NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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VIA EMAIL ONLY

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RE: *Elizabeth M. Argo vs. 22nd Century Technologies Inc et. al.,* CL-2025-6307

Dear Counsel:

The Complaint in this case alleges that plaintiff Elizabeth M. Argo ("Argo") was subjected to sexual harassment and related misconduct by her supervisor, defendant Sandeep

Singh ("Singh"), while they both worked for defendant 22nd Century Technologies, Inc. ("22nd Century"). Specifically, Argo contends that she was assaulted and battered when Singh made a number of unwelcome sexual overtures and could not keep his hands to himself. Accordingly, Argo seeks to hold Singh and 22nd Century liable, the latter under a theory of *respondeat superior*. On July 18, 2025, this matter came before the Court for a decision on 22nd Century's Demurrer to Counts II (Assault) and III (Battery).[1] For the reasons that follow, the Demurrer is overruled.

FACTS ALLEGED IN THE COMPLAINT[2]

Argo is a thirty-year-old female who began working for 22nd Century as an Associate Director of Client Relations on or about October 18, 2021. Compl. ¶ 9. Singh, who interviewed Argo for the job, was her direct supervisor. Compl. ¶ 10. "From the beginning of Plaintiff's employment with 22nd Century, Singh and other male employees sexually harassed and accosted her." Compl. ¶ 11; *see also* Compl. ¶¶ 15-17, 21-25, 29-32, 37-42.

Counts II and III revolve around five incidents which are said to form the basis for Argo's claims of assault and battery, as follows.

Incident 1: The Client Dinner

On November 18, 2021, Plaintiff travelled to North Carolina with Singh and other 22nd Century employees for a work trip. Compl. ¶ 12. "When the employees were checking in at their hotel's front desk, Singh commented that 'people [were] going to think that three Indian men [including Singh] kidnapped a beautiful blonde woman.'" Compl. ¶ 13. That night, Singh and Argo attended a client dinner paid for by 22nd Century. Compl. ¶ 16. Singh drank heavily. *Id.* After dinner, believing he spied the outline of a belly ring, Singh "ordered" Argo to "lift up [her] shirt" so that he could see it. Compl. ¶ 16. When Argo refused, Singh asked Argo if her "breasts

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[1] 22nd Century filed an Answer to Count I, which alleges Defendants violated the Virginia Whistleblower Protection Law, Va. Code § 40.1-27.3.

[2] On demurrer, the Court assumes for purposes of argument that "all material facts, implied facts and reasonable inferences from those facts that are properly alleged in the complaint are true." *Brown v. Jacobs*, 289 Va. 209, 212 n.2, 768 S.E.2d 421, 423 n.2 (2015). While such "proper allegations" are viewed in the light most favorable to the plaintiff, *Coward v. Wellmont Health Sys.*, 295 Va. 351, 358, 812 S.E.2d 766, 770 (2018), they do not include conclusions of law or conclusory allegations of fact. *Id.* They also do not include inferences that are "strained, forced, or contrary to reason." *Coward v. Wellmont Health Sys.*, 295 Va. 351, 358-59, 812 S.E.2d 766, 770 (2018). The Court may not sustain a demurrer unless, under the foregoing standards, it is clear that the plaintiff has failed to state a claim upon which relief may be granted. *Assurance Data, Inc. v. Malyevac*, 286 Va. 137, 143, 747 S.E.2d 804, 807 (2013).

[were] real" and "reached out to touch them." Compl. ¶ 17. Terrified, Argo left the room. Compl. ¶ 18.

The next day Singh asked Argo out for drinks, which Argo declined. Compl. ¶ 19. Several days later, Singh told Argo she should be a model rather than being in the management and technology business. Compl. ¶ 20.

Incident 2: The Hotel Room

On or about December 1, 2021, Plaintiff accompanied Singh on a work trip to Denver, Colorado. Compl. ¶ 22. Plaintiff had her own hotel room which 22nd Century had booked under Singh's name. Compl. ¶ 23. After attending a client dinner paid for by 22nd Century, a highly intoxicated Singh entered Plaintiff's hotel room. Compl. ¶ 24.[3] Singh told Argo he "just wanted to cuddle" before forcibly putting his arms around her. Compl. ¶ 25. When Argo asked Singh to leave her hotel room, Singh responded that he "want[ed] a goodnight kiss." *Id.*

Incident 3: The Work Lunch

Argo worked from home at times during her employment with 22nd Century. Compl. ¶ 28. On days that she was in the office, Singh would text her constantly to determine her whereabouts and to arrange meetings. Compl. ¶ 28. On December 16, 2021, Singh asked Argo to get lunch during the workday at a local mall. Compl. ¶ 29. Once there, he encouraged Argo to drink wine in an attempt to get her intoxicated. *Id.* "Like in Denver," Singh "again touched [Argo's] breasts" in an unwanted fashion. Compl. ¶ 30.

