[Cite as *Deless v. Cox Ents., Inc.*, 2008-Ohio-7140.]

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

MARK DELESS, et al.,	)	
	)	CASE NO. 07 BE 31
PLAINTIFFS-APPELLANTS,	)	
	)	
- VS -	)	O P I N I O N
	)	
COX ENTERPRISES, INC., et al.,	)	
	)	
DEFENDANTS-APPELLEES.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Common Pleas Court, Case No. 04CVI413.
JUDGMENT:	Affirmed.

APPEARANCES:

For Plaintiffs-Appellants:	Attorney Frank Duff Attorney John Jurco The Maxwell Centre, Suite 500 32-20th Street Wheeling, West Virginia 26003
For Defendants-Appellees:	Attorney Hunter Havens Attorney Jeffrey Moeller 1301 East Ninth Street, Suite 500 Cleveland, Ohio 44114-1876

JUDGES:

Hon. Joseph J. Vukovich
Hon. Mary DeGenaro
Hon. Gene Donofrio

Dated: July 3, 2008

VUKOVICH, J.

{¶1} Plaintiffs-appellants Mark and Shellee DeLess appeal the decision of the Belmont County Common Pleas Court granting summary judgment in favor of defendants-appellees Butler Auto Auction, Manheim Auctions Government Services, Inc. a.k.a. Manheim Auctions, Inc., and Cox Enterprises, Inc. The crucial issue in this case is what state law applies for employer intentional tort and negligence claims when a Pennsylvania resident who is employed by a Pennsylvania company is injured while in Ohio working on a one day assignment. More specifically, does R.C. 4123.54 dictate the choice of law or does the Restatement of Conflict of Laws, Sections 145 and 146, which was adopted in *Morgan v. Biro Mfg. Co.* (1984), 15 Ohio St.3d 339, dictate the choice of law? For the reasons expressed below, the decision of the trial court is hereby affirmed.

STATEMENT OF FACTS AND CASE

{¶2} Mark DeLess is a Pennsylvania resident and in June 2003 he worked for Butler Auto Auction. Butler Auto Auction is a Pennsylvania business that operates as a "wholesale auto auction where new and used car dealers conduct business by buying and/or selling vehicles." (Skamla Depo. 29-30). Manheim Auctions, Inc. owns Butler Auto Auction. (Skamla Depo. 23-24). Cox Enterprises is a Georgia company and is the parent company of Manheim.

{¶3} DeLess testified that his job at Butler Auto Auction was to repossess vehicles; he would pick up vehicles with his tow truck and bring them back to Butler Auto Auction. (DeLess Depo. 52, 55). On June 11, 2003, he arrived at Butler Auto Auction and was assigned by Joseph Skamla from the finance department to repossess three cars in Cleveland, Ohio, at Maineline Auto Sales. (DeLess Depo. 56; Skamla Depo. 73). Dick Stewart was also assigned to go with DeLess to pick up the vehicles. Dick was going to drive one of the cars back to Butler Auto Auction while the other two vehicles would be towed back to Butler Auto. (Stewart Depo. 21).

{¶4} Upon arriving at Maineline, a worker from Maineline gave DeLess sets of keys to two of the vehicles that were supposed to be repossessed. The third vehicle, however, was not on the lot. DeLess called Skamla to ask what he should do.

(Skamla Depo. 77). After talking with the employee from Maineline, Skamla instructed DeLess to take another vehicle, a white Corsica. (DeLess Depo. 81; Skamla Depo. 87).

{¶5} Sometime after that, the Maineline employee and another man assaulted DeLess. He was hit in the head with a hammer, knocked down and kicked. Stewart yelled at them to stop and they, the assailants, took off running. Stewart then called 911. The ambulance arrived quickly; a firehouse was located across the street from Maineline. Stewart called Skamla and let him know that DeLess had been assaulted and was injured.

{¶6} As a result of his injuries, DeLess collected workers' compensation from Pennsylvania. Then, in November 2004, he filed suit in Belmont County Common Pleas Court against Butler Auto, Cox Enterprises, Manheim Auctions, Inc., Maineline Auto Sales, and the two assailants.[1] Discovery occurred; Stewart, Skamla and DeLess were deposed.

