

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

PAUL JOSEPH PERRY, by his	:	
guardian ad litem, PAUL PERRY,	:	C.A. No. 03C-08-033 WLW
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
STEVEN D. MERILLO, DONALD	:	
FORAKER and GLADYS E. FORAKER,	:	
	:	
Defendants.	:	

Submitted: July 16, 2004

Decided: August 6, 2004

**ORDER**

Upon Defendants Donald and Gladys Foraker's  
Motion for Summary Judgment.  
Granted in part; Denied in part.

Nicholas H. Rodriguez, Esquire of Schmittinger and Rodriguez, P.A., Dover,  
Delaware; attorneys for the Plaintiff.

Robert B. Young, Esquire of Young & Young, P.A., Dover, Delaware; attorneys for  
Defendants Foraker.

WITHAM, J.

### **Introduction**

Before this Court is Defendant Donald and Gladys Foraker's motion for summary judgment. Plaintiff Paul Joseph Perry opposes the motion in part. Defendant Steven Merillo has not answered the motion.

### **Background**

Plaintiff Perry allegedly suffered injuries in an automobile accident which occurred on July 15, 2003. On that day, Merillo was driving the vehicle in which Perry was a passenger. The Forakers were not involved in the accident in any way. The issue is who was the actual owner of the vehicle on the date of the accident - Mrs. Foraker or Merillo.

On July 12, 2003, Merillo paid \$75.00 of a \$400.00 purchase price for the Foraker's vehicle. Mrs. Foraker contends that a bill of sale was drawn up on that day, while Merillo states that the bill of sale did not exist until after the events that gave rise to this litigation. The vehicle was delivered to Merillo on July 13, 2003, with the understanding that the balance of the money due would be "worked off" by Merillo performing various tasks for the Forakers. Both parties agreed that when Merillo picked up the car on July 13, 2003, he had the keys, the sole possession and sole use of the vehicle. However, the agreement was that the title to the vehicle would be held by Mrs. Foraker until Merillo paid in full. As of July 13, 2003, Merillo had "worked off" approximately \$200.00 of the remaining \$325.00 owed. Mrs. Foraker claims that she signed the title on July 12, 2003, but Merillo did not sign until July 24, 2003. According to Mrs. Foraker, she informed Merillo that she was cancelling the

insurance on July 13, 2003, and the insurance was actually transferred to a different vehicle on July 14, 2003. However, Merillo claims that Mrs. Foraker agreed to maintain the insurance until he could afford his own.

The Forakers contend that because they were not owners of the vehicle at the time of the accident, they cannot be held liable for any damages arising from the accident on July 15, 2003. The Plaintiffs have conceded that Donald Foraker was not an owner of the vehicle at the time and should be dismissed as a party Defendant, but assert that because title to the vehicle remained with Mrs. Foraker, she was the owner of the vehicle at the time of the accident. Further, Plaintiff argues that the insurance had not actually been cancelled at the time of the accident.

### **Discussion**

Superior Court Civil Rule 56(c) provides that judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact.”<sup>1</sup> On a motion for summary judgment the Court examines the record to determine whether there are any material issues of fact. The moving party bears the initial burden of showing that no material issues of fact are present.<sup>2</sup> The burden then shifts to the nonmoving party to demonstrate that there is a genuine issue of

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<sup>1</sup> Super. Ct. Civ. R. 56.

<sup>2</sup> *Martin v. Nealis Motors, Inc.*, 247 A.2d 831, 833 (Del. 1968).

fact.<sup>3</sup> Summary judgment should only be granted when, after viewing the record in a light most favorable to the non-moving party, there is no genuine issue of material fact.<sup>4</sup> Summary judgment will not be granted if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.<sup>5</sup>

Under Delaware law, “the general rule is that proof that a motor vehicle is registered in the name of a person as owner creates a presumption which makes a case of ownership of a vehicle.”<sup>6</sup> However, the *prima facie* case may be rebutted.<sup>7</sup> In *Morgan*, the Superior Court concluded that despite the fact that the seller had failed to endorse her registration, the intended sale was still valid. Thus, the seller no longer had an insurable interest in the car, and her insurer could not be held liable for damages occurring from an accident after the intended sale.

