IN THE COURT OF APPEALS

BENNIE YEARBY,	)	HAMILTON CIRCUIT
	)	C.A. NO. 03A01-9509-CV-00345
Plaintiff-Appellee	)	
vs.	)	HON. SAMUEL H. PAYNE JUDGE
HENRY SHANNON, d/b/a UNITED TAXI STAND,	)	REVERSED AND REMANDED
Defendant-Appellant	)	

ALARIC A. HENRY AND MICHAEL A. KENT, Luther, Anderson & Cleary, P.C., Chattanooga for Appellant.

HUGH P. GARNER, Garner, Lewis & Prickett, Chattanooga, for Appellee.

OPINION

McMurray, J.

This case originated in the General Sessions Court for Hamilton County. In plaintiff's civil warrant the plaintiff sought damages for personal injury from the defendants, Henry Shannon and David W. King. King was never served with process and he is not a party to this action. While the case was pending in the general sessions court, the parties, through their attorneys, reached a settlement whereby the defendant or his liability insurance company was to pay the plaintiff the sum of $4,500.00. Payment was not forthcoming. It was later learned that Universal Security Insurance Company, defendant's liability insurance carrier, was placed into receivership by the State of Tennessee.

On April 14, 1994, the plaintiff filed a motion in the general sessions court styled "Motion to Activate and Enforce Settlement." The judge of the general sessions court declined to enforce the settlement and apparently held a trial on the merits. Judgment was entered in favor of the plaintiff against the defendant for $2,895.00. An appeal was perfected to the circuit court.

In the circuit court, the defendant filed a motion for summary judgment on the grounds that King, who was driving the defendant's automobile at the time of the accident, was not an employee, agent or servant of the defendant, hence, he was and is not vicariously liable for the acts of King. As a second ground for the motion,

the defendant asserted that the plaintiff cannot proceed against the defendant because the plaintiff failed to obtain service of process on King.

The plaintiff also filed a motion for summary judgment on the grounds that there had been an agreement to settle the case for $4,500.00 and that the defendant had reneged on the agreement. In support of his motion, the plaintiff filed the affidavit of Hugh Garner, Attorney for the plaintiff. In his affidavit, Mr. Garner deposed, inter alia, as follows:

> 2. In July 1991, I, on behalf of Bennie Yearby, offered to settle his claim against the defendants, Henry Shannon d/b/a United Taxi Stand and David W. King, for the sum of $4,500.00.
>
> 3. The defendants, through their attorney, Elaine B. Winer, agreed to pay $4,500.00 in settlement of the claim.
>
> 4. Subsequent to July, 1991, the defendants refused to pay the monies and have not paid the monies to day (sic).

The defendant responded to the plaintiff's motion for summary judgment and in so doing, filed two letters, one from the Tennessee Receiver's Office advising that Universal had been placed in receivership. The second letter was apparently a cover letter whereby the defendant's attorney sent a copy of the first letter to the plaintiff's attorney. Further, the defendant's attorney filed

in opposition to the plaintiff's motion her affidavit which in pertinent part is as follows:

> I am an attorney licensed in the State of Tennessee, number 011337. During 1991, I was an attorney at Luther, Anderson, Cleary & Ruth, P.C. I was retained by Unidom Insurance Company to represent their insured, United Taxi Stand, in this matter.[1]
>
> In July, 1991, I entered settlement negotiations with the plaintiff's attorney, Hugh Garner. These negotiations were based on settlement authorization from the defendant's carrier, Unidom Insurance Company. The defendants had no knowledge of the ongoing negotiations, nor did they contribute to or participate in any such negotiations. In the first or second week of July, 1991, Attorney Garner and I reached a settlement of $4,500.00 for bodily injury only. Unidom had previously paid the amounts for property damage to the plaintiff. All funds for settlement were to come from Unidom Insurance Company. United Taxi Stand did not contribute any money to the settlement nor did United Taxi Stand, who is the defendant in this lawsuit, authorize any negotiations or settlement. I notified defendants Shannon and King of the settlement by telephone. In late July or early August of 1991, I was notified that Unidom was in receivership. I notified Attorney Garner of the problems. Ultimately, this case was submitted to the Tennessee Guaranty Commission. In July of 1992, I terminated my association with Luther, Anderson, Cleary and Ruth, P.C.