{¶7} Cox, Manheim and Butler Auto then filed motions for summary judgment. DeLess opposed the summary judgment motions. The trial court granted summary judgment for Cox, Manheim and Butler Auto. It reasoned that R.C. 4123.54 dictated that Pennsylvania law applied and Pennsylvania does not recognize an employer intentional tort. Also, it indicated that DeLess cannot sue his employer or anyone indistinguishable from his employer (meaning Cox and Manheim) for work-related injuries.

ASSIGNMENT OF ERROR

{¶8} "THE TRIAL COURT ERRED IN ITS JUNE 6, 2007 TRIAL COURT OPINION AND JUNE 15, 2007 ORDER (EXHIBITS A AND B) GRANTING SUMMARY JUDGMENT TO DEFENDANTS, COX ENTERPRISES, INC.; MANHEIM AUCTIONS

[1]Before the suit was filed in Belmont County, the same suit was filed in Cuyahoga County Common Pleas Court. The Cuyahoga County Common Pleas Court suit was dismissed shortly after the same suit was filed in Belmont County Common Pleas Court. At the trial level, appellees did argue that Belmont County Common Pleas Court was an improper venue. While they slyly make remarks in the brief indicating it is improper venue, appellees do not argue that the trial court's decision that it was the proper venue was incorrect. Thus, as to whether Belmont County Common Pleas Court was the proper venue is now waived. Improper venue does not deprive a court of its jurisdiction to hear an action. *State ex rel. Florence v. Zitter*, 106 Ohio St.3d 87, 2005-Ohio-3804, ¶23.

GOVERNMENT SERVICES, INC.; MANHEIM AUCTIONS, INC., AND BUTLER AUTO AUCTION (DELESS'S EMPLOYER)."

{¶9} In this appeal, DeLess argues that the trial court erroneously granted summary judgment for Cox, Manheim and Butler Auto. We invoke a de novo standard of review when determining whether the trial court's grant of summary judgment was appropriate. *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 95 Ohio St.3d 314, 2002-Ohio-2220, at ¶24. Summary judgment is properly granted when: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66; Civ.R. 56(C).

{¶10} The central issue in this appeal for determining whether summary judgment was appropriately granted is what state's law applies. Does Ohio law or Pennsylvania law apply? DeLess' complaint asserted an intentional tort against his employer Butler Auto. DeLess also claimed that Cox and Manheim directed Butler Auto to send him to Maineline to pick up the cars. While, DeLess does not phrase his complaint in terms of trying to pierce the corporate veil, he does insinuate that Cox and Manheim controlled Butler Auto. However, he admits they are not his employer; he does not allege an employer intentional tort against Cox and Manheim, rather he asserts negligence. He argues they are third parties responsible for his injury.

{¶11} Our analysis will begin with the alleged employer intentional tort against Butler Auto. It will start with a discussion of relevant law in Ohio and Pennsylvania as to employer intentional torts and then will continue on to an analysis of which state law applies.

{¶12} In Ohio, the workers' compensation system protects employers from employee negligence suits. R.C. 4123.74; *Blankenship v. Cincinnati Milacron Chemicals, Inc.* (1982), 69 Ohio St.2d 608, 614. However, the Ohio workers' compensation system does not insulate employers from intentional tort suits from their employees. *Blankenship*, 69 Ohio St.2d at 613-614. The reason for this is because "an employer's intentional conduct does not arise out of employment." Id. "While such

a cause of action contemplates redress of tortious conduct that occurs during the course of employment, an intentional tort alleged in this context necessarily occurs outside the employment relationship." *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St.3d 624, 635.

{¶13} Thus, the Court has clearly indicated that an employer intentional tort occurs during the course of employment, but it does not arise out of the employment relationship. Furthermore, it has set forth the legal standard by which courts determine whether an employer committed an intentional tort against an employee in *Fyffe v. Jeno's, Inc.* (1991), 59 Ohio St.3d 115.[2]

{¶14} Pennsylvania, however, takes a different stance on an employee's ability to sue its employer for an intentional tort. Multiple Pennsylvania courts, including the Pennsylvania Supreme Court, have stated that the Pennsylvania Workers' Compensation Act (PWCA) does not contain an exception for injuries caused by the employer's intentional torts:

