

SUPREME COURT OF YUKON

Citation: *Aucoin v. Aldridge*, 2012 YKSC 44

Date: 20120604
S.C. No. 11-A0036
Registry: Whitehorse

Between:

Glenda Aucoin

Plaintiff

And

**Patsy Aldridge, Simon Shepherd, Simon Shepherd operating as
Shepherd Contracting and Mark Mendelsohn**

Defendants

And

Patsy Aldridge and Mark Mendelsohn

Third Parties

Before: Mr. Justice F.W. Cole

Appearances:

Debra L. Fendrick
Anthony D. Schmit

Counsel for the Plaintiff
Counsel for the Defendants
Simon Shepherd and Simon Shepherd
operating as Shepherd Contracting
Appearing on his own behalf

Mark Mendelsohn

REASONS FOR JUDGMENT

[1] This is a summary trial.

BACKGROUND

[2] On April 29, 2008, a motor vehicle, namely a 1991 Suzuki Swift ("Suzuki"), was operated by the defendant Patsy Aldridge, when it was involved in a motor vehicle accident with the plaintiff who suffered injuries as a result.

[3] The defendants Simon Shepherd and Simon Shepherd operating as Shepherd Contracting ("Shepherd") apply for an order that they are not the owners of the Suzuki and, in the alternative, that the plaintiff's claim be dismissed on the basis that there was no consent expressed or implied for the defendant Aldridge to operate the motor vehicle.

[4] The defendant Mark Mendelsohn applies for an order that the plaintiff's claim be dismissed against him as there was no expressed or implied consent for the defendant Aldridge to operate the motor vehicle at the time of the collision.

[5] The plaintiff applies for a declaration that Shepherd and Mendelsohn be held vicariously liable as owners of the Suzuki on April 29, 2008.

[6] There is a companion action started by the plaintiff against ING Insurance Company of Canada ("ING") (S.C. No. 09-A0051). There, the plaintiff seeks coverage from the defendant ING for damages arising out of the same motor vehicle accident. ING's liability to pay the plaintiff is contingent on the findings in respect of the issue of ownership of the Suzuki.

[7] Because the defendant Aldridge has not been located, examinations for discovery have not taken place and ING applied for the matters of vicarious liability to be determined at a later date because of the necessity to complete examinations for discovery of Aldridge. I granted that order.

[8] The only issue I have been asked to decide is whether or not the defendant Shepherd was the owner of the Suzuki on April 29, 2008.

[9] On April 26, 2008, the defendant Mendelsohn purchased the Suzuki from Shepherd for the sum of \$1,200. Shepherd signed over the transfer registration on the

reverse side of the certificate of registration and provided that to Mendelsohn authorizing the transfer of the registration. Mendelsohn has acknowledged ownership, he took possession of the vehicle, and Mendelsohn was given the only set of keys. It was understood that Mendelsohn would be applying for a safety inspection certificate and transfer of the vehicle in two weeks, after he received payment for work he had done on a contract. It was understood that Mendelsohn would only drive the car to his home where it would be stored and used only to have the inspection performed and the registration completed. Shepherd left the licence plate on the Suzuki and did not cancel the insurance coverage until May 8, 2008.

RELEVANT STATUTORY PROVISIONS

[10] Section 1 of the *Motor Vehicles Act*, R.S.Y. 2002, c. 153, defines owner as follows:

"owner" means the person in whose name a motor vehicle or trailer is or is required to be registered under this Act;

[11] Part 2 has a section indicating what is necessary to transfer registration from one person to another:

Transfer of registration

47(1) This section applies to the registration of all vehicles registered pursuant to this Act.

(2) If the ownership of a registered vehicle passes from the registered owner to any other person, whether by an act of the owner or by operation of law, the registration of the vehicle expires immediately and the registered owner shall remove the licence plates from the vehicle and retain them in the registered owner's possession.

....

(4) If the ownership of a registered vehicle passes from the registered owner, either by an act of the owner or by the operation of law, to another person, that other person, if the licence plates issued to the registered owner come into the other person's possession, shall return the plates immediately to the registrar.

[12] Part 5 of the *Act* “Civil Rights and Remedies” contains the following provision, which counsel for the plaintiff says is relevant to the application of common law principles to civil actions for accidents:

Action for negligence not affected

89 Nothing in this Act shall be construed to curtail or abridge the right of any person to prosecute an action for damages because of injuries to person or property resulting from the negligence of the owner or operator of any motor vehicle or from the negligence of any agent or employee of the owner.

CASELAW AND ANALYSIS

[13] Shepherd takes the position that there can only be one owner of the motor vehicle because the definition of “owner” in s. 1 uses the singular “the person” in whose name a motor vehicle or trailer is registered “or” is required to be registered under the *Act*.

[14] Shepherd says that the only owner must be Mendelsohn, as he was the individual that purchased the vehicle, had control of the vehicle and had possession of the only set of keys. Also, when Shepherd signed the transfer of registration, in accordance with s. 47(1), the ownership of the vehicle passed from him to Mendelsohn upon the signing of the transfer, and “the registration of the vehicle expire[d] immediately”.

[15] The Supreme Court of Canada in *Hayduk v. Pidoborozny*, [1972] S.C.R. 879 [*Hayduk*], discusses the policy considerations behind the motor vehicle legislation.