Defendant relies on *Malloy v. United State Fidelity & Guaranty Co.*, in which the Superior Court concluded that the failure to formally transfer title does not

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<sup>3</sup> *Id.*

<sup>4</sup> *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. Ct. 1973); *see also McCall v. Villa Pizza, Inc.*, 636 A.2d 912 (Del. 1994).

<sup>5</sup> *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

<sup>6</sup> *Finkbiner v. Mullins*, 532 A.2d 609, 613 (Del. Super. Ct. 1987).

<sup>7</sup> *See Morgan v. State Farm Mutual Automobile Insurance Co.*, 402 A.2d 1211 (Del. Super. Ct. 1979).

invalidate an intended sale.<sup>8</sup> In *Malloy*, defendant Finney was involved in an automobile accident with plaintiff. Defendant Whittington claimed that she sold the car to Finney but forgot to cancel the insurance. Finney asserted that he bought the car from his brother-in-law, but asked Whittington to insure the car because she would qualify for a lower rate. However, both parties agreed that Finney had exclusive possession of, access to, and use of the automobile on the date of the accident. Although the certificate of title had not actually been transferred, the Court concluded Finney was the intended owner of the vehicle under both versions of the facts. Thus, the Court held that because Whittington was not the equitable owner of the automobile and was not open to the risk of liability occurring from the use of the automobile, she did not have an insurable interest. Accordingly, the Court granted Whittington's and her insurer's motions for summary judgment.

In reviewing a motion for summary judgment, the Court must view the facts in a light most favorable to the non-moving party. Based on Merillo's deposition testimony, the bill of sale did not exist until after the accident, Mrs. Foraker agreed to maintain insurance coverage on the vehicle, and Merillo did not see the title until after the accident. Although it is undisputed that Mrs. Foraker did not have use of or possession of the automobile after July 13, 2003, there is still an issue as to whether Mrs. Foraker intended to maintain an ownership interest in the car. Mrs. Foraker testified that she would keep the title to the car until Merillo paid the balance owed. As of the date of the accident, Merillo had not paid the balance due. Also, based on

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<sup>8</sup> 1992 Del. Super. LEXIS 318, \*8.

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Merillo's testimony, Mrs. Foraker expressed her desire to maintain an ownership interest in the car by continuing their insurance coverage.

This case is distinguishable from both *Morgan* and *Malloy*. In those cases, there was no clear factual dispute as to the ownership of the car. The testimony of all the parties involved lead to the same conclusion - that the sellers of the vehicles no longer owned the cars despite the failure to transfer title. In this case there is a factual dispute. Merillo's testimony differs from Mrs. Foraker's testimony regarding material factual issues. According to Merillo's testimony, Mrs. Foraker indicated that she would maintain insurance coverage until he could insure the car. This testimony raises a question as to whether Mrs. Foraker intended to maintain ownership of the vehicle at least until the full purchase price had been paid. Even though Merillo admits that he had sole use and possession of the vehicle, there is still a possibility that Mrs. Foraker allowed him to possess the car while she maintained ownership. This is a question for the jury to decide. The fact that the title was not transferred into Merillo's name prior to the accident is not dispositive with respect to the ownership of the car. However based on the deposition testimony of Mrs. Foraker and Merillo, it is clear there are factual disputes and a credibility issue which must be resolved by the trier of fact. Accordingly, the question of who owned the car at the time of the accident is one which must be answered by the jury.

### **Conclusion**

Defendant's motion for summary judgment with respect to defendant Donald Foraker is ***granted***, as the Plaintiff agrees Mr. Foraker was not an owner of the

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vehicle. However, because there is a factual dispute as to whether Mrs. Foraker or Merillo owned the car at the time of the accident, Defendant's motion for summary judgment with respect to defendant Gladys Foraker is *denied*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution