

COURT OF APPEAL FOR YUKON

Citation: *Aucoin v. Shepherd*
2013 YKCA 1

Date: 20130111
Docket: 12-YU702

Between:

Glenda Aucoin

Respondent
(Plaintiff)

And

**Simon Shepherd, Simon Shepherd operating as
Shepherd Contracting**

Appellants
(Defendants)

And

ING Insurance Company of Canada

Respondent
(Defendant)

And

Mark Mendelsohn and Patsy Aldridge

Defendants and Third Parties

Before: The Honourable Mr. Justice Chiasson
The Honourable Mr. Justice Frankel
The Honourable Mr. Justice Hinkson

On appeal from: Supreme Court of Yukon, June 6, 2012
(*Aucoin v. Aldridge*, 2012 YKSC 44, Whitehorse S.C. No. 09-A0050 and 09-A0051)

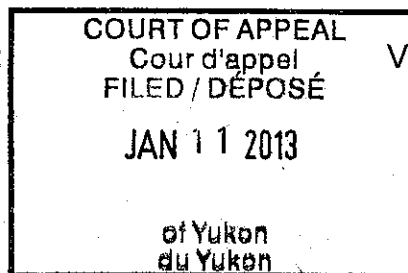
Counsel for the Appellants: A.D. Schmit

Counsel for the Respondent, G. Aucoin: D.L. Fendrick

Counsel for the Respondent,
ING Insurance Company: M.M.T. MacKinnon

Place and Date of Hearing: Vancouver, British Columbia
December 12, 2012

Place and Date of Judgment: Vancouver, British Columbia
January 11, 2013



Written Reasons by:

The Honourable Mr. Justice Chiasson

Concurred in by:

The Honourable Mr. Justice Frankel

The Honourable Mr. Justice Hinkson

Reasons for Judgment of the Honourable Mr. Justice Chiasson:

Introduction

[1] The appeal considers the definition of “owner” in the *Motor Vehicles Act*, R.S.Y. 2002, c. 153 [the Act].

Background

[2] On April 26, 2008, Mark Mendelsohn purchased a motor vehicle from Simon Shepherd, who was the registered owner of the vehicle. He signed and gave to Mr. Mendelsohn required transfer papers and the only set of keys to the vehicle. Mr. Mendelsohn paid for and took possession of the vehicle. It was understood that Mr. Mendelsohn would drive the vehicle to his home and would apply for a safety inspection and would register the vehicle in about two weeks once he was paid by his employer. Mr. Shepherd understood that the vehicle would not be driven and would remain parked until it was taken for a safety inspection, insured and registered.

[3] Mr. Shepherd did not remove the licence plates from the vehicle because he had no need for them. He planned to move to British Columbia.

[4] On April 29, 2008, the vehicle was involved in an accident. Ms. Aldridge was the driver of the vehicle. Ms. Aucoin was injured. She sued for damages. On April 11, 2012, by court order a parallel action commenced by Ms. Aucoin against her insurer, ING Insurance Company, was consolidated with her damages action.

[5] At a summary trial, the chambers judge was asked to determine whether Mr. Shepherd was an owner of the vehicle at the time of the accident. He held that he was. For the reasons that follow, I do not agree.

Reasons of the chambers judge

[6] The judge set out the definition of “owner” in the *Act* s. 1(1), which states: “owner” means the person in whose name a motor vehicle...is or is required to be registered under this Act”.

[7] The judge also quoted from Part 2 of the *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.

[8] The judge referred to *Hayduk (Next friend of) v. Pidoborozny*, [1972] S.C.R. 879. In that case, the Supreme Court of Canada commented on policy considerations underlying the registration provisions of motor vehicle legislation.

The judge observed in paras. 15 and 16 that:

[15] ... 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. 88[4]:

... 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.

[9] In para. 17, the judge discussed *Burton v. Fluth Estate (Public Administrator of)*, [1994] Y.J. No. 91 (QL) (S.C.) stating:

In *Burton v. Fluth Estate (Public Administrator of)*, ... 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*.

[10] The judge also reviewed *Westrop-McKay v. Barrett*, 2001 ABQB 81, 285 A.R. 374 in paras. 18 and 19:

[18] In *Westrop-McKay v. Barrett*, ... 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.A.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.

[11] The judge concluded in para. 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.

[12] He held in the alternative that Mr. Shepherd was an owner because he failed to remove the licence plates from the vehicle, stating in para. 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.

Positions of the parties

[13] The appellants raise three issues on appeal in their factum:

ISSUE 1: The learned trial judge made an error of law when deciding that there could be more than one owner of a vehicle based on the restrictive definition of "Owner" in Section 1 of the *Motor Vehicle Act*, RSY 2002, c.153.

ISSUE 2: The learned trial judge made an error of law by failing to address and determine the issue of whether Simon Shepherd was a "registered owner" considering that the vehicle had been sold and that according to Section 47(2) the registration had "expired immediately".

ISSUE 3: The learned trial judge made an error of law by failing to consider the transfer of registration and ownership in the *Motor Vehicle Act*, RSY 2002, c.153 including section 47(4), when deciding that Simon Shepherd was an owner of the motor vehicle based on some indicia of ownership remaining with Shepherd at the time of the accident.