In further opposition to the motion for summary judgment, the defendant, Henry Shannon, filed his affidavit. The pertinent parts of his affidavit are as follows:

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[1]It is reflected in the record that "Unidom" was acting as claims manager for Universal Security Insurance Company. In referring to the insurance company, the parties use the terms interchangeably.

> 2. In 1991, I was notified by my previous attorney, Elaine Winer that the insurance company for United Taxi Stand had agreed to make a payment to the plaintiff in settlement of the plaintiff's claims. I had previously had no knowledge that settlement negotiations were taking place.
>
> 3. I have never authorized my attorney to bind me to make any payment to settle this case, nor have I authorized my attorney to settle this case.

After a hearing on both motions for summary judgment the court overruled the defendant's motion and sustained the plaintiff's motion and gave judgment to the plaintiff against the defendant in the sum of $4,500.00. It is from this judgment that this appeal was taken.

We will first note the obvious. If there was a valid contract between the parties in this case, the issue of whether King was an agent, servant or employee of the defendant, Shannon d/b/a United Taxi Stand is moot.

Our standard of review of the granting of a motion for summary judgment is as follows:

> The standards governing an appellate court's review of a trial court's action on a motion for summary judgment are well settled. Since our inquiry involves purely a question of law, no presumption of correctness attaches to the trial court's judgment, and our task is confined to reviewing the record to determine whether the requirements of Tenn. R. Civ. P. 56 have been met. Cowden

> v. Sovran Bank/Central South, 816 S.W.2d 741, 744 (Tenn. 1991). Tenn. R. Civ. P. 56.03 provides that summary judgment is only appropriate where: (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, Byrd v. Hall, 847 S.W.2d 208, 210 (Tenn. 1993); and (2) the moving party is entitled to a judgment as matter of law on the undisputed facts. Anderson v. Standard Register Co., 857 S.W.2d 555, 559 (Tenn. 1993). The moving party has the burden of proving that its motion satisfies these requirements. Downen v. Allstate Ins. Co., 811 S.W.2d 523, 524 (Tenn. 1991).
>
> The standards governing the assessment of evidence in the summary judgment context are also well established. Courts must view the evidence in the light most favorable to the nonmoving party and must also draw all reasonable inferences in the nonmoving party's favor. Byrd, 847 S.W.2d at 210-11. Courts should grant a summary judgment only when both the facts and the conclusions to be drawn from the facts permit a reasonable person to reach only one conclusion. Id.

Carvell v. Bottoms, 900 S.W.2d 23 (Tenn. 1995).

A settlement agreement between litigants is a contract, nothing more, nothing less. It is to be treated as any other contract. "In order to have a valid settlement agreement, certain criteria must be met. Compromise and settlement is defined as 'an agreement or arrangement by which, in consideration of mutual concessions, a controversy is terminated.' 6 Tenn. Juris. Compromise and Settlement § 3 (1992). A settlement is defined as the act or process of adjusting or determining; an adjustment between persons concerning their dealings or difficulties; an agreement by which parties having disputed matters between them reach or

ascertain what is coming from one to the other; arrangement of difficulties; composure of doubts or differences; determination by agreement and liquidation; payment or satisfaction. In legal parlance it implies a meeting of minds of parties to a transaction or controversy. See Black's Law Dictionary 1231 (5th ed. 1979); 6 Tenn. Juris. Compromise and Settlement § 3 (1992)." Lambert v. Cate, an unreported case from this court, opinion filed November 30, 1994.

Further, counsel for the appellee candidly admits in his brief that an attorney cannot surrender substantial rights of the client. See Absar v. Jones, 833 S.W.2d 86 (Tenn. App. 1992). The appellee argues, however, that the doctrine of ratification applies and that in this case the appellee ratified the attorney's acts by failing to timely repudiate the compromise after learning of it. We find the doctrine of ratification to be inapplicable insofar as the disposition of the plaintiff's motion for summary judgment is concerned. A ratification occurs when the party, knowing all the facts necessary to form an opinion, deliberately assents to be bound. State ex rel. Robertson v. Johnson County Bank, 18 Tenn. App. 232, 74 S.W.2d 1084 (1934); Wagner v. Frazier, 712 S.W.2d 109 (Tenn. App. 1986).