Incident 4: The Repair Shop

On February 3, 2022, Singh gave Argo a ride to drop off her car at a repair shop, but not without first touching Argo's "inner thighs and legs" and stating that her "boobs made [him] feel like a little boy." Compl. ¶ 39.

Incident 5: The Strip Club

On July 29, 2022, Singh and Argo flew to Columbus, Ohio for a work trip. Compl. ¶ 41. After a client meeting and a trip to a local brewery, Singh "pressured [Argo] into joining him in an Uber to a strip club" at which time he again "grabbed Plaintiff's breasts." Compl. ¶¶ 41-42.

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[3] In the light most favorable to Argo, the entry was achieved a result of the room being booked in Singh's name.

THE CLAIMS

Count II alleges assault against Singh and 22nd Century. Argo claims that in Singh's "capacity as [her] direct supervisor and on work trips and outings paid for by 22nd Century," he performed "acts intended to cause offensive contact against [her] on November 18, 2021, December 1, 2021, December 16, 2021, February 3, 2022, and June 29, 2022." Compl. ¶ 63. [Argo] contends that such "actions created a reasonable apprehension of imminent batteries in her mind." Compl. ¶ 64. The basis for 22nd Century's liability is said to be based on "a respondeat superior theory." Compl. ¶ 65. Argo claims damages in the amount of $1,000,000.

Count III alleges battery against the same defendants, for the same acts, and seeks the same damages. Specifically, Argo contends that "on several occasions including, but not limited to, November 18, 2021, December 1, 2021, December 16, 2021, February 3, 2022, and June 29, 2022, Singh subjected Plaintiff to unwanted, nonconsensual, unjustified touching of her breasts, groin, and other intimate areas." Compl. ¶ 68. Argo further alleges that this touching was "highly offensive given Singh's position as Plaintiff's supervisor [and was] lascivious, predatory, rude, and harmed Plaintiff." Compl. ¶ 70.

ANALYSIS

The basis for liability against 22nd Century in both Counts II and III turns on the doctrine of *respondeat superior*. 22nd Century demurs on the ground that *respondeat superior* does not apply because Singh acted outside the scope of his employment. Thus, 22nd Century reasons, Counts II and III fail to state a claim against it and the demurrer must be sustained. The Court disagrees.

An employer "is not liable for every wrong which [an employee] may commit during the continuance of an employment." *Parker v. Carilion Clinic*, 296 Va. 319, 335, 819 S.E.2d 809, 818 (2018). Under the "doctrine of *respondeat superior*, an employer is only liable for the tortious act of his employee if the employee was performing his employer's business and acting within the scope of his employment." *Id.* (citations omitted). Thus, employers often seek to avoid liability by focusing on an employee's personal motives. According to the argument, wrongful conduct stemming from personal motivations is outside the scope of employment because it does not advance the employer's business.

In *Parker*, the Virginia Supreme Court observed that "scope of employment" is a "low resolution" phrase that is of little assistance in many cases. *Parker,* 296 Va. at 335, 819 S.E.2d at 819 (describing the scope of employment test as "vexatious[,] perplexing [and often] devoid of meaning"). Indeed:

> [T]he trial court's task may be particularly difficult in cases in which the injury is caused by an intentional, often criminal, tortious act which clearly would not have been contemplated by the employer as being within the scope of employment, but

> which nonetheless was performed incident to the employment and even facilitated thereby.

Id., 296 Va. at 326, 819 S.E.2d at 814. To address this situation, the Virginia Supreme Court re-examined almost a century of precedent and "revert[ed] to [the] first principles" of *respondeat superior. Id.,* 296 Va. at 336, 819 S.E.2d at 819.

