneers hinges on whether the Buccaneers pointed to the absence of factual evidence that it became the employer of the alleged tortfeasor, Deputy Tisdale, under the facts and

affirmatively that the affiant is competent to testify to the matters stated therein.”).

³ A fact is *material* if its existence or nonexistence may be essential to a plaintiff’s cause of action under the applicable theory of recovery. Facts are *material* if they potentially insure or preclude recovery, affect a litigant’s ultimate success, or determine the outcome of the legal dispute. **Penalber v. Blount**, 550 So.2d 577, 583 (La. 1989). Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is *material* for summary judgment purposes can be seen only in light of the substantive law applicable to the case. **Jackson v. City of New Orleans**, 12-2742, p. 6 (La. 1/28/14), 144 So.3d 876, 882; **Richard v. Hall**, 03-1488, p. 5 (La. 4/23/04), 874 So.2d 131, 137. Because plaintiffs will bear the burden of proof at trial, defendants’ burden on summary judgment is to show an absence of factual support for one or more elements essential to plaintiffs’ claim. See **Hester v. Walker**, 20-01278, p. 5 (La. 5/13/21), 320 So.3d 362, 366 (per curiam).

circumstances presented in this case and, if so, whether the plaintiffs thereafter came forward with sufficient factual support to show a genuine issue of material fact remained regarding whether the Buccaneers became the employer of Deputy Tisdale.

The single most important factor to consider in deciding whether the employer-employee relationship exists, for purposes of La. C.C. art. 2320, is the right of the employer to control the work of the employee. **Roberts v. State, Through the Louisiana Health and Human Resources Administration**, 404 So.2d 1221, 1225 (La. 1981) (citing **Hickman v. Southern Pacific Transportation Company**, 262 La. 102, 262 So.2d 385 (1972), and **Blanchard v. Ogima**, 253 La. 34, 215 So.2d 902 (1968)). In **Blanchard**, this court stated: “It is the right of control of the time and physical activities in the other party and the existence of a close relationship between the parties which determine that one is a servant.” **Id.**, 253 La. at 44, 215 So.2d at 905. This court further stated: “‘Servant’ must be interpreted as that particular kind of agent who has a very close economic relation to, and is subject to very close control by, the principal. A servant is one who offers his personal services for a price. He is an integral part of his employer’s business and must submit to the control of his physical conduct as well as of his time.” **Id.**, 253 La. at 47, 215 So.2d at 906. The four primary evidentiary factors considered in deciding whether such an employer-employee relationship exists relate to whether the alleged employer has the right or duty, relative to the employee, of: (1) selection and engagement; (2) payment of wages; (3) power of dismissal; and (4) power of control. **Hillman v. Comm-Care, Inc.**, 01-1140, p. 8 (La. 1/15/02), 805 So.2d 1157, 1162. However, no one factor is controlling; rather, the totality of the circumstances must be considered, and the burden of proof is on the party seeking to establish an employer-employee relationship. **Hillman**, 01-1140 at pp. 8-9, 805 So.2d at 1163.

In contrast to the employer-employee relationship, the status of an

independent contractor connotes a freedom of action and choice with respect to the undertaking in question and a legal responsibility on the part of the contractor in case the agreement is not fulfilled in accordance with its covenants. **Hickman v. Southern Pacific Transport Company**, 262 La. 102, 117, 262 So.2d 385, 390 (1972). An independent contractor relationship presupposes a contract between the parties, the independent nature of the contractor's business, and the nonexclusive means the contractor may employ in accomplishing the work. **Id.** Moreover, it should appear that the contract calls for specific piecework as a unit to be done according to the independent contractor's own methods, without being subject to the control and direction, in the performance of the service, of his employer, except as to the result of the services to be rendered. **Id.** It must also appear that a specific price for the overall undertaking is agreed upon; that its duration is for a specific time and not subject to termination or discontinuance at the will of either side without a corresponding liability for its breach. **Id.**, 262 La. at 117, 262 So.2d at 390-91. The law further recognizes the inquiry to determine whether a relationship is that of independent contractor or that of a servant/employee requires, among other factors, the application of the principal test: the control over the work reserved by the employer. **Id.**, 262 La. at 117, 262 So.2d at 391. In applying this test it is not the supervision and control which is actually exercised which is significant; the important question is whether, from the nature of the relationship, the right to do so exists. **Id.**, 262 La. at 117-18, 262 So.2d at 391.

The distinction between an employee and an independent contractor status is a factual determination to be decided on a case-by-case basis. **Tower Credit, Inc. v. Carpenter**, 01-2875, p. 6 (La. 9/4/02), 825 So.2d 1125, 1129.

