

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TADEUSZ DOBROWOLSKI, JANET  
DOBROWOLSKI, CHRISTOPHER  
DOBROWOLSKI, ADAM DOBROWOLSKI, and  
KYLE DOBROWOLSKI,

UNPUBLISHED  
June 3, 2003

Plaintiffs-Appellants,

v

No. 238007  
Charlevoix Circuit Court  
LC No. 98-136418-NO

SECOND CHANCE BODY ARMOR,

Defendant-Appellee,

and

CITY OF CHARLEVOIX, RICHARD DAVIS,  
MICHAEL JAYE, GLEN CRAWFORD,  
LAWRENCE GRISE, FIREWORKS NORTH,  
INC., VENETIAN FESTIVAL, CHARLEVOIX  
CHAMBER OF COMMERCE, CHARLEVOIX  
FIRE DEPARTMENT CHIEF, CHARLEVOIX  
CHIEF OF POLICE, CHARLEVOIX CITY  
MANAGER, WOLVERINE FIREWORKS  
DISPLAY, INC., STAR SPECIALTY DESIGN &  
FIREWORKS, UNITED PYROTECHNICS, INC.,  
HUNAN PROVINCIAL FIREWORKS &  
FIRECRACKERS IMPORT, PYRO SHOWS,  
INC., SUNNY INTERNATIONAL, LIDU  
AMERICA, and TEMPLE OF HEAVEN,

Defendants.

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Before: Schuette, P.J., and Sawyer and Wilder, JJ

PER CURIAM.

Plaintiffs appeal by leave granted the trial court's summary disposition of their claims against defendant Second Chance Body Armor, Inc. (Second Chance) under MCR 2.116(C)(10). This case arose from a catastrophic premature explosion during a fireworks display at the Charlevoix Venetian Festival. Second Chance paid its employees for part of the time they spent

renovating the trailer that housed the pyrotechnical mortars where the blast originated. The mortars and trailer failed to contain or divert the explosion. We reverse.

Plaintiff argues that it demonstrated a question of fact whether Second Chance employees acted within the scope of their employment with Second Chance when they renovated the trailer because Second Chance used the fireworks displays to promote its police-equipment business. We agree that a question of fact exists.

This Court reviews de novo a trial court's decision to grant summary disposition under 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817. A trial court may only grant summary disposition under MCR 2.116(C)(10) if, drawing all reasonable inferences in favor of the non-moving party, "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." MCR 2.116(C)(10); *Alsbaugh v Law Enforcement Comm*, 246 Mich App 547, 567; 634 NW2d 161 (2001).

Second Chance appeared on a press release that promoted the schedule of Fireworks North, Inc., a fireworks display company. Second Chance's president and major shareholder, defendant Richard Davis, owned Fireworks North. Plaintiffs' evidence indicated that fireworks displays were powerful marketing tools. Plaintiffs presented evidence that Davis personally promoted Second Chance's product and its design during a fireworks meeting with law officers, and that Davis used fireworks to gain familiarity with municipal officials.

Plaintiffs also presented evidence that Second Chance paid defendants Grise and Crawford – Second Chance employees – for time they spent renovating the mortar trailer. Defendant failed to produce any evidence that Davis or Fireworks North reimbursed Second Chance for the time Grise and Crawford spent on the trailer. Plaintiffs showed that the Second Chance employees worked on the trailer on Second Chance's leased premises. Plaintiffs also produced evidence that Davis used Second Chance's truck to haul the mortars to the show and that materials used for the trailer's reconstruction were often mingled with materials used by Second Chance. Plaintiffs showed that Second Chance gave Crawford a pay raise for obtaining a hazardous materials license – a license he only needed for hauling fireworks.

An employer is responsible for its employee's actions when the employee acts within the scope of his or her employment. *Rogers v JB Hunt Transp, Inc*, 466 Mich 645, 650-651; 649 NW2d 23 (2002). Generally, an act is within an employee's scope of employment if "(a) it is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; (c) [and] it is actuated, at least in part, by a purpose to serve the master . . . ." 1 Restatement Agency, 2d, § 228(1), p 504. Whether an employee acted within the employment's scope is usually a question of fact. *Green v Shell Oil Co*, 181 Mich App 439, 446-447; 450 NW2d 50 (1989).

We find that plaintiffs presented evidence on which a reasonable factfinder could determine that Davis and the other employees acted with Second Chance's authorization and, at least in part, in an attempt to promote Second Chance's police-equipment business. Plaintiffs presented facts on which a reasonable juror could find that the employees renovated the trailer and performed the display within the scope of their employment with Second Chance. We hold

that the trial court erred when it granted Second Chance's summary disposition motion.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Bill Schuette

/s/ David H. Sawyer

/s/ Kurtis T. Wilder