

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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September 21, 2012

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RE: ***Cecilia V. Newson and Jeffrey D. Newson v. Stephen H. Obeda, Stephen A. Obeda, Margaret E. Bollinger, Ronald I. Henson and State Farm Mutual Automobile Insurance Company***
C.A. No. S12C-02-019 RFS

*Upon Defendant Margaret E. Bollinger's Motion for Summary Judgment.
Denied.*

Submitted: July 23, 2012
Decided: September 21, 2012

Dear Counsel:

In February 2010, Plaintiff Cecilia Newson was involved in a motor vehicle accident with Defendant Stephen H. Obeda ("Stephen H.") and Defendant Ronald Henson ("Henson"). Plaintiffs Cecilia Newson and Jeffrey Newson filed a personal injury complaint in February 2012. Count IV alleges vicarious liability and negligent entrustment against

Defendant Margaret Bollinger (“Bollinger”) based on her ownership of the Ford Explorer Stephen H. was driving at the time of the accident. Bollinger moves for summary judgment on grounds that she is not the registered owner of the Ford Explorer.

Issues of negligence are not generally susceptible to summary adjudication.¹ The moving party bears the burden of showing the absence of a genuine issue of any material fact regarding negligence.² If this showing is made, the burden shifts to the nonmoving party to produce evidence that there is a genuine issue of material fact.³ If any evidence supports a favorable conclusion for the nonmoving party, summary judgment must be denied.⁴

Bollinger argues that she was not the registered owner of the Ford Explorer at the time of the accident. Based on the Delaware Uniform Collision Report, Bollinger asserts that Defendant Stephen A. Obeda (“Stephen A.”) owned the vehicle. She further argues without evidentiary support that Stephen A. is Stephen H.’s father. Defendant Bollinger acknowledges that the insurance policy on the Ford Explorer is in her name. In her reply brief, Bollinger concedes that she may have been a previous owner of the Explorer.

Plaintiffs argue that summary judgment is premature because fact questions exist as to ownership of the vehicle at the time of the accident. Bollinger is the named insured, which suggests that she could be the registered owner or an equitable owner. Bollinger relies on an inadmissible document, the police report, to show that Stephen A. owned the vehicle. Plaintiffs request that discovery proceed in order to answer these questions.

Defendant Henson filed an answering brief, arguing that ownership of the vehicle is not an element of negligent entrustment. Instead, negligent entrustment and foreseeability of the plaintiff’s damages are key factors. These assertions also raise fact questions. At this point, the record is devoid of evidence that Bollinger entrusted the Explorer to Stephen H. or that she knew him to be a careless driver. Henson asserts that Form 30 Interrogatories are the only discovery that has been taken and that further discovery is necessary. Henson reiterates Plaintiffs’ argument that the police report relied on by Bollinger cannot prove who

¹*Ebersole v. Lowengrub*, 180 A.2d 467, 469 (Del.1962).

²*Id.*

³*Id.* at 470.

⁴*Plant v. Catalytic Constr. Co.*, 287 A.2d 682 (Del.Super.), *aff’d* 297 A.2d 37 (Del.1972).

owns the Ford Explorer.⁵

It is notable that Count IV asserts Bollinger's vicarious liability but alleges the elements of negligent entrustment. This too raises questions of material fact.

Bollinger creates a fact question by her admissions that she is the named insured on the policy for the Explorer and that she may have been a former owner. Her admissions, in combination with Plaintiffs' arguments and Henson's arguments, show that multiple fact questions remain to be determined in regard to Count IV.

Bollinger's motion for summary judgment is **DENIED**. The parties shall proceed with discovery as scheduled.

IT IS SO ORDERED.

Sincerely,

/s/ Richard F. Stokes

Richard F. Stokes

Original to Prothonotary

⁵Defendant State Farm Mutual Automobile Insurance Company, by letter dated July 12, 2012, adopted the arguments set forth by Plaintiffs and Defendant Henson.