{¶15} "The comprehensive system of substantive, procedural, and remedial laws comprising the workmen's compensation system should be the exclusive forum for redress of injuries in any way related to the work place." *Alston v. St. Paul Ins. Cos.* (1992), 531 Pa. 261, 612 A.2d 421, 424, citing *Kuney v. PMA* (1988), 379 Pa.Super. 598, 550 A.2d 1009. See, also, *Poyser v. Newman & Co., Inc.* (1987), 514 Pa. 32, 37-38, 522 A.2d 548; *Wendler v. Design Decorators, Inc.* (Pa.Super. 2001), 768 A.2d 1172, ¶13; *Snyder v. Specialty Glass Products Inc.* (1995), 441 Pa.Super. 613, 629-630, 658 A.2d 366; *Papa v. Franklin Mint Corp.* (1990), 400 Pa.Super. 358, 359-360, 583 A.2d 826; *Blouse v. Superior Mold Builders Inc.* (1987), 363 Pa.Super. 516, 518-520, 526 A.2d 798.

{¶16} The Pennsylvania Supreme Court in *Poyser* explained:

{¶17} "It is true that the appellate courts of some other states have held that wanton and willful misconduct by an employer is tantamount to an intentional tort, and

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[2]The common-law test for employment intentional torts applies to Deless' claim rather than R.C. 2745.01. In 1999, the Ohio Supreme Court found R.C. 2745.01 unconstitutional. *Johnson v. BP Chemicals, Inc.* (1999), 85 Ohio St.3d 298, syllabus. The new version of the statute did not take effect until April 4, 2005. DeLess was injured in 2003. Since no valid employment intentional tort statute was in existence at the time that DeLess filed his claim, if Ohio's intentional tort analysis applies, the common law test is required to be used. See, also, *Pinkerton v. Thompson*, 9th Dist No. 06CA8996, 2007-Ohio-6546, fn. 2.

as such, prevents the operation of a statutory exclusive-remedy provision. It must be noted, however, that those cases rested on provisions in the state workmen's compensation statutes which expressly preserved the right of an employee to sue in tort where his injury was caused by the employer's intentional wrongdoing. There is no such provision in The Pennsylvania Work[ers'] Compensation Act." *Poyser*, 514 Pa. at 37-38, 522 A.2d 548.

{¶18} Thus, as can be seen, Pennsylvania does not recognize a cause of action for an employer intentional tort; the only means of redress is through the PWCA. Therefore, our question becomes what state's law applies to this situation; we are faced with a choice of law question. The Ohio Supreme Court in *Morgan v. Biro Mfg. Co.* (1984), 15 Ohio St.3d 339, adopted the Restatement of Law, Conflict of Laws, Section 6, which indicates that unless a specific state statute addresses the choice of law, courts should use the factors in that section, and in sections 145 and 146 to determine which state law applies.

{¶19} The trial court found, and Butler Auto maintains, that R.C. 4123.54(G) (version in effect at the time of filing the complaint) is the choice of law statute that dictates Pennsylvania law applies. Appellees contend that section (G) contains an exclusive remedy clause that indicates that the law of the state where an employee is insured for workers' compensation purposes controls whether a claim can be brought against the employer for any other type of suit, including an employer intentional tort.

{¶20} This court has previously interpreted that section to mean just that. *Caldwell v. Petersburg Stone Co.,* 7th Dist. No. 05MA12, 2005-Ohio-6793, ¶21-31. In *Caldwell*, a Pennsylvania resident that worked for a Pennsylvania company was injured while performing work in Ohio. The Pennsylvania employee brought suit against his Pennsylvania employer under Ohio's employer intentional tort laws. In finding that he could not do this pursuant to R.C. 4123.54, we explained:

{¶21} "The Caldwells are Pennsylvania residents and are insured under Pennsylvania's workers' compensation laws. Furthermore, Mr. Caldwell was injured while temporarily within this sate. Thus, this section [R.C. 4123.54] prevents the Caldwells from receiving workers' compensation benefits in Ohio and provides that

Pennsylvania's laws 'are the exclusive remedy against the employer' for the Caldwells' injuries.