Boiling the analysis to its essence, *Parker* clarified that *respondeat superior* liability can only attach where "the tortious act or transaction occur[s] *while* the employee [is] in fact performing a *specific job-related service* for the employer, and, but for the employee's wrongdoing, the service would otherwise have been within the authorized scope of his employment." *Parker*, 296 Va. at 338, 819 S.E.2d at 820 (emphasis in original). This is known as the "job-related service principle." *Id.*, 296 Va. at 335, 819 S.E.2d at 818. The Virginia Supreme Court specifically rejected a broader formulation that permitted a jury to find liability "if the tortious act of the employee arose out of an activity which was within the employee's scope of employment or within the ordinary course of business" without focusing on the employee's specific duties and whether the tort was committed while they were being carried out. *Id.*

To illustrate the difference between the application of the job-related service principle and the more unfocused "scope of employment" test, the Virginia Supreme Court noted that an act of embezzlement by an employee might result in two different outcomes under the job-related service principle depending on the nature of the "transaction, service, or task" the employee was being compensated to perform at the time of the theft. While embezzlement is unlawful and contrary to the employer's interests, the embezzlement of bank deposits by a bank teller during her shift could create *respondeat superior* liability because the task or service of accepting checks for deposit by a teller was "a service within the ordinary course of" the bank's business. *Parker*, 296 Va. at 338, 819 S.E.2d at 820. On the other hand:

> The bank would not have been vicariously liable if a janitor working for the bank had stepped aside from the 'normal function' [of being] a janitor — that is, stepped aside from his or her 'general job activity' . . . to deposit a customer's forged check.

Id. (internal citations omitted).[4]

Under the job-related service principle, motive remains relevant because *respondeat superior* liability cannot extend to an employer for an unauthorized tortious act arising "*wholly* from some external, independent, and personal motive on the part of the [employee] to do the act upon his own account." *See Parker,* 296 Va. at 340, 819 S.E.2d at 821 (emphasis in original) (cites omitted). However, if a plaintiff alleges that a tortfeasor's duties of employment

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[4] The example was drawn from *Gina Chin & Assocs. v. First Union Bank*, 260 Va. 533, 537 S.E.2d 573 (2000).

included the task or service out of which the tort arose, and that the tortfeasor was engaged in the execution of that task or service at the time of the plaintiff's injury, a rebuttable presumption of *respondeat superior* liability arises. *Parker*, 296 Va. at 332, 819 S.E.2d at 817; *see also, e.g.*, *Majorana v. Crown Cent. Petroleum Corp.*, 260 Va. 521, 526, 539 S.E.2d 426, 429 (2000). The presumption operates from the demurrer stage through trial. *Parker,* 296 Va. at 334, 819 S.E.2d at 818 ("the proper timing of the scope-of-employment presumption . . . begins with the complaint, not the presentation of evidence at trial").

The significance of such a presumption is that it almost invariably requires evidence to rebut.[5] Under Rule 2:302:

> Unless otherwise provided by Virginia common law or statute, in a civil action a rebuttable presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof, which remains throughout the trial upon the party on whom it originally rested.[6]

Thus, a jury question can exist even where an employee-tortfeasor acts against his employer's interests *in a criminal manner* but nonetheless within the "ambit of the particular 'services' his employer had expected him to perform." *Parker,* 296 Va. at 337-38, 809 S.E.2d at 819-20. *See also Majorana*, 260 Va. at 527, 539 S.E.2d at 429 (reversing an entry of summary judgment against a claim alleging that a gas station attendant committed a tortious act within the scope of his employment when he assaulted the claimant during a sales transaction); *Gina Chin & Assocs. v. First Union Bank*, 260 Va. 533, 545, 537 S.E.2d 573, 579 (2000) (reversing the grant of a motion to strike against a claim that a bank teller committed a tortious act within the scope of his employment when he participated in an embezzlement scheme); *Plummer v. Ctr. Psychiatrists*, 252 Va. 233, 237, 476 S.E.2d 172, 174 (reversing a grant of a demurrer on a motion for judgment asserting that a psychologist committed a tortious act within the scope of his employment when he engaged in sexual intercourse with a patient while treating her for mental-health problems).

In sum, under modern Virginia law an employer is only liable for the tortious act of its employee under the doctrine of *respondeat superior* if at the time of the tort:

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[5] It remains true that a "plaintiff can plead herself out of court by affirmatively alleging facts that rebut the presumption implied in law." *Parker*, 296 Va. at 341, 819 S.E.2d at 822. However, the "self-refutation must be clear, not conjectural, and irrefutable rather than debatable." *Id.*

[6] The Virginia Supreme Court's discussion in *Parker* makes clear that Rule 2:302 applies in the *respondeat superior* context. *Parker*, 296 Va. at 342, 819 S.E.2d at 822 ("The scope-of-employment "presumption disappears in the face of positive facts to the contrary").