There, a father and son were found jointly and severally liable as “owners” in an action

for an accident in which the son had exclusive use of the vehicle of which the father was the registered owner. At issue was the interpretation of a deemed liability provision (s. 130 of *The Vehicles and Highway Traffic Act*, R.S.A. 1955, c. 356) which is similar to that found in s. 92 of the *Yukon Act*. Ritchie J. found that it was good policy to treat the registered owner as the “owner” for liability purposes (at p. 885):

There is a logical reason why the registered owner should be treated as “owner” within the meaning of the Act because the very purpose of the registration is to give notice to all users of the highway of the identity of an individual to whom they may look as owner in the event of an accident.

[16] The Court also held at p. 885:

... proof of such registration is, by the clear terms of this section of the statute, to be treated as proof of ownership unless and until the contrary be shown.

[17] In *Burton v. Fluth Estate (Public Administrator of)*, [1994] Y.J. No. 91 (S.C.) [*Burton*], Hudson J. dealt with the issue of whether the wife of a deceased driver was the owner of a vehicle for purposes of a negligence lawsuit. The circumstances were that Mrs. Fluth had forged documents to register herself as the owner of the car, however, she had no equity in it, and, but for the forgeries, certainly never would have been considered an owner. Hudson J. considered the definition of “owner” and found it significant that the *Yukon Act* uses the words “means” rather than “includes”. This, he found, was more restrictive language and implies that the *Act* “contains its own code of definition” (para. 16). Furthermore, since the legislation states in clear terms that a person who is registered as the owner is the owner, “the common law indicia of ownership are not of concern” (para. 18). Hudson J. held that Mrs. Fluth was neither the

registered owner nor someone in whose name the vehicle was to be registered and consequently she was not liable under the *Act*.

[18] In *Westrop-McKay v. Barrett*, 2001 ABQB 81 [*Westrop-McKay*], Mr. Chmura had sold his vehicle to Mr. Barrett and had received the full purchase price; however he failed to remove his licence plates and made no attempt to cancel his insurance. A few weeks later Barrett was involved in a motor vehicle accident. There was found to be an understanding that the truck would be registered and insured in Chmura's name for "the benefit and use of [the purchase] until [he] was able to register and insure the vehicle in his own name". Martin J. accepted that Barrett was the owner on the basis that he had "exclusive domination and control" over the vehicle. The contentious issue was whether Chmura, the registered owner, was an owner as well. Martin J. considered "the indicia of ownership" in reaching his conclusions.

[19] Martin J. at para. 21 states:

[21] ... I refer to the failure of the vendor of a motor vehicle to comply with the requirements of the Motor Vehicle Administration Act (M.V.A.A.) and remove the licence plates from the vehicle at the time of sale. It is my opinion that where the vendor as the previous owner, upon sale of the vehicle fails to remove the licence plates and insurance card and notify his or her insurance company to cancel the insurance, the presumption that the vendor remains an owner in law should be very difficult to rebut. I say that because in such circumstances the vendor is not only continuing to hold him or herself out as the owner of the vehicle, but the failure to comply with these legal requirements would often induce the purchaser not to bother complying with all the requirements of ownership - namely to register and insure the newly acquired vehicle.

[22] Removal of licence plates as required by s. 41 of the M.V.A.A. is an important feature of the provincial regulation of motor vehicles, for once licence plates are removed by the vendor, the new owner cannot drive the vehicle without

acquiring new plates by registering the vehicle under his or her name. In Alberta a vehicle cannot be registered without proof of valid insurance. Thus, if the vendor fulfills his or her obligation under s. 41 of the M.V.V.A., the purchaser is effectively compelled to complete all obligations of ownership, including properly insuring and registering the vehicle in his or her name, immediately. In this way the Legislature is able to ensure that all vehicles are properly registered and insured. The only frailty in this scheme is that occasionally we find cases where the purchaser obtains proof of insurance which is later cancelled by either the insured or the insurer. Still the insurance card appears to be valid and will allow the purchaser to register the vehicle.

[20] Based on *Westrop-McKay* and *Hayduk* I am satisfied that there can be more than one owner of a motor vehicle. I am satisfied based on *Burton* that the registered owner is an owner and that common law indicia of ownership do not apply.

[21] If I am wrong in these conclusions, I find that the plaintiff has satisfied me on the balance of probabilities that Shepherd is nevertheless in fact an owner of the motor vehicle. There was a purchase and sale, full purchase price was paid, Mendelsohn had control over the motor vehicle, he had the only set of keys, he stored the motor vehicle, and Shepherd did not receive any money from the salvage of the motor vehicle.

However, I do not believe that s. 47(2) of the *Act* assists him because the legislation reads:

... the registration of the vehicle expires immediately and the registered owner shall remove the licence plates from the vehicle and retain them in the registered owner's possession.

[22] Shepherd did not remove the licence plates, he purposely left the licence plates on the motor vehicle and left the motor vehicle insured to allow Mendelsohn to drive the motor vehicle to his home and then drive it to have it inspected. I agree with Martin J. in

Westrop-McKay that “the presumption that the vendor remains an owner in law should be very difficult to rebut” (para. 21), as the:

Removal of licence plates as required by s. 41 of the M.V.A.A. is an important feature of the provincial regulation of motor vehicles, for once licence plates are removed by the vendor, the new owner cannot drive the vehicle without acquiring new plates by registering the vehicle under his or her name.

Those comments should be considered along with what Ritchie J. stated at p. 885 in

Hayduk:

There is a logical reason why the registered owner should be treated as “owner” within the meaning of the Act because the very purpose of the registration is to give notice to all users of the highway of the identity of an individual to whom they may look as owner in the event of an accident.

[23] In considering the evidence before me, I am satisfied that the plaintiff has proved on a balance of probabilities that Shepherd is an owner of the Suzuki. I make no comment on Mendelsohn’s ownership.

Cole J.