{¶22} "The plain language of this statute resolves the choice of law issue in this case. The injury referred to in R.C. 4123.54(G) is the same injury regardless of the theory of recovery being pursued. Mr. Caldwell had his leg seriously injured. His workers' compensation claim and his claim for an employer intentional tort are merely different ways of being compensated, or remedies, for the same injury. R.C. 4123.54(G) does not distinguish between the various theories of recovery available to compensate a person for their injuries. Instead, it provides that the other state's laws shall provide the exclusive remedy to the injury. Thus, when that statute is applied to this case, Pennsylvania law must apply to the Caldwells' claims against Mr. Caldwell's employer, Senex. The trial court properly granted summary judgment to Senex since Pennsylvania does not recognize a claim for an employer intentional tort." Id. at ¶30-31.

{¶23} The Ohio Supreme Court accepted a discretionary appeal in *Caldwell*. However, after doing so, it dismissed it as improvidently accepted. *Caldwell v. Petersburg Stone Co.*, 112 Ohio St.3d 1212, 2007-Ohio-150. The Supreme Court in its dismissal entry stated, "The court orders that the opinion of the court of appeals may not be cited as authority except by the parties inter se." Id. at ¶2. Accordingly, our decision has no precedential authority and we cannot rely on it.

{¶24} Regardless, even if that was not the case, we no longer agree with the *Caldwell* decision's interpretation of R.C. 4123.54(G). Subsection G is not a choice of law statute; it does not dictate that Pennsylvania law applies to DeLess' employer intentional tort claim against Butler Auto. We reach this decision by looking to the language of that subsection (G), which states in pertinent part:

{¶25} "If an employee is a resident of a state other than this state and is insured under the workers' compensation law or similar laws of a state other than this state, the employee and the employee's dependents are not entitled to receive compensation or benefits under this chapter, on account of injury, disease or death arising out of or in the course of employment while temporarily within this state, **and the rights of the employee and the employee's dependents under the laws of the**

other state are the exclusive remedy against the employer on account of the injury, disease, or death." R.C. 4123.54 (Emphasis added)."[3]

{¶26} The bolded section, the exclusive remedy clause, is the primary section we are looking at to determine whether this is a choice of law statute for employer intentional torts. When the paragraph is read in its entirety, it is clear that the reference in the bolded section to "the laws of the other state" is a reference to the workers' compensation law (or similar laws) of the other state. Likewise, the reference in the statute to "the injury, disease, or death" is a reference to "injury, disease or death arising out of or in the course of employment." Thus, the second part of the aforementioned statute means that the rights of the employee under the workers' compensation laws of the other state are the exclusive remedy against the employer for any injury, disease or death arising out of or in the course of employment.

{¶27} This statute is clearly not a choice of law statute for employer intentional torts; rather, it is a choice of law statute for workers' compensation claims. It is merely dictating where a nonresident that is insured under the workers' compensation laws of another state can apply for workers' compensation. In simple terms, it is stating that the nonresident cannot file for benefits in Ohio and that the proper place is in the state in which the nonresident is insured under the workers' compensation laws.

{¶28} The only possible language in the statute which could arguably indicate that R.C. 4123.54 is a choice of law statute for employer intentional torts is the phrase "arising out of or in the course of employment." The use of the word "or" could mean that it includes employer intentional torts. As previously explained, the Ohio Supreme Court has stated that an employer intentional tort occurs in the course of employment, but do not arise out of the employment relationship. *Brady*, 61 Ohio St.3d at 635. The conjunction used to connect the phrases "arising out of" and "in the course of employment" could directly impact whether the phrase includes or excludes employer intentional torts. For instance, if the phrases are joined by the word "and" it would not

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[3]The language in this portion of the statute has only changed slightly from its inception in 1953. Up until 1989, the statute instead of stating "receive compensation or benefits under this chapter," it states, "receive compensation or benefits under 4123.01 to 4123.94, inclusive, of the Revised Code". That change is insignificant and does not affect the analysis.

Additionally, it is noted that in the current version of R.C. 4123.54 this language is found in subsection (H). At the time of the injury, the language was in (B)(5) of R.C. 4123.54. For ease of discussion, the version in effect at the time of the filing of the complaint is used.

include employer intentional tort because while an employer intentional tort does occur in the course of employment, it does not arise out of the employment relationship. However, if the phrases are joined instead by "or" it would probably include employer intentional torts because only one of the phrases' criteria would need to be met. Thus, while meeting the phrase "arising out of employment" would mean that the injury did not occur from an employer intentional tort that is not necessarily the case if the other phrase "in the course of employment" is solely met. Injury occurring in the course of employment may or may not be an intentional tort depending on whether it arises out of the employment relationship. Consequently, using the conjunction "or" instead of "and" to connect the phrases "arising out of" and "in the course of employment" could indicate that employer intentional torts are included.