1. The employee is performing a normal function of a transaction, service, or task she has been engaged by the employer to perform;

2. The tortious act arises out of that very transaction, service, or task; and

3. The employee was motivated, at least in part, by a desire to serve the employer's business.

Based on the foregoing, well-pleaded allegations establishing the first two elements will almost invariably be enough to survive demurrer. However, as shown below motive can still play a role at the pleading stage, albeit a judicious one.

Incident 1: The Client Dinner

Incident 1 involved inappropriate comments by Singh and an attempt to touch Argo's breasts during a trip to visit a client and "after a client dinner." While Singh's motives are portrayed as lascivious and self-interested, it can be inferred from the Complaint that as a person working in Client Relations, being on the trip and attending the dinner with the client were normal functions of the transaction, service, or task Singh was engaged to perform.

It can be argued that the transaction, service, or task ended when the client dinner ended, or it can be argued that the transaction, service, or task did not end until after the client was gone and the parties had all adjourned from the dinner table with no further transaction, service, or task to perform. Viewing the Complaint in the light most favorable to Argo, the client might have still been at the table when the improper advances took place or, in the alternative, the client might have been gone but Singh and Argo might still have been at what was otherwise a work transaction, service, or task at the time of Singh's conduct. For now, at the pleading stage, it is enough to survive demurrer to the extent this incident is alleged to have involved an assault.[7]

Incident 2: The Hotel Room

Incident 2 involved more inappropriate comments and an alleged sexual battery. However, the Complaint alleges that these matters took place in a hotel room after a client dinner. It would be strained and unreasonable to assume that the client was also in the hotel room or that being in the hotel room was an extension of the dinner transaction. It is therefore clear from the Complaint that Singh's unwelcome visit to Argo's hotel room was not a transaction, service, or task for 22nd Century. Were there doubt about this, Singh's apparent motives suggest

[7] No battery is actually alleged in connection with the Client Dinner.

that Singh was not acting within the scope of his employment.[8] Thus, Incident 2 cannot form the basis for a claim against 22nd Century in Count II or Count III.

Incident 3: The Work Lunch

Incident 3 involved a lunch between a supervisor and an employee during the workday in which Singh plied Argo with wine and touched her breasts. While the lunch was outside the office, it is not uncommon for supervisors and subordinates to meet for lunch to discuss business and in the light most favorable to Argo this event can be viewed as a transaction, service, or task that Singh was engaged to undertake by 22nd Century. Insofar as the breast-touching allegedly occurred at that time, it can form the basis for a claim against 22nd Century in Count II and Count III.

Incident 4: The Repair Shop

Incident 4 involved Singh giving Argo a ride to a car repair shop at which time Singh touched Argo's "inner thighs and legs" and stated that her "boobs made [him] feel like a little boy." However, there is no allegation that Singh was engaged by Century 22nd to take employees to get their cars repaired and thus Incident 4 cannot form the basis for a claim against 22nd Century in Count II or Count III.

Incident 5: The Strip Club

Incident 5 involved Singh "pressuring" Argo to take an Uber to a strip club after a client meeting at which time he again "grabbed [Argo's] breasts." This incident cannot be viewed as a relevant transaction, service, or task because the incident occurred after a client meeting, after retiring to another location, and there is no allegation that Singh was engaged to take employees to strip clubs. As a result, Incident 5 also cannot form the basis for Count II or Count III.

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[8] On the other hand, if Singh entered Argo's hotel room late at night as the result of an urgent business matter, but then dissembled, the motive could still suggest that Singh was acting within the scope of his employment.

CONCLUSION

Because one or more incidents alleged in the Complaint can form the basis for Counts II and III, the Demurrer is overruled. An Order memorializing the Court's decision will follow.

Very Truly Yours,

[redacted]

Timothy J. McEvoy
Judge, Circuit Court for Fairfax Cunty

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ELIZABETH M. ARGO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. CL-2025-6307**
	)	
	)	
22ND CENTURY TECHNOLOGIES, INC., *et al.*,	)	
	)	
Defendants.	)	

ORDER

This cause came before the Court on 22nd Century Technologies, Inc.'s Demurrer to Counts II and III of the Complaint. For the reasons set forth in the Court's Letter Opinion of even date herewith, it is hereby

ORDERED, that the Demurrer is overruled.

[redacted]

August 19, 2025
Fairfax, Virginia

Timothy J. McEvoy, Judge

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.