

VANESSA ELLIS V. EARVIN JARMIN ET AL.

CV095010839

**SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT
OF NEW LONDON AT NEW LONDON**

December 17, 2009

EXCERPT OF OPINION

This case arises out of an automobile accident in Norwich, Connecticut. In her five-count complaint, the plaintiff alleges the following. On February 4, 2007, the plaintiff, Vanessa Ellis was walking along Boswell Avenue, in Norwich, Connecticut with some friends.

The defendant, Earvin Jarmin, was driving a car that was owned by CAMRAC, Inc. (CAMRAC) and rented to Jarmin through Enterprise Rent-A-Car, a subsidiary of CAMRAC. Jarmin offered Ellis and her friends a ride, and they accepted. At this time, Jarmin was wanted by the police and had outstanding criminal arrest warrants. While Jarmin was driving the Grand Prix, with Ellis and her friends inside, a Norwich police cruiser attempted to stop Jarmin. Instead of pulling over, Jarmin fled from the police. During the chase, Ellis and her friends demanded to be let out of the car and Jarmin complied. While Ellis was exiting the vehicle, Jarmin suddenly accelerated before Ellis was clear of the car, causing her to fall from the vehicle and sustain physical injuries and losses.

In Count Five of her complaint, Ellis alleges that CAMRAC was negligent in entrusting a motor vehicle to a person that it knew or should have known had outstanding criminal arrest warrants and was likely to engage the police in a chase and cause injuries to the public.

Discussion

In the present case Ellis has alleged that CAMRAC was negligent in entrusting a vehicle to Jarmin in that they either knew or should have known that he was the subject of outstanding arrest warrants and was therefore predisposed to fleeing from the police and placing third parties in danger through his driving. While this is a particularly novel claim for subjecting a rental car company to liability for injuries caused by a vehicle operator, the court must construe the complaint in the manner most favorable to sustaining its legal sufficiency.

In *Greeley v. Cunningham*, 116 Conn. 515, 165 A.678 (1933), our Supreme Court recognized the tort of negligent entrustment of an automobile. There, the court stated: "An automobile, while capable of doing great injury when not properly operated upon the highways, is not an intrinsically dangerous instrumentality to be classed with ferocious animals or high explosives . . . and liability cannot be imposed upon an owner merely because he entrusts it to another to drive upon the highways. It is, however, coming to be generally held that the owner may be liable for injury resulting from the operation of an automobile he loans to another when he knows or ought reasonably to know that the one to whom he entrusts it is so incompetent to operate it by reason of inexperience or other cause that the owner ought reasonably anticipate the likelihood that in its operation injury will be done to others . . ."

When the evidence proves that the owner of an automobile knows or ought reasonably to know that one to whom he entrusts it is so incompetent to operate it upon the highways that the former ought reasonably to anticipate the likelihood of injury to others by reason of that incompetence, and such incompetence does result in such injury, a basis of recovery by the person injured is established. That recovery rests primarily upon the negligence of the owner in entrusting the automobile to the incompetent driver." (Citations omitted; internal quotation marks omitted.)

Several Superior Court decisions have described the elements of the tort of negligent entrustment as follows: "The essential elements of the tort of negligent entrustment of an automobile [are] that the entrustor knows or ought reasonably to know that one to whom he entrusts it is so incompetent to operate it upon the highways that the former ought to reasonably anticipate the likelihood of injury to others by reason of that incompetence, and such incompetence does result in injury . . . Liability cannot be imposed on a defendant under a theory of negligent entrustment simply because the defendant permitted another person to operate the motor vehicle . . . Liability can only be imposed if (1) there is actual or constructive knowledge that the person to whom the automobile is loaned is incompetent to operate the motor vehicle; and (2) the injury results from that incompetence."

In the present case, in Count Five of her complaint, Ellis has alleged that CAMRAC was negligent in entrusting a vehicle to Jarmin because they knew, or should have known, that he was the subject of outstanding criminal warrants and was therefore likely to flee from the police and cause harm to members of the public. While the plaintiff's complaint does not allege the method by which CAMRAC should have become aware of Jarmin's outstanding arrest warrants, our Supreme Court has noted that "[w]hat is necessarily implied [in an allegation] need not be expressly alleged . . . It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." With that directive in mind, while Ellis' complaint does not specifically claim the source of CAMRAC's constructive notice of Jarmin's outstanding warrants, her complaint's allegation that CAMRAC should have known that Ellis was wanted by the police implies the allegation that Jarmin's status as a wanted man was readily discoverable and should have put CAMRAC on notice that Jarmin was incompetent to operate a motor vehicle. It is worth noting, however, that while the mere allegation that CAMRAC should have known of Jarmin's outstanding arrest warrants is sufficient to imply such constructive notice at the motion to strike phase, the court is concerned by the complete lack of factual allegations regarding just what additional steps CAMRAC should have taken to ascertain whether Jarmin was competent to drive. At some point, Ellis will have to formulate a more concrete factual basis for alleging that CAMRAC was negligent in failing to discover that Jarmin was the subject of outstanding arrest warrants.

In light of the court's obligation to construe the factual allegations in the complaint as true when considering a motion to strike and viewing the complaint in a manner most favorable to sustaining the action, Ellis has sufficiently pleaded [*10] the elements of negligent entrustment of a motor vehicle. Because Ellis has sufficiently pleaded facts which, if proven, could support a negligent entrustment cause of action, striking Count Five of her complaint would be inappropriate.

CAMRAC argues that under federal statute, rental car companies are shielded from liability for the negligent acts of those to whom they rent vehicles. 49 U.S.C. 30106 (2004), 49 U.S.C. 30106 provides, in relevant part: "(a) In General--An owner of a motor vehicle that rents or leases the ve-

hicle to a person . . . shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle . . . for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if (1) the owner is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner."

The protections offered by 49 U.S.C. § 30106 do not apply to CAMRAC in this instance, however. While 49 U.S.C. § 30106 shields rental car companies from vicarious liability for the negligence of [*11] vehicle operators, the plain language of the statute states that its protection is unavailable where the rental car company commits independent acts of negligence that lead to the eventual injury at the heart of the litigation. In the present case, Ellis has alleged independent negligent acts or omissions on the part of CAMRAC that render 49 U.S.C. § 30106 inapplicable.

For the above reasons, CAMRAC's motion to strike Count Five is denied.

Cosgrove, J.