The undisputed facts in this case do not support a finding, as a matter of law, that there was a meeting of the minds between the principals when the agreement was reached by their respective attorneys. Further, from the undisputed facts it is clear that the defendant lacked the requisite knowledge to ratify the agreement. Therefore, as a matter of law, no ratification occurred. On this issue, reasonable minds could not differ. On the contrary, the only reasonable inference that can be drawn from the affidavits is that it was, in fact, the understanding of the defendant, Mr. Shannon, that the insurance company was to pay the settlement and he was to be under no obligation whatever to honor the agreement. Reasonable persons could reach only one conclusion — there was no meeting of the minds as between the parties.

We find that the plaintiff's motion for summary judgment was improvidently granted. We reverse the judgment of the trial court on this issue.

We must next concern ourselves with the remaining issues presented by the defendant:

> 2. Is the owner of a vehicle involved in an automobile accident entitled to a summary judgment where the uncontradicted proof shows that the driver of the vehicle was not an agent or employee of the owner and not on the owner's business at the time of the accident?

3. If the statute of limitations bars a plaintiff from maintaining an action against a purported agent or employee, may the plaintiff nevertheless proceed against the claimed principal or employer solely on a theory of respondeat superior.

It is axiomatic that if the facts assumed in appellant's second issue are true, the answer is yes. Thus, we must make a determination as to whether there is a genuine issue of a material fact. In support of his motion for summary judgment, the defendant filed an affidavit the pertinent parts of which we will set out verbatim.

* * * *

1. My name is Henry Shannon and I have personal knowledge of the facts contained in this affidavit. I am over eighteen (18) years of age. I was the owner of the 1984 vehicle which was involved in the accident on January 24, 1991, which is the subject of this action.

2. David King was driving the automobile at the time of the accident.

3. I had rented the vehicle to David King for $35.00 per day at the time of the accident.

4. Mr. King was operating the vehicle as a taxi cab.

5. David King was not my employee.

6. I did not provide David King a paycheck, withhold social security taxes, withhold federal withholding taxes, nor provide Mr. King a W-2 form. I did not provide Mr. King a uniform.

7. My name appeared nowhere on the vehicle involved in the accident.

8. I did not tell Mr. King how much to charge his customers.

9. I did not receive any portion of the amount Mr. King charged any customers.

10. I did not provide or require Mr. King to follow a certain route.

11. I did not tell Mr. King where to wait or where to look for customers.

12. Mr. King was not on any of my business at the time of the accident.

FURTHER, AFFIANT SAITH NOT.

In our review of the record, we can find nothing which controverts the facts established by Mr. Shannon's affidavit. There is, of course, a statute which addresses itself to the issue under consideration. T.C.A. § 55-10-311 provides in pertinent part as follows:

> (a) In all actions for injury to persons and/or to property caused by the negligent operation or use of any automobile ... proof of ownership of such vehicle shall be prima facie evidence that the vehicle at the time of the cause of action sued on was being operated and used with authority, consent and knowledge of the owner in the very transaction out of which the injury or cause of action arose, and such proof of ownership likewise shall be prima facie evidence that the vehicle was then and there being operated by the owner, or by the owner's servant, for the owner's use and benefit and within the course and scope of the servant's employment. ...

"As presently written, the statute does not contain the word 'presumption,' although prior versions did so. Earlier cases construing the statute held that it created a 'rebuttable' presumption' of a master-servant relationship, sometimes referred to as an 'agency' and that unless there was countervailing evidence introduced at trial this prima facie evidence was sufficient to take the case to the jury and to support a jury verdict against the owner." Hamrick v. Spring City Motor Co., 708 S.W.2d 383 (Tenn. 1986). Hamrick also stated that summary judgment is not ordinarily the proper procedure for determining whether a prima facie case has or has not been overcome by countervailing evidence. Hamrick recognized, however, that there may be instances where summary judgment is warranted.