[14] Ms. Aucoin summarizes her positions on these issues in her factum:

ISSUE 1: The learned Trial Judge was correct in law in finding that there can be more than one owner of a vehicle under the definition of "owner" in the *Motor Vehicles Act*, RSY 2002, c. 153.

ISSUE 2: The learned Trial Judge considered and determined the issue of whether Shepherd was an owner of the Suzuki and from that, it can be inferred that the Trial Judge addressed the issue of whether Shepherd was the registered owner as well as section 47(2) of the *Motor Vehicles Act*.

ISSUE 3: The learned Trial Judge expressly addressed section 47(4) of the *Motor Vehicles Act* when he considered the Shepherd's argument regarding transfer of registration and ownership and further, the learned Trial Judge was correct in considering indicia of ownership on Shepherd's part as an alternative basis of his judgment finding that Shepherd was an owner.

ISSUE 4: The learned Trial Judge was correct in applying the public protection policy rationale that a registered owner is an "owner" for liability purposes in this case.

[15] The insurer echoed the position of Ms. Aucoin.

Discussion

Preliminary issue

[16] It is necessary to review part of the procedural history of this case.

[17] The April 11, 2012 consolidation order provided that ING was allowed to make submissions on the dismissal applications of Messrs. Mendelsohn and Shepherd. Those applications and the application of Ms. Aucoin for a declaration that Messrs. Mendelsohn and Shepherd be held vicariously liable as owners of the motor vehicle were heard that day.

[18] The judge held that he was “satisfied that [Ms. Aucoin] has proved on a balance of probabilities that Shepherd is an owner.... I make no comment on Mendelsohn’s ownership” (at para. 23). His reasons were delivered on June 6, 2012.

[19] Mr Shepherd appealed on June 29, 2012 using only the style of cause of the action against him and Mr. Mendelsohn, which is the style of cause under which the judge’s reasons were delivered. ING was not mentioned in the notice of appeal.

[20] The judge’s order was entered on August 13, 2012. It is under the consolidated style of cause.

[21] On November 27, 2012, an order was entered amending the style of cause for this appeal to include Ms. Aucoin’s action against ING. At the hearing of the appeal we were advised that this had been done, but that the notice of appeal had not been amended. We were asked to and did order that the notice of appeal be amended.

[22] The style of cause included Ms. Aldridge and Mr. Mendelsohn as appellants. They did not appeal and appear to have taken no part in this appeal.

[23] I would revise the style of cause in this appeal to reflect these matters.

Ownership

[24] In *Hayduk*, the Supreme Court of Canada made it clear that the language of the legislation under consideration controls. Mr. Justice Ritchie stated this point at 886-887:

The respondents cited and relied upon a number of decisions of the Court of Appeal of Ontario in this regard and I think it sufficient to say that these cases were decided under The *Highway Traffic Act* of Ontario and in my opinion are of no assistance in interpreting the Alberta *Vehicles and Highway Traffic Act*, supra. In my opinion, under the Alberta statute the registered owner remains an "owner" notwithstanding the fact that an extended meaning has been given to the word by s. 2(m) so that a person who has the exclusive use of the motor vehicle for a period of more than thirty days before the collision is also included as an "owner".

[25] The respondent relies on *Hayduk*, *Westruk* and *Laroque v. Lutz* (1979), 10 B.C.L.R. 348, [1980] 1 W.W.R. 97 (S.C.), aff'd (1981), 27 B.C.L.R. 357 (C.A.), to support the proposition that Mr. Shepherd was an owner at the time of the accident. In all of those cases, the definition of ownership was inclusive; the statutory definition applicable in those provinces added to the common law definition of "owner". Indicia of ownership were relevant. In the present case, summarizing his understanding of the applicable law at para. 20, the judge stated that "the common law indicia of ownership do not apply". He relied on such indicia in his alternative analysis.

[26] *Hayduk* involved a motor vehicle accident in which a son was driving a vehicle registered in his father's name. At 884, the Court referred to s. 127(1) of the Alberta legislation (*The Vehicles and Highway Traffic Act*, R.S.A. 1955, c. 356), which stated:

When proof of ownership of any motor vehicle...is required, the production of a certificate purporting to be under the hand of the registrar or his deputy, to the effect that the person named therein is or was the registered owner of the vehicle...is prima facie proof thereof, without proof of signature or official character.

The Court continued in the following paragraph:

I think it to be a significant indication of the importance and effect that the Legislature intended to give to registration of ownership of a motor vehicle that 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.

Section 272 of the Yukon Act is to similar effect.

[27] The Court noted that the contention the father was an owner did not rest on registration alone. He bought the vehicle on a conditional-sales contract that he signed and his son did not. While the son made the payments, the contract was obtained on the credit of the father. The Court concluded that, at common law, the father was the owner of the vehicle.

[28] In *Hayduk*, the definition of "owner" in the Alberta legislation included a person having exclusive use for more than 30 days. This led the Court to conclude that there could be more than one owner. Because the son had exclusive possession for over 30 days, he also was an owner.

