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**STATE OF VERMONT
RUTLAND COUNTY**

TURUNEN TRUCK & EQUIPMENT)	Rutland Superior Court
)	Docket No. 806-11-07 Rdcv
Plaintiff,)	
)	
v.)	
)	
ALAN COOPER)	
)	
Defendant)	

**DECISION ON DEFENDANT’S MOTION FOR SUMMARY JUDGMENT,
FILED AUGUST 8, 2008**

This matter came on before the Court on defendant Alan Cooper’s Motion for Summary Judgment, filed August 8, 2008. Plaintiff Turunen Truck and Equipment filed a Memorandum in Opposition on December 11, 2008.

Plaintiff Turunen Truck and Equipment is represented by Antonin Robbason, Esq. Defendant Alan Cooper is represented by Harry R. Ryan, III, Esq.

Summary Judgment Standard

Summary judgment is appropriate where there is no genuine issue of material fact and the party is entitled to judgment as a matter of law. V.R.C.P. 56(c)(3). In response to an appropriate motion, judgment must be rendered "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 and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c)(3). In determining whether a genuine issue of material fact exists, the Court accepts as true allegations made in opposition to the motion for summary judgment, provided they are supported by evidentiary material. *Robertson v. Mylan Labs, Inc.*, 2004 VT 15, ¶ 15, 176 Vt. 356. The nonmoving party

then receives the benefit of all reasonable doubts and inferences arising from those facts. *Woolaver v. State*, 2003 VT 71, ¶ 2, 175 Vt. 397. Furthermore, where, as here, "the moving party does not bear the burden of persuasion at trial, it may satisfy its burden of production by showing the court that there is an absence of evidence in the record to support the nonmoving party's case. The burden then shifts to the nonmoving party to persuade the court that there is a triable issue of fact." *Ross v. Times Mirror, Inc.*, 164 Vt. 13, 18 (1995) (internal citations omitted).

Background

Alan Cooper worked for Nate Smith, an independent light trucker. On December 20, 2004, Mr. Cooper delivered a truck for Nate Smith to Turunen Truck and Equipment for repair. Turunen Truck and Equipment, in turn, gave Mr. Cooper a 2000 Ford Ranger pick-up truck as a loaner for Nate Smith. Mr. Cooper was to drive the loaner vehicle back to Nate Smith.

As Mr. Cooper was driving back to Nate Smith's on Route 133 to pick up his own truck, there was wintry weather, including the presence of ice on the roadways. The speed limit on Route 133 is 50 miles per hour. Mr. Cooper was driving 25 miles per hour. At some point during his travel on Route 133, Mr. Cooper lost control of the vehicle and hit a telephone pole, damaging the vehicle. Mr. Cooper contends that he lost control of the vehicle when he drove over a patch of black-ice.

On November 26, 2007, plaintiff filed a Complaint alleging that defendant was liable under the principles of bailment to maintain the good condition of the vehicle and return it in the condition it was provided to him.

In Motion for Summary Judgment, defendant argues that plaintiff has presented

no evidence to support its allegation that defendant was negligent in any way. Plaintiff argues that there is a presumption of negligence on the part of defendant, and therefore the issues raised by the defendant are disputed and not appropriate for Summary Judgment.

Discussion

In a bailment is created for the benefit of both the bailor and bailee, a bailee has a duty to exercise reasonable care for the safekeeping of the subject of the bailment and will be liable for any loss caused by its failure to do so. *LaPlace v. Briere*, 962 A.2d 1139, 1149 (N.J. Super. Ct. App. Div. 2009); *Wilson v. Burch Farms, Inc.*, 627 S.E.2d 249, 258 (N.C. Ct. App. 2006). When proof is presented showing that the property was delivered to the bailee; that the bailee accepted it and thereafter had possession and control of it; and that the bailee failed to return the property or returned it in a damaged condition; a presumption of negligence arises and in those circumstances, a prima facie case is established against the bailee. *LaPlace*, 962 A.2d at 1149; *Wilson*, 627 S.E.2d at 258. “The presumption of negligence, however, may be rebutted by the bailee with evidence showing that the loss was not caused by his negligence or that he exercised due care. The burden of proof always remains with the plaintiff.” *LaPlace*, 962 A.2d at 1149 (internal quotations and citations omitted).

In the present case, the facts are undisputed that the loaner truck was delivered to the bailee-defendant; that the bailee-defendant accepted the truck and thereafter had possession and control of it; and that the bailee-defendant returned the truck in a damaged condition. A presumption of negligence arises and a prima facie case is therefore established against the bailee. See *LaPlace*, 962 A.2d at 1149; see also *Wilson*, 627

S.E.2d at 258.

“As the operator of a motor vehicle, defendant had the duty to have it under reasonable and proper control at all times and that reasonable control requires that the speed of the car be reasonable under the circumstances.” *George v. Graham*, 151 Vt. 527, 529 (1989) (citing *Weeks v. Burnor*, 132 Vt. 603, 608 (1974)). “The circumstances of each case must determine the degree of alertness of an operator in looking out for road hazards.” *Id.* (citing *Beaucage v. Russell*, 127 Vt. 58, 62 (1968)).

It is undisputed that bailee-defendant was driving well below the speed limit. Bailee-defendant further contends that he drove over a patch of black-ice which was not visible. Bailee-defendant, however, has not demonstrated that there is no genuine issue as to any material fact and that he is entitled to judgment as a matter of law. There is a genuine issue of material fact as to whether the loss was not caused by his negligence or that he exercised due care in the operation of the vehicle under these circumstances. As this determination is one guided by the unique facts and circumstances of this case, it is best suited for a jury to decide.

ORDER

Defendant’s Motion for Summary Judgment, filed August 8, 2008, is DENIED.

Dated at Rutland, Vermont this ____ day of _____, 2009.

Hon. William Cohen
Superior Court Judge