"The rule in this State, where evidence is offered in rebuttal to the presumption created by T.C.A. secs. 59-1037, 1038, [now T.C.A. secs. 55-10-311, 312] is that uncontradicted and unimpeached evidence causes the presumption to disappear." Hill v. Harrill, 203 Tenn. 123, 133, 310 S.W.2d 169 (1957); Bell Cab & U-Drive-It Co. v. Sloan, 193 Tenn. 352, 356, 246 S.W.2d 41 (1951); Long v. Tomlin, 22 Tenn. App. 607, 619, 125 S.W.2d 171 (1938); Woody v. Ball, 5 Tenn. App. 300, 304 (1927)."

* * * *

"This means that, before a trial judge may take the question from the jury, the evidence must be such that it can be said, as a matter of law, that there was no agency." Haggard v. Jim Clayton Motors, Inc., 393 S.W.2d 292 (Tenn. 1965). In our view the same reasoning is to be applied to motions for summary judgment. If it can be said as a matter of law that there was no agency, a motion for summary judgment on that issue should be sustained.

Also "[t]he presumption, or prima facie case, of respondeat superior created by proof of ownership of the automobile involved in the accident is displaced, as a matter of law, by material evidence to the contrary of the presumed fact (i.e., operation of the automobile in the owner's service), where such evidence is uncontradicted and comes from witnesses whose credibility is not in issue. McConnell v. Jones, 33 Tenn. App. 14, 228 S.W.2d 117; McParland v. Pruitt, 39 Tenn. App. 399, 284 S.W.2d 299; Sadler v. Draper, 46 Tenn. App. 1, 326 S.W.2d 148. However, if the witness offering the evidence in rebuttal of the presumption is contradicted on any material point, or is impeached or discredited in any mode recognized by law, the trial court may not hold as a matter of law that the statutory presumption has disappeared and direct a verdict, but must permit the jury to decide if the witnesses' testimony overcomes the presumption. Haggard v. Jim Clayton

Motors, Inc., 216 Tenn. 625, 393 S.W.2d 292, and numerous cases these cited." Buck v. West, 434 S.W.2d 616 (Tenn. 1968).

In the case under consideration here the testimony offered by Mr. Shannon by affidavit stands totally uncontradicted, his credibility has not been attacked in any manner and he has not been impeached or discredited in any mode recognized by law. Accordingly, we are of the opinion that there is no genuine issue of material fact relating to the question of agency. Neither from the unrefuted facts nor the inferences to be drawn therefrom could reasonable minds differ. We find as a matter of law that there was no agency relationship between Mr. Shannon and Mr. King. Accordingly, Mr. Shannon is entitled to judgment. In accordance with Rule 36, Tennessee Rules of Civil Procedure, we sustain the motion for summary judgment filed on behalf of the defendant.

Our disposition of this issue pretermits the third issue presented for review by the appellant.

We note that counsel for the appellee candidly states in his brief that if the appellant prevails on the settlement issue he will probably prevail on the second and third issues. We appreciate such candor by the attorneys appearing before us.

The judgment of the trial court is reversed, the plaintiff's motion for summary judgment is overruled and the defendant's motion for summary judgment is sustained. Costs are taxed to the appellee and this case is remanded to the trial court for entry of a judgment consistent with this opinion.

_____
Don T. McMurray, J.

CONCUR:

_____
Houston M. Goddard, Presiding Judge

_____
Charles D. Susano, J.

IN THE COURT OF APPEALS

BENNIE YEARBY, Plaintiff-Appellee	)	HAMILTON CIRCUIT C.A. NO. 03A01-9509-CV-00345
vs.	)	HON. SAMUEL H. PAYNE JUDGE
HENRY SHANNON, d/b/a UNITED TAXI STAND, Defendant-Appellant	)	REVERSED AND REMANDED

ORDER

This appeal came on to be heard upon the record from the Circuit Court of Hamilton County, briefs and argument of counsel. Upon consideration thereof, this Court is of the opinion that there was reversible error in the trial court.

The judgment of the trial court is reversed, the plaintiff's motion for summary judgment is overruled and the defendant's motion for summary judgment is sustained. Costs are taxed to the appellee

and this case is remanded to the trial court for entry of a judgment consistent with this opinion.

PER CURIAM