On the issue of selection and engagement, the deposition testimony of the Buccaneers' security director, Andres Trescastro, and documents attached thereto, show that the request for a motorcade escort was directed by the Buccaneers to

Lieutenant Anthony Micheu of the New Orleans Police Department, and the testimony of JPSO Sergeant Jeff Navo, JPSO Deputy Ben Green, and JPSO Deputy Jerry Bonds established that the law enforcement agencies select the individuals who will work on the escort details and in what capacity. JPSO requires all of its motorcycle officers to accept escort assignments unless there is a valid family or medical excuse to refuse the off-duty assignment. There was no indication that the Buccaneers had any power to either select officers for the escort detail or to fire the officers selected by a law enforcement agency.

On the issue of payment of wages, the testimony of Mr. Trescastro and accompanying documentation showed that NOPD billed the Buccaneers \$1,955 for NOPD officers to be assigned to the escort detail and requested that a check be submitted payable to the Office of Police Secondary Employment (“OPSE”), and the NOPD invoice stated that JPSO Captain Greg Lonero should be contacted as to the arrangements of payment of the JPSO officers. A copy of the Buccaneers’ check made payable to OPSE, in the amount of \$1,955, was attached to Mr. Trescastro’s deposition. A copy of the JPSO invoice to the Buccaneers was also attached to the deposition of Mr. Trescastro, billing the Buccaneers for the JPSO motorcycle escort officers and requesting cash payment.

On the issue of control over the activities of the motorcycle escort officers, even though the officers testified that they made every effort to accommodate any requests of the entity requesting an escort, the officers nevertheless decided independently of the requesting entity whether to grant, deny, or modify such requests based on their own safety evaluations.

The totality of the evidence presented by the defendants in connection with their motion for summary judgment demonstrated that the relationship between the motorcycle officers and the Buccaneers was more akin to that of independent contractors, rather than employees, since the Buccaneers did not select or hire the

individual officers, the Buccaneers did not always make direct payment to the officers, and the Buccaneers did not control the methods employed by the officers in conducting the motorcade escort. While the Buccaneers necessarily set the dates, times, and locations for the job (details that were dictated by the date, time, and location of the NFL game the Buccaneers were traveling to and from), the overall motorcade escort job called for “specific piecework as a unit” to be done according to the motorcycle officers’ own methods, without being subject to the control and direction in the performance of the service by the Buccaneers, except as to the result of the services rendered (i.e., a successful motorcade escort). Therefore, the defendants’ showing on motion for summary judgment was sufficient to point out the absence of factual evidence that the motorcycle officer Deputy Tisdale became an employee of the Buccaneers, and the plaintiffs were required to then come forward with sufficient factual support to establish the existence of a genuine issue of material fact regarding whether the Buccaneers did become the employer of Deputy Tisdale, in order to defeat a ruling adverse to them on the motion for summary judgment.

When a motion for summary judgment is made and supported as required by law, an adverse party may not rest on the mere allegations or denials of his pleadings, but his responding evidence must set forth specific facts showing that there is a genuine issue for trial; if he does not so respond, summary judgment, if appropriate, shall be rendered against him pursuant to La. C.C.P. art. 967(B). **Bufkin**, 14-0288 at p. 11, 171 So.3d at 858; **Luther v. IOM Company**, 13-0353, p. 6 (La. 10/15/13), 130 So.3d 817, 822; **Dejoie v. Medley**, 08-2223, p. 10 (La. 5/5/09), 9 So.3d 826, 832; **Samaha v. Rau**, 07-1726, p. 5 (La. 2/26/08), 977 So.2d 880, 883.

The plaintiffs filed no supporting documents along with their opposition to the defendants’ motion for summary judgment, pursuant to La. C.C.P. art. 966(A)(4), and the only record evidence pointed to by the plaintiffs as supporting

their position was the affidavit testimony of JPSO Traffic Division commander, Captain Greg Lonero, who stated in his affidavit that it was the policy of the JPSO traffic division to comply with the instructions of the entity for whom a motorcycle escort was performed. Notwithstanding, this statement by Captain Lonero does not contradict the deposition testimony offered by the defendants (via the deposition testimony of Andres Trescastro, JPSO Deputy Michael Tisdale, NOPD Lieutenant Kenny Prepetit, JPSO Sergeant Jeff Navo, JPSO Deputy Ben Green, and JPSO Deputy Jerry Bonds), which showed that although an entity requesting a motorcycle escort through Orleans and Jefferson Parishes may make requests, in addition to providing the dates, times, and locations for the needed escort, which the law enforcement officers providing the escort will try to accommodate, the law enforcement officers providing the escort have the ultimate authority to conduct the escort in accordance with their own safety assessments. The affidavit testimony of Captain Lonero merely stated the general policy of honoring requests by the entity to be escorted, but did not directly contradict the deposition testimony of other officers regarding when they could not honor such requests, i.e., when safety concerns dictated otherwise.⁴

