

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**JOHN A. PARKINS, JR.**

***JUDGE***

**NEW CASTLE COUNTY COURTHOUSE  
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**Re: Frank I. Henderson, Jr., et al. v. Your Kar Express Rentals,  
Inc., et al.  
C.A. No. 06C-03-131 JAP**

Submitted: March 3, 2009  
Decided: June 30, 2009

On Defendant Your Kar Express Rentals, Inc.'s  
Motion for Summary Judgment  
**GRANTED**

Dear Counsel:

Before the Court is Defendant Your Kar Express Rentals, Inc.'s motion for summary judgment. Rashida Childs rented a car from Your Kar, a car rental company located in Virginia, and drove the car through

Delaware on her way to see her family in Philadelphia. While in Delaware, she was involved in a deadly collision with Plaintiffs' car. The issue is whether Plaintiffs can recover against Your Kar for negligent entrustment based on the fact that at the time Childs rented the car her driver's license, although valid on its face, was suspended due to an unpaid speeding ticket and lack of insurance. Under Virginia law, Childs' lack of a driver's license cannot sustain a claim for negligent entrustment and therefore, Your Kar's motion for summary judgment is **GRANTED**.

## **I. FACTUAL BACKGROUND**

Rashida Childs was enlisted in the navy and stationed in Virginia. At the time of the accident giving rise to this suit she was assigned to the *U.S.S. Dwight D. Eisenhower*. While on leave in January 2006, Childs rented a car from Your Kar, a small rental car company located in the Tidewater area of Virginia, in order to drive to Philadelphia to visit her family. When she rented the car Childs produced, at Your Kar's request, proof of Virginia residency and a Virginia drivers license, which appeared on its face to be valid and in effect. Unbeknownst to Childs and Your Kar, however, Childs' driver's license was twice suspended; once because she had failed to pay a fine for a speeding ticket she received the previous April while driving in

Maryland, and again because she failed to maintain liability insurance.<sup>1</sup> The undisputed evidence shows that Childs could have had her license reinstated simply by paying the Maryland fine, providing proof of insurance to the Virginia authorities and paying an \$85 reinstatement fee. The record shows that Childs was, in fact, insured at the time of the accident and that after the accident she had her license reinstated by the Commonwealth of Virginia.

Three days after renting the car, while driving through Delaware, Childs was involved in a horrific collision with Plaintiffs' vehicle when she made a left turn in front of Plaintiffs, who had the right-of-way. As a result of the crash, Mr. Henderson was badly injured and Mrs. Henderson was killed. Plaintiffs filed a complaint in this Court against Childs, Your Kar, and State Farm Mutual Insurance Company. Plaintiffs dismissed Childs from the case after recovering the limits of her insurance. Their remaining claims are against Your Kar for negligent entrustment and State Farm for underinsured motorist benefits.

Taking the evidence in the light most favorable to Plaintiffs, when Childs rented the car, Your Kar made no inquiry as to whether the drivers' license presented by Childs had been suspended or revoked. Your Kar did not ask Childs about the status of her license, nor did it check with the

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<sup>1</sup> The record is devoid of any evidence that her license was suspended because of her previous driving record.

Virginia Department of Motor Vehicles. If Your Kar had made an inquiry of the Virginia DMV it would have learned of the suspension of Childs' license.

The gist of Plaintiffs' claims against Your Kar is that at the time it leased the car to Childs it should have accessed driving information about Childs available car rental companies from the Virginia Department of Motor Vehicles. According to Theresa Gonyo, the Director of Data Management Services for the Virginia DMV, Your Kar would have been able to learn whether Childs' license had been suspended by accessing certain records available to car rental companies on computer. In order to learn anything further about Childs' records, including any past violations, Your Kar would have been required to send a request by fax to Virginia DMV. Unfortunately, Plaintiffs did not provide any evidence on how long this fax process takes or whether it would be fast enough to make it commercially feasible for a car rental agency to make such inquiries.<sup>2</sup>

## **II. STANDARD OF REVIEW**

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

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<sup>2</sup> The rental agreement shows that Childs rented the car at 4:00 p.m. on a Friday afternoon.

affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”<sup>3</sup>

When considering a motion for summary judgment, the facts must be viewed “in the light most favorable to the nonmoving party.”<sup>4</sup> Furthermore, “[f]rom those accepted facts the court will draw all rational inferences which favor the non-moving party.”<sup>5</sup>

### **III. DISCUSSION**

#### **A. Virginia Law Applies to Plaintiffs’ Negligent Entrustment Claim**

Delaware courts decide choice of law questions by application of the “most significant relationship test,” which requires consideration of the following seven factors set forth in the Restatement (Second) of Conflicts § 6: (a) the needs of the interstate and international systems; (b) the relevant policies of the forum; (c) the relevant policies of other interested states in determination of the particular issue; (d) the protection of justified expectations; (e) the basic policies underlying the particular field of law; (f)

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<sup>3</sup> Super. Ct. Civ. R. 56(c)

<sup>4</sup> *Mason v. USAA*, 697 A.2d 388, 392 (Del.1997).

<sup>5</sup> *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

certainty, predictability and uniformity of result; and (g) ease in the determination and application of the law to be applied.<sup>6</sup>

Section 145 also lists the following relevant contacts a court should consider when applying the above factors: (1) the place where the injury occurred; (2) the place where the conduct allegedly causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation, and place of business of the parties; and (4) the place where the relationship, if any, between the parties is centered.<sup>7</sup> The Court must evaluate these contacts according to their relative importance with respect to the particular issue.<sup>8</sup>

In personal injury cases, the law of the state where the injury occurred is usually applied, unless with respect to a particular issue, some other state has a more significant relationship.<sup>9</sup> In this case, although the accident

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<sup>6</sup> *Travelers Indem. Co. v. Lake*, 594 A.2d 38, 47 (Del. 1991). Section 6 reads in its entirety:

(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include

- (a) the needs of the interstate and international systems,
- (b) the relevant policies of the forum,
- (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
- (d) the protection of justified expectations,
- (e) the basic policies underlying the particular field of law,
- (f) certainty, predictability and uniformity of result, and
- (g) ease in the determination and application of the law to be applies

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Restatement (Second) of Conflicts § 146.

occurred in Delaware, Virginia has the more significant relationship with respect to Plaintiffs' negligent entrustment claim against Your Kar. The rental transaction, which took place in Virginia, is at the crux of this claim. Your Kar, a Virginia corporation, rented a car registered and insured under Virginia law to a resident of Virginia pursuant to a rental agreement governed by Virginia law.<sup>10</sup>

Of critical importance here are the needs of our interstate system.<sup>11</sup> According to the drafters of the Restatement, "[p]robably the most important function of choice-of-law rules is to make the interstate and international systems work well."<sup>12</sup> Determining the liability of a car rental agency for negligent entrustment on the basis of the law of a far away state where an accident happens to occur—as opposed to the law of the State where the entrustment occurred—would place an intolerable burden on the interstate system. Predictability of the law is a key element of our interstate system.<sup>13</sup> It would be impossible for a car rental agency to predict what its legal obligations are if those obligations are to be defined by the vicissitudes of judicial rulings throughout the fifty states. Surely the prospect that an

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<sup>10</sup> See *Pittman v. Maldania, Inc.*, 2001 WL 1221704 (Del. Super.) (applying Delaware law where the plaintiffs rented a jet ski in Delaware and were subsequently involved in a jet ski collision in Maryland because the "conflict of law issue involved . . . focus[ed] on the rental transaction itself").

<sup>11</sup> Restatement (Second) of Conflicts § 6(a).

<sup>12</sup> *Id.* at § 6, comment (d).

