

IN THE COURT OF APPEALS OF
MARYLAND

No. 39

September Term, 1997

ARROW CAB

v.

MICHELLE HIMELSTEIN

Bell, C.J.
Eldridge
Rodowsky
Chasanow
Raker
Karwacki, Robert L.
 (Retired, specially assigned)
McAuliffe, John F.
 (Retired, specially assigned)
 JJ.

Concurring Opinion by McAuliffe, J.

Filed: February 9, 1998

McAuliffe, J. concurring.

I concur in the result. The Plaintiff's amended complaint named as Defendants "Arrow Cab Company" and "David H. Granat, trading as Arrow Cab." David H. Granat was served as "president." Granat appeared on the scheduled trial date and was successful in having the second count of the complaint, which sued him in an individual capacity, dismissed. Granat then left the courtroom, and trial proceeded on the first count against Arrow Cab Company. No answer had ever been filed on behalf of Arrow Cab Company, and no attorney appeared to defend that company. Judgment was entered in favor of the Plaintiff against Arrow Cab Company in the amount of \$19,878.09. No appeal was taken from that judgment.

The instant controversy arose when the Plaintiff attempted to collect her judgment through the letter of credit posted with the Motor Vehicle Administration as security for self-insurance of an aggregation of motor vehicles operating as taxicabs. The owners of the motor vehicles self-insured in this group intervened in the garnishment proceeding, arguing that funds promised by the letter of credit should not be available to satisfy the judgment. I agree that the intervenors are not correct in this assertion and that the Plaintiff may have satisfaction of her judgment from this source. I reach this conclusion, however, on the basis that the Plaintiff has obtained a final judgment for damages arising out of the operation of a taxicab that is a part of the group of taxicabs insured by a self-insurance arrangement approved by the Motor Vehicle Administration and secured by the letter of credit. A final judgment obtained against the driver of this taxicab would be required to be paid under this self-insurance plan, and so too must a judgment against any other party shown to be

responsible for the driver's negligent operation.

The Plaintiff sued Arrow Cab Company, claiming that it was an association that owned and operated the taxicab which was involved in this accident, and that the association was vicariously liable for the negligence of the driver. I am not at all certain that Arrow Cab Company was an unincorporated association¹, and if it was, that it would be liable for the negligence of any driver operating under the colors of Arrow Cab. These issues, however, were resolved by the judgment against Arrow Cab Company — a proceeding in which Granat elected not to participate on behalf of the alleged unincorporated association.

Maryland Rule 2-124 (h) provides as follows:

Unincorporated association. Service is made upon an unincorporated association sued in its group name pursuant to Code, Courts Article, § 6-406 by serving any officer or member of its governing board. If there are no officers or if the association has no governing board, service may be made upon any member of the association.

If Arrow Cab Company was an unincorporated association, Granat was certainly a member or officer, and service of process upon him would be sufficient. Granat could have challenged the allegation that Arrow Cab Company was an unincorporated association and the allegation that if it existed as an association it was vicariously liable for the negligence of the driver. Granat chose not to do so, and the final judgment entered in that action

¹I do not agree that the approval of self-insurance for this aggregation of motor vehicles and owners constitutes approval of an unincorporated association known as Arrow Cab Company. The group approved by the Motor Vehicle Administration for a self-insurance package was made up of vehicles owned by various persons or entities, some of which operated under Arrow Cab colors and some of which operated under New Pikesville Cab colors.

resolved those issues. The judgment was for injuries suffered because of the negligent operation of a taxicab that was specifically listed as a covered vehicle under this method of self-insurance, and the security posted to support the self-insurance was therefore properly attached for payment of the judgment. It is on this basis that I vote to affirm.