{¶29} However, the Supreme Court has determined that R.C. 4123.74, which uses that same phrase connected by "or", did not include employer intentional torts. *Brady*, 61 Ohio St.3d 624, 630-631. R.C. 4123.74 is the workers' compensation statute for employer's liability in damages. This statute states that employers shall not be liable at common law or by statute for any injury the employee received "in the course of or arising out of his employment." The *Brady* Court held that R.C. 4123.74 does not "expressly extend the grant of immunity to actions alleging intentional tortious conduct by employers against employees." *Brady*, 61 Ohio St.3d 624, 630-631, quoting *Blankenship*, 69 Ohio St.2d at 612. Or, in other words, the Court indicated that employer intentional torts are not included in the phrase "arising out of or in the course of employment." Therefore, since in R.C. 4123.74 the phrase "arising out of or in the course of employment" did not include employer intentional torts, nor does R.C. 4123.54(G)'s use of the same phrase.

{¶30} Accordingly, for those reasons we hold that R.C. 4123.54(G) does not dictate the choice of law for employer intentional torts. See, also, *Emminger v. Motion Savers, Inc.* (1990), 60 Ohio App.3d 14, 16. Furthermore, since this court cannot find any other state statute which would dictate the choice of law in this situation, we must look to the Restatement of Law on Conflict of Laws, Sections 6, 145 and 146 to determine which state's law applies. *Morgan*, 15 Ohio St.3d 339; *American Interstate Ins. Co. v. G&H Serv. Ctr., Inc*., 112 Ohio St.3d 521, 2007-Ohio-608 (reaffirming its

holding that Sections 145 and 146 were adopted to determine choice of law in tort actions).

{¶31} The analysis under the Restatement begins with Section 146. *Morgan*, 15 Ohio St.3d at 342. This section states:

{¶32} "In action for personal injury, the local law of the state where the injury occurred determines the rights and liability of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in §6 to the occurrence and to the parties, in which event the local law of the other state will be applied."

{¶33} Section 6 states a court should follow a statutory directive of its own state on choice of law. However, if there is no directive, the following factors are to be considered: (a) the needs of interstate and international systems; (b) the relevant polices of the forum; (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue; (d) the protection of justified expectations; (e) the basic polices underlying the particular field of law; (f) certainty, predictability and uniformity of result; and (g) ease in the determination and application of law to be applied.

{¶34} Section 145 states that the "rights and liabilities of the parties to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence of the parties under the principles stated in § 6." It then states that "contacts to be taken into account in applying the principles of § 6 to the law applicable to an issue include: (a) the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (d) the place where the relationship, if any, between the parties is centered."

{¶35} All of these factors are to be evaluated according to their relative importance to the case. Id. at 342. Thus, we now weigh the above factors to this case to determine whether Ohio or Pennsylvania law applies, i.e. who has more connections.

{¶36} Pennsylvania has a multitude of connections. DeLess is a Pennsylvania resident. Butler Auto is a Pennsylvania company. DeLess collected Pennsylvania workers' compensation benefits. Clearly, the relationship between the parties is centered in Pennsylvania. Also, DeLess' complaint indicates that part of what Butler Auto failed to do was properly train him to repossess cars. That failure happened in Pennsylvania. Furthermore, while DeLess was assaulted in Ohio, the instruction to actually go to Ohio to pick up cars occurred in Pennsylvania. Likewise, DeLess' claim that Stewart told the supervisors that he did not want to go to Maineline because it was in a bad section of Cleveland, Ohio, also occurred in Pennsylvania.

{¶37} In addition, under section 6 of the Restatement, one of the factors is the need of interstate and international system. The comment to this section states this factor incorporates a desire to facilitate commercial intercourse between states and nations. Applying Ohio law to this situation might not foster such intercourse. For example, a Pennsylvania employer who insures his employees under the workers' compensation system of Pennsylvania may be leery to send his employees to do temporary work in Ohio if he is subject to Ohio's employer intentional tort laws.

