

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

RICHMOND AUTO SALES, INC.

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:
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v.

C.A. No. PD-2018-6554

CARLOS M. PEREIRA

(Filed: September 16, 2019)

DECISION

LANPHEAR, J. This District Court matter came before the court for a trial *de novo*, without a jury.

I

Findings of Fact

The Court finds specific facts, as follows:

On June 24, 2016, Defendant Carlos M. Pereira (Mr. Pereira) was the operator of a 2012 Kia automobile which was in the process of pulling out of a parking space on the shoulder of Broadway in Pawtucket, Rhode Island, to travel southbound along Broadway. Mr. Pereira looked in his side mirror and his rear mirror as he activated his directional signal. After several vehicles passed, he checked his mirrors again. Believing the street to be clear, he exited the parking spot to enter the travel lane. A 2013 Toyota Camry (Camry) vehicle was traveling quickly down Broadway, which Mr. Pereira did not see until it was upon him. Mr. Pereira described the Camry as “coming very fast” and that he could not avoid it once he saw it. The Camry struck Mr. Pereira’s car suddenly and with such force that it crossed over to the other side of the roadway. The driver’s front corner of Mr. Pereira’s vehicle came into contact with the passenger side of the Camry. The Camry was owned by Plaintiff Richmond Auto Sales, Inc. (Plaintiff or Richmond) and is

designated as its vehicle number 683. Each of the motor vehicles suffered damages, but no evidence was submitted as to any personal injuries.

Richmond is in the business of renting motor vehicles. Vehicles are rented for varying periods of time. Richmond focuses its business on rentals resulting from damaged vehicles when those vehicles are being repaired by auto body shops. Richmond owns over 1397 vehicles. While many of the vehicles are rented or leased, several vehicles are used to transport customers, to travel to the Registry of Motor Vehicles, or are out for servicing. On the date of the collision, vehicle 683 was being operated by Mr. Tek, an employee of Richmond, apparently for company business. It was not being rented at the time.

On the date of the collision, Richmond followed its usual course for processing a claim for one of its motor vehicles. It removed the registration plates from vehicle 683 and placed them in a claim folder. It removed the car from its rental inventory, and it initiated the filing of a claim. Richmond mailed a claim package to GEICO on June 27, 2016. On August 12, 2016, the Camry (apparently repaired) was returned into the active inventory and available for rent. It had been out of service for forty nine days.

The Rhode Island Department of Business Regulation has adopted the “NADA reference guide” as the standard value to determine the loss for totaled motor vehicles. (Trial Tr. (Tr.) 46:2-9, July 10, 2009). The guide set the value of Richmond’s vehicle 683 as \$14,300 on June 24, 2016, and on August 12, 2016, it set a value of \$13,400 on vehicle 683. *Id.* at 46:14-21; 47:24-48:1.

Richmond’s motor vehicles were originally purchased for \$4.7 million, although they are different ages. The average cost of their vehicles is \$23,637. In 2017,¹ Richmond incurred the following expenses: \$591,529 for motor vehicle insurance, \$3.1 million for vehicle maintenance,

¹ The accountant used the 2017 amounts although the collision occurred in 2016.

\$99,960 for registrations and fees, \$688,254 for excise taxes on the motor vehicles in inventory, and \$586,594 for office supplies and other costs of operating the business. Together with amounts for Richmond's wages, labor costs and rent paid, the accountant concluded that the total cost of a vehicle per day is \$27.03. Tr. 80:12-85:2. She made that computation by totaling all of these expenses, dividing the total by 1397 (for each car) and then dividing that total by 365 (days in the year).² *Id.* This cost analysis was completed by Jane Lattinville, a certified public accountant for thirty years. Tr. 75:7-9. Ms. Lattinville said costs could go up or down for each car, depending on total costs. Tr. 86:6-9.

The accountant testified that an analysis of the cost for a particular car would be "too cost prohibitive for a small company like Richmond." Tr. 85:11-12. Hence, she did not break down the cost analysis by type of motor vehicle, year . . . or specific car. Tr. 85:6-15. She did not consider the percentage of cars available. She used a five-year average life of each car in her computations, apparently as the IRS allows for depreciation over 5 years, without indicating the average life of a car on the Richmond lot. Tr. 80:25-81:3.

II

Presentation of Witnesses

Mr. Pereira testified first, as an adverse witness called by Richmond. He described the collision. He was clear, consistent and cooperative to all attorneys in his testimony. Mr. Pereira seemed uncomfortable in the courtroom setting, but straightforward with his responses. This, coupled with his lack of direct interest in the action and continued attempts to be complete and

² Registration fees are for two years so the \$99,960 figure was divided by two before this computation.

precise in his testimony, leaves the Court to find that he was quite credible. Mr. Tek was not called, and no other witness testified concerning the actual collision.

Patrick Allienello testified as the manager of Richmond. He described how the vehicles are managed, inventoried for rental availability, and the NADA values. He described Richmond's actions with vehicle 683. These issues did not appear to be in controversy. While consistent on direct examination, he appeared to be well-prepared and knowledgeable about the valuation issues at controversy in this case. He was less cooperative on cross-examination. When he was cross-examined about whether 17.5% of the inventory was available for rentals, he grew defensive. He acknowledged that the cars were available but attempted to emphasize the importance of having other cars available. Tr. 60:18-23; 63:12-20. He agreed that when Mr. Tek was using vehicle 683 it was not rented, that the vehicles could depreciate over different periods of time, and that each rental is for a different rental period and purpose. Tr. 63:24-64:8; 65:4-15; 66:2-15. He acknowledged that he had been convicted of embezzlement. Tr. 66:16-67:11. This, paired with his attempts to justify other responses on cross-examination, lessened his credibility. At the end of redirect, he claimed that Richmond must "have vehicles available at all times" or else "be out of business." Tr. 71:2; 71:7. However, Richmond never established that vehicles were unavailable at any time, or vehicles like 683 were ever unavailable.

Ms. Lattinville was credible, explanatory and professional. She noted that the cost analysis was not an accounting opinion, and this Court sees it as a simple mathematical analysis. She was cooperative but defensive of her client Richmond, and was only asked for this analysis. She admitted that it was not an analysis of actual loss, that the numbers were averaged, that she never considered the percentage of vehicles available for rent and did not know the actual life of the cars.

She cooperated with both attorneys, and was responsive and clear. The Court finds her very credible.

III

Analysis

This case, as originally filed in the District Court, sounds in one count: negligence. “To prevail on a claim of negligence, ‘a plaintiff must establish a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage.’” *Selwyn v. Ward*, 879 A.2d 882, 886 (R.I. 2005) (quoting *Mills v. State Sales, Inc.*, 824 A.2d 461, 467 (R.I. 2003)).

There is no question that Mr. Pereira owed a duty to the other drivers on the roadway, particularly as he was entering a roadway from a stopped position. *See Connor v. Bjorklund*, 833 A.2d 825, 827 (R.I., 2003). Mr. Pereira’s testimony is that he pulled out from a parking space after checking his side and rearview mirrors. Only Mr. Pereira testified, as there is no other witness to the incident. He claimed that Mr. Tek was speeding, but the Court cannot accept his opinion testimony as an expert, particularly when he never saw Mr. Tek approaching. Clearly, both of the drivers should have been aware of where they were going and the presence of the other vehicles nearby. Accordingly, the Court finds Mr. Tek to be thirty percent negligent for the collision, and Mr. Pereira to be seventy percent negligent. The Court further finds that the collision and the negligence of both drivers were the proximate cause of the damages to the vehicle.

A

Damages

As the case is to recover for damage to the vehicle, Richmond sufficiently established that the conduct of the two drivers resulted in the damage and that the vehicle was damaged. The

remaining dispute here is the issue of “loss of use” of the vehicle.³ The Plaintiff was quite specific in its closing memorandum, that it was seeking loss of use damages, not lost profits. (Plaintiff’s Closing Mem. 3.)

In *Longo v. Monast*, 70 R.I. 460, 465, 40 A.2d 433, 435 (R.I. 1944), plaintiff was seeking damages for the loss of use of his private motor vehicle after a collision. Plaintiff established that his car was damaged, he needed it for transportation to his employment, and he hired another vehicle. The high court concluded “we are of the opinion that plaintiff’s loss of use of his automobile was an element of damage for the jury [factfinder] to consider, even though such automobile was not used in plaintiff’s business.”

In *Newstone Development, LLC v. East Pacific, LLC*, 140 A.3d 100, 106 (R.I. 2016), the Court considered whether loss of use damages were appropriate for damage to a condominium unit, but as the unoccupied unit was fully restored and later sold at fair market value, loss of use damages were denied.

In the case at bar, the damaged vehicle was removed from service, repaired, returned to service and the property damage claim was resolved. The Plaintiff was not able to show by a preponderance of the evidence that this particular vehicle would have been rented or that any income was lost. While Mr. Allienello testified that the business must have vehicles available at all times, he never testified that the damage to this car prevented the company from renting out similar vehicles. While Ms. Lattinville testified to the cost of insurance, registration, maintenance and the inventory of the Plaintiff, she never established that the loss of use of the subject vehicle

³ Richmond was not seeking recovery for the cost to repair the car, as it appears that claim has already been resolved between the parties.

prevented any income⁴ – or created any expense which was not already settled. Specifically, she stated that she would not testify on the specific expenses to a specific vehicle. Richmond attempted a loss of profits analysis for the damaged car, without demonstrating what income, if any, was lost. More importantly, Richmond was unable to demonstrate (as Mr. Longo did in his case) that any harm was suffered because the vehicle was out of use. Richmond never established that it lost a single rental, that it was ever short of vehicles to rent, or that it suffered any other loss.

It stands to reason that the damage to a motor vehicle which places a car out of use can be a substantial inconvenience to a driver dependent on that car. In his case, Mr. Longo needed to find alternative transportation to get to his employment and proved that he paid for it. *Longo*, 70 R.I. at 465, 40 A.2d at 435. Others who suffer a loss to their car may need to obtain a tow truck, spend hours waiting in a body shop or suffer other actual losses. Here, Richmond was unable to show any such loss or inconvenience. Accordingly, plaintiff failed to establish any damages, which is an essential element in a negligence case.

IV

Conclusion

After a trial *de novo* and for the reasons stated herein, judgment is granted to the Defendant. No interest, no costs. The Defendant shall submit an appropriate judgment consistent herewith.

⁴ Compare the analysis of loss profits by our high court in *Troutbrook Farm, Inc. v. DeWitt*, 611 A.2d 820, 824 (R.I. 1992).



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Richmond Auto Sales, Inc. v. Carlos M. Pereira

CASE NO: PD-2018-6554

COURT: Providence Superior Court

DATE DECISION FILED: September 16, 2019

JUSTICE/MAGISTRATE: Lanphear, J.

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