<sup>13</sup> *Id.* at § 6(f).

obscure Delaware judge applying Delaware law can dictate to a Virginia car rental agency having no contacts with Delaware what its legal obligations are when renting a car in Virginia is inimical to the promotion of predictability in our interstate system. The only way to ensure predictability of the law for those who lease motor vehicles is to apply the law of the jurisdiction in which the lease was entered into by the parties. Therefore the Court will apply Virginia law to the negligent entrustment issue.<sup>14</sup>

**B. Plaintiffs' negligent entrustment claim fails under Virginia law**

Under Virginia law there are two reasons why Plaintiffs' negligent entrustment claim must fail. First, Your Kar did not have a duty to verify the status of Childs' license with the Virginia DMV. Second, Your Kar's failure to investigate the status of her license was not a proximate cause of the accident.

*1. Under Virginia law Your Kar did not have a duty to verify Childs' license with the Division of Motor Vehicles*

Plaintiffs have not cited a single Virginia case holding that a car rental agency is obligated to verify a patron's license with the Virginia Department of Motor Vehicles. Indeed, Plaintiffs are unable to cite a single case from

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<sup>14</sup> See *Pittman*, 2001 WL 1221704, at \*3 (noting that choice of law may be determined on an issue by issue basis).



any jurisdiction in the country which holds that a car rental agency has a duty to query a state agency about the status of a prospective renter's license or the renter's driving record. Courts which have considered this question have uniformly held that there is no such duty or that it is the function of the legislature, not the courts, to impose such a duty.<sup>15</sup>

Plaintiffs argue with considerable vigor that under Virginia law Your Kar was obligated to at least verify Childs' driver's license. They point to a Virginia statute<sup>16</sup> which authorizes car rental agencies to obtain certain records pertaining to Virginia drivers. That statute, however, does not *require* rental agencies to do so. The Virginia House of Delegates was easily capable of making such inquiries mandatory if that is what it intended. Given the legislative silence and the absence of any Virginia judicial holdings imposing such an obligation, this Court concludes that it would be a quantum leap to find that Virginia requires car rental agencies to verify facially valid driver's licenses when renting a car. This is a step this Court

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<sup>15</sup> See, e.g., *Dortch v. Jack*, 2005 WL 1279025 (S.D. Miss.) (holding that under North Carolina law that "if a customer presents a valid driver's license, the rental company is under no duty to inquire further"); *Nunez v. A&M Rentals, Inc.*, 922 N.E.2d 743 (Mass. App. Ct. 2005) (holding under Massachusetts law that a rental car company did not have a duty to verify the legal status of a license even though technology to verify the lessee's license status and driving history was available); *Cousin v. Enterprise Leasing Co.*, 948 So.2d 1287 (Miss. 2007) (holding that under Mississippi law "only places a burden on rental car companies to accept facially valid, unexpired driver's licenses").

<sup>16</sup> Va. Code Ann. § 46.2 -208.

refuses to take: rather it is a step which must be taken, if at all, in the Virginia courts or in its legislature.

*2. As a matter of law, Your Kar's failure to verify Child's license was not a proximate cause of the accident*

Under Virginia law, the test of liability for negligent entrustment is “whether the owner knew, or had reasonable cause to know, that he was entrusting his car to an unfit driver likely to cause injury to others.”<sup>17</sup> There is no recovery where the entrustment is not a proximate cause of the accident.<sup>18</sup> Virginia courts have consistently held that a suspended license or a poor driving record is not enough to establish proximate cause of the accident.<sup>19</sup> In *Hack v. Nester*, a defendant car owner entrusted her car to a driver she knew had no driver's license and a tendency to drink and drive.<sup>20</sup> The Supreme Court of Virginia held that the fact the driver's license was suspended was not a basis for a negligent entrustment claim because the lack of a license was not a proximate cause of the collision writing:

Although it is negligence per se to entrust a motor vehicle to an unlicensed driver, Code § 46.1-386, there can be no recovery for negligent entrustment unless the reason for the entrustee's

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<sup>17</sup> *Hack v. Nester*, 404 S.E.2d 42 (Va. 1991).

<sup>18</sup> *Id.*

<sup>19</sup> See *Kearns v. Wehr*, 1998 WL 619221 (Va. Cir. 1988) (dismissing a negligent entrustment claim because “no cases to my knowledge would find liability on behalf of the [entrustor] in a case such as the case at bar on the basis of a poor driving record”).