We note that plaintiffs also cited the cases of **Wright v. Skate Country, Inc.**, 734 So.2d 874 (La. App. 4 Cir. 5/12/99), writ denied, 99-2272 (La. 11/5/99), 750 So.2d 194, **Duryea v. Handy**, 96-1018 (La. App. 4 Cir. 10/03/97), 700 So.2d 1123, and **Kramer v. Continental Casualty Company**, 92-1131 (La. App. 3 Cir. 6/22/94), 641 So.2d 557, writ not considered, 94-2576 (La. 12/19/94), 648 So.2d

⁴ We note that, in the plaintiffs' brief to this court, emphasis is placed on a "tweet" posted online by a "Nick Jacobs from Kansas City, MO," allegedly remarking on the NFL team coach of the Raiders directing a police escort to "take a victory lap" around "Arrowhead Stadium" (apparently referenced in support of the plaintiffs' argument that the Buccaneers had the power to control the motorcade route in the instant case); however, putting aside the relevancy vel non of such a statement, there is no indication that this statement appears as an item of evidence filed in the district court in connection with the motion for summary judgment at issue. See La. C.C.P. art. 966, 2015 Revision Comment (k) ("[Article 966,] Subparagraph (D)(2) makes clear that the court can consider only those documents filed in support of or in opposition to the motion.").

399, writs denied, 94-2473, 94-2474, 94-2475 (La. 12/19/94), 648 So.2d 402-03, which they contend establish that off-duty law enforcement officers, working private details, become the employees of the entities that hire them. However, we distinguish the cases relied on by the plaintiffs, since they involved off-duty law enforcement officers performing private duty *premises* security, and *premises* security differs significantly from a motorcade escort in that the private entities hiring premises security officers must necessarily have greater control over the work performed by the officers given that the private entities in the cited cases had custody and control over the premises they were occupying. In contrast, governmental entities have exclusive control over public thoroughfares; thus, in the context of a motorcycle escort, the law enforcement officers conducting the escort cannot relinquish control over the public roadways over which the motorcade travels to the private entities who request a motorcycle escort. See La. R.S. 32:1, et seq. (Louisiana Highway Regulatory Act); **Blair v. Tynes**, 621 So.2d 591, 596 (La. 1993) (“The legislature has given law enforcement officers the exclusive power to regulate traffic....”).

In **Blair v. Tynes**, two attendees to a Mardi Gras event, held by a krewe at an American Legion Hall, were injured by a motorist while crossing the street after parking in the Hall’s parking lot, despite the presence of off-duty deputy sheriffs hired by the Hall to provide security between the premises where the Hall was located and where the parking lot was located, for pedestrian crossing. **Blair v. Tynes**, 621 So.2d 593-94. Unlike the facts and circumstances presented in **Blair v. Tynes**, the motorcycle officers in the instant case were not engaged to provide security on the requesting entity’s physical premises, but rather on the public roadways in the New Orleans area, and the Buccaneers did not have the power to hire and schedule the deputies or to assign particular duties to the motorcycle officers.

Based on the foregoing, we conclude that the district court erred in failing to grant the motion for summary judgment in favor of the defendants, under the facts and circumstances of this case, on the defendants' showing that the Buccaneers did not become the employer of Deputy Tisdale merely because the deputy participated in a motorcycle escort for the Buccaneer team buses, and on the plaintiffs' failure to produce sufficient factual support to establish the contrary.

Because the plaintiffs in this case failed to show, on motion for summary judgment, that they would be able to bear their burden at trial to prove the alleged tortfeasor, Deputy Tisdale, was an employee of the Buccaneers, summary judgment in favor of the Buccaneers and its insurers should have been granted. See **Bufkin v. Felipe's Louisiana, LLC**, 14-0288 at p. 11, 171 So.3d at 859; **Cheramie Services, Inc. v. Shell Deepwater Production, Inc.**, 09-1633, pp. 9-10 (La. 4/23/10), 35 So.3d 1053, 1059.

DECREE

Accordingly, we reverse the district court ruling and remand for entry of a summary judgment in favor of defendants Buccaneers Limited Partnership, Ohio Security Insurance Company, Liberty Mutual Insurance Company, and Nautilus Insurance Company.

REVERSED; REMANDED WITH INSTRUCTIONS.