{¶38} As for the connections to Ohio there is one. DeLess was assaulted by Maineline's employees at its facility in Ohio.

{¶39} Considering the above, Pennsylvania has the most connections and Pennsylvania law must be applied to DeLess' employer intentional tort claim against Butler Auto. As explained above, Pennsylvania does not recognize employer intentional torts. Therefore, at least as to Butler Auto, who admitted through interrogatories that it is DeLess' employer, summary judgment was appropriately granted, albeit for different reasons than those given by the trial court.

{¶40} Our attention now to turns to the claims against Cox and Manheim; specifically, whether the trial court appropriately granted summary judgment in their favor. The trial court found that DeLess could not sue his employer or anyone indistinguishable (meaning Cox and Manheim) from his employer for work-related injuries. It appears the trial court was finding them de facto employers of DeLess. Thus, as Pennsylvania law did not provide for recovery for employer intentional torts, those claims were dismissed.

{¶41} As previously indicated, Cox is the parent corporation of Manheim and Manheim owns Butler Auto. The complaint and amended complaint assert a negligence claim and a joint venture claim against Manheim and Cox.

{¶42} The negligence claim asserts that Cox and Manheim instructed, supervised and/or directed Butler Auto to have DeLess repossess cars from Maineline. As to the joint venture claim, DeLess asserts that Cox, Manheim and Butler Auto were in a joint venture/partnership to repossess cars. In making both of these claims, he specifically alleges in both the complaint and motions for summary judgment that Cox and Manheim are not his employer and that Butler Auto is his employer.

{¶43} Based on the contention that they are not his employer, he contends that if R.C. 4123.54 is a choice of law statute for intentional torts, it does not apply to Cox and Manheim. Thus, under that assumption, he contends that Ohio law on negligence applies.

{¶44} As explained above, R.C. 4123.54 is not a choice of law statute that dictates that Pennsylvania law applies, however, given the Restatement of Law analysis, Pennsylvania law does apply. As stated above, the PWCA precludes an employer from being sued for employer intentional tort. Under Pennsylvania law, its Supreme Court has determined that a parent company and a subsidiary company must be treated separate for purposes of workers' compensation; they both are not the employer. *Kiehl v. Action Manufacturing Co.* (1988), 517 PA. 183, 535 A.2d 571. Thus, the PWCA does not afford immunity to both; it is only afforded to the company that controls the employee. Id.

{¶45} Cox and Manheim admit that they are not DeLess' employer. They contend Butler Auto is his employer. DeLess likewise acknowledges that Butler Auto is his employer, not Cox or Manheim. Thus, given those undisputed facts, Cox and Manheim do not have any type of protection under the PWCA for being sued for their alleged third party negligence.

{¶46} That said, a review of the numerous filings in this case clearly indicate that DeLess has failed to overcome summary judgment on this issue. DeLess is claiming that Cox and Manheim told Butler Auto to repossess the cars from Maineline. There was no evidence produced that established this accusation. In fact, an affidavit

from the Director of Manheim indicated that Manheim had nothing to do with sending DeLess to repossess the vehicles at Maineline. (Flynn Affidavit). Cox also indicated that they were not involved in the day-to-day business of Butler Auto or in DeLess' employment. (Merdek Affidavit). Furthermore, Skamla, who works in the finance department of Butler Auto, stated that he, acting on behalf of Butler Auto, arranged for the repossession of the vehicles. Consequently, there was nothing in the record, beyond mere allegation, to suggest that Cox or Manheim had anything to do with Butler Auto's choice to repossess the vehicles. Thus, Cox and Manheim did not owe any duty to DeLess as they were not involved in the business. They were not the ones who would be required to train him to repossess cars and they had no control over the Maineline employees. Furthermore, there is nothing in the record to indicate that they were responsible for the Maineline employee's action of assaulting DeLess. Thus, summary judgment was appropriately granted for Cox and Manheim.

{¶47} For the foregoing reasons, the decision of the trial court granting summary judgment for Butler Auto, Manheim and Cox is hereby affirmed.

DeGenaro, P.J., concurs in judgment only with concurring opinion.
Donofrio, J., concurs.