<sup>20</sup> 404 S.E.2d at 43-45.

disqualification from securing a license was a proximate cause of the collision. Hack's last suspension expired several months before the collision. Therefore, Hack was eligible for reinstatement of his driver's license upon proof of financial responsibility and payment of a reinstatement fee. Code § 46.1-438(B) and (C). Here. . . there was no showing that the entrustee's lack of a license had any causal connection to the collision. Thus, Hack's lack of a driver's license provides no basis for recovery against Weaver.<sup>21</sup>

The United States District Court for the Eastern District of Virginia reached a similar result in *Goff v. Jones*,<sup>22</sup> wherein a father entrusted his car to his son who subsequently caused a collision. Despite the father's knowledge that his son was a "reckless driver" whose driver's license had been suspended, the district court, applying Virginia law, dismissed the plaintiffs' claim against the father for negligent entrustment.<sup>23</sup> It reasoned that the plaintiffs "have not shown that the suspension of driving privileges in Virginia had any connection whatsoever to the accident. Indeed, it appears that Plaintiffs cannot make such a showing "since the suspension was due to an unpaid traffic ticket; after the ticket was paid for, the driving privileges were reinstituted."<sup>24</sup>

To be sure, there are cases in which Virginia courts have upheld claims of negligent entrustment. But the bases for those claims are far different than the one presented here. For example, the Virginia Supreme

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<sup>21</sup> *Id.* at 43-44 (internal citations omitted).

<sup>22</sup> 47 F.Supp.2d 692 (E.D. Va. 1999).

<sup>23</sup> *Id.* at 697-98.

<sup>24</sup> *Id.* at 697.

Court held that an entrustor could be liable for entrustment of a car to someone the owner knew was disqualified from obtaining a license due to a congenital eye defect.<sup>25</sup> In addition, a Virginia circuit court found that the entrustor of an automobile be held liable when the person to whom the vehicle was entrusted was intoxicated at the time of the entrustment.<sup>26</sup> It is undisputed that Childs was not intoxicated at the time she rented the car and did not suffer from any physical disabilities which precluded her from operating a car safely. This line of cases, therefore, is of no help to Plaintiffs.

The Commonwealth of Virginia never determined that Childs was unfit to drive. Rather in one instance Childs' driver's license was suspended because she failed to pay a fine for a speeding ticket. Under Virginia law this would not give rise to liability for negligent entrustment. Plaintiffs have not shown that the suspension of driving privileges in Virginia had any connection with the accident. Indeed, it appears that Plaintiffs cannot make such a showing "since the suspension was due to an unpaid traffic ticket, after the ticket was paid for, the driving privileges were

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<sup>25</sup> *Denby v. Davis*, 188 S.E.2d 266 (Va. 1972) (holding the entrustor of a vehicle liable where the entrustee's impaired eye sight could have been the proximate cause of a car accident).

<sup>26</sup> *Kearns*, 1998 WL 619221 at \*1.

reinstated.”<sup>27</sup> Childs’ license was eligible for reinstatement and was in fact reinstated upon payment of the fine. The cause of her second suspension was her failure to have insurance. It is undisputed, however, that she had insurance at the time of the instant accident and that she could have had her license reinstated simply by paying a fee to the Virginia Department of Motor Vehicles. The Court concludes, therefore that this case fits neatly within the holdings in *Goff* and *Hack* and is critically distinct from those cases in which a negligent entrustment claim has been sustained. Accordingly, when the evidence is viewed in the light most favorable to Plaintiffs, they have failed to make out a claim for negligent entrustment under Virginia law.

#### IV. CONCLUSION

For the reasons stated above, Defendant Your Kar’s motion for summary judgment is **GRANTED**.<sup>28</sup>

**IT IS SO ORDERED**

Very truly yours,

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<sup>27</sup> *Goff*, 47 F. Supp. 2d at 697.

<sup>28</sup> As a consequence, Your Kar’s motion in limine to exclude the opinions of Plaintiffs’ expert Cheryl C. Morgan is moot.