[29] Relying on *Hayduk*, the Alberta Queen's Bench in *Westrop-McKay* proceeded on the basis that there could be more than one owner under the Alberta legislation and looked to the indicia of ownership to determine whether a person who had sold a vehicle still retained sufficient vestiges of ownership to remain an owner.

[30] The Court in *Laroque* dealt with the proposition that Edward Yusko, who was not the registered owner of a vehicle involved in a motor vehicle accident, was a substantial part owner and vicariously liable for the driver's negligence. The then applicable legislation in British Columbia defined "owner" as follows:

"Owner" includes a person who is in possession of a motor vehicle under a contract by which he may become the owner of the motor vehicle upon full compliance with the terms of the contract.

The Court examined the facts and concluded that Edward Yusko fell within the extended definition.

[31] In my view, Hudson J. was correct in *Burton*. He found it significant that the definition of owner in the *Act* used the word “means” rather than “includes”. As the chambers judge observed at para. 17 in the present case, Hudson J. found the language of the Yukon legislation “more restrictive”. He then quoted Hudson J.’s comment at para. 16 of *Burton*.

I do not, in my view, need to consider the common law issue of ownership, finding as I do that the Motor Vehicles Act contains its own code of definition and basing my judgment as I do on that conclusion.

[32] I set out sections of the *Act* that I consider to be relevant to the present inquiry:

1(1) In this Act,

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

...

39(1) Subject to this Act,

(a) no person who is the owner of a motor vehicle or trailer shall operate or suffer or permit any other person to operate the motor vehicle or trailer on a highway at any time during which that owner is not the holder of a subsisting certificate of registration or permit issued pursuant to this Act for the motor vehicle or trailer; and

...

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.

[33] The “or” in the definition of “owner” is of note. In s. 21(1) of the *Interpretation Act*, R.S.Y. 2002, c. 125 “or” includes “and” in an enactment. Courts should be

careful not to confuse the inclusive “or” as being either conjunctive or simply meaning “and”. It has been written that the word “or” is “always disjunctive and, unless the drafter has made a mistake, should never be understood to mean ‘and’”: Ruth Sullivan, *Statutory Interpretation*, 2d ed. (Toronto: Irwin Law, 2007) at 82. This may be an overly strong position in light of the provision in the Yukon legislation, which I take to mean that “or” may be conjunctive or mean “and” if the context requires it to do so.

[34] In my view, the definition of “owner” in the *Act* is disjunctive. An owner is either a person who is registered as the owner or one who is required to be so registered. Section 39 of the *Act* illustrates the distinction. A person, who is an owner at common law, must register to drive in Yukon. That is, there may be a registered owner from whom ownership has passed and who no longer is an owner by definition, but the actual owner is a person who is required to be registered and is by definition an owner. The comments of Hudson J. at para. 14 of *Burton* are apt:

Counsel for the plaintiff pointed out an apparent contradiction in s. 38 of the Motor Vehicles Act in that there is reference to “owner” driving a non-registered vehicle and counsel suggested this was a redundancy. On reflection, I do not believe there is a contradiction in that the “owner” in that case could refer to a person in whom a motor vehicle is required to be registered and, therefore, there is in my view, no contradiction. Even if there was a fault to be found in the drafting of this section, I do not believe that the legislative intent is thereby made vague in that it is made clear in s. 38(3).

[35] Section 47(2) states that when a change in ownership occurs, the owner’s registration expires immediately. He or she no longer is the registered owner. The former registered owner has an obligation to remove the licence plates from the vehicle, but the legislation provides in s. 47(4) that if this is not done, the purchaser of the vehicle must do so.

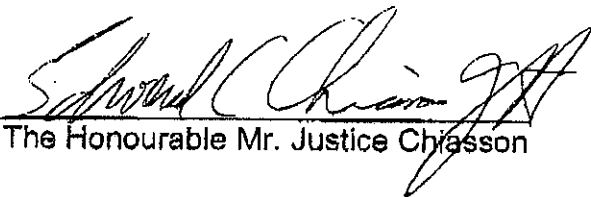
[36] In my view, the fact that a registered owner does not comply with the obligation to remove licence plates, while a breach of the legislation, does not affect who is the owner as defined by the *Act*.

[37] It was suggested in argument that because s. 47(2) states that the "registered owner" must remove the licence plates, this meant that the registered owner remains an owner until the licence plates are removed. In my view, the words are merely descriptive and do not alter the clear statement that registration immediately expires.


Conclusion

[38] I would amend the notice of appeal and style of cause in this appeal to delete Ms. Aldridge and Mr. Mendelsohn as appellants and to add ING as a respondent.


[39] I would allow this appeal, set aside the order of the chambers judge and declare that on April 29, 2008, Mr. Shepherd was not an owner as defined in the *Motor Vehicle Act* of the 1991 Suzuki Swift motor vehicle, which was that day involved in the accident in which Ms. Aucoin was injured.


The Honourable Mr. Justice Chasson

I agree:


The Honourable Mr. Justice Frankel

I agree:


The Honourable Mr. Justice Hinkson