

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

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CHERYL POTTER, Individually and :
as Parent and Guardian of :
KYLE POTTER, :

Plaintiff :

vs. :

FRANK B. MORSE and CARIBBEAN :
JEEP and CAR RENTAL, INC., :
Defendants :

CIVIL NO. 231/1983

ACTION FOR DAMAGES

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and Car Rental, Inc.)

MEMORANDUM OPINION
(August 20, 1986)

FEUERZEIG, J.

The court must determine whether a car rental agency's violation of the statutorily imposed record keeping and insurance provisions provides a basis for recovery by a plaintiff who was involved in an accident with a renter of an agency vehicle.

Defendant Caribbean Jeep and Car Rental, Inc. ("Caribbean Jeep") has moved for summary judgment and dismissal of the complaint. Defendant's motion, accompanied by a sworn deposition, is premised on the proposition that an owner or bailor of a motor vehicle is not liable for the negligence of a bailee in the

absence of a negligent entrustment or an employment relationship. The plaintiff argues, however, that Caribbean Jeep's failure to comply with its statutory obligation of keeping records is negligence per se. The court is of the opinion that there is no genuine issue as to any material fact and will grant Caribbean Jeep's motion. F.R.Civ.P. 56.

I

Caribbean Jeep on or about August 13, 1982, rented a vehicle to the co-defendant Frank Morse. On or about the same date, Morse allegedly collided his rental vehicle with a car driven by the plaintiff. The plaintiff subsequently filed this suit for damages against both Morse and Caribbean Jeep. Plaintiff's efforts to locate Morse for service, however, were futile. Consequently, service was made on the Office of the Lieutenant Governor pursuant to 20 V.I.C. §543 (1976). The plaintiff's subsequent failure to make timely efforts at giving notice of the proceeding to Morse, as section 543 requires, resulted in the dismissal of this action as to Morse.

II

Plaintiff's amended complaint asserts two alternative bases for Caribbean Jeep's liability: (1) negligent entrustment of defendant's vehicle to Morse and (2) Caribbean Jeep's failure to obtain a complete and accurate address for Morse, ^{1/} a violation of 20 V.I.C. §417 (1976). The defendant's motion for summary judgment, supported by the deposition of its manager, correctly argues that in the Virgin Islands an owner of a vehicle is not

^{1/} The address obtained by Caribbean Jeep from Morse was: Frank B. Morse - 18 Ballard Ln. - Marblehead.

liable for the negligence of a bailee unless the owner negligently entrusted the vehicle to the bailee or the owner has an agency relationship with the bailee. See Smith v. Hertz Rent-a-Car, 6 V.I. 235, 262 F.Supp. 431 (D.V.I. 1966), aff'd, 377 F.2d 885 (3d Cir. 1967); Estaphane v. Hobson, 18 V.I. 396 (D.V.I. 1981). Defendant contends that it had no reason to foresee that Morse might use defendant's vehicle in a dangerous manner because Morse previously had rented vehicles from the defendant without incident. Additionally, the defendant urges that it had no agency relationship with Morse at any time relevant to his accident with the plaintiff.

The plaintiff concedes that the defendant has correctly stated the two established bases for imposing liability on the theory of negligent entrustment, and does not contest that Caribbean Jeep previously rented vehicles to Morse without any problems. The plaintiff also does not assert that there was an agency relationship between Caribbean Jeep and Morse at the time of the accident in question. Clearly, then, there is no genuine issue as to Caribbean Jeep's lack of knowledge that Morse would be likely to use its vehicle in a manner involving unreasonable risk of harm to others or as to the absence of an agency relationship between Caribbean Jeep and Morse at the time of the accident. Finally, there is no evidence before the court that Morse even was driving the vehicle at the time of the accident. Accordingly, summary judgment will enter in favor of Caribbean Jeep on the issue of negligent entrustment.

III

The plaintiff, however, argues that Caribbean Jeep's alleged violation of 20 V.I.C. §417 is negligence per se. Although the plaintiff inexplicably attempts to interweave the theories of negligent entrustment and negligence per se, the court will address them as the distinct issues that they are.

For the purposes of the present motion, the court will assume that the address ^{2/}obtained by Caribbean Jeep from Morse at the time it rented its vehicle to him did not satisfy the requirements of section 417 ^{3/}. Whether this statutory violation amounts to negligence per se, though, hinges on a finding that (1) the statute is designed to protect the class of persons in which the plaintiff is included and (2) the statute is intended to protect the plaintiff against the risk of the type of harm that has in fact occurred as a result of its violation. See Restatement (Second) of Torts, §§286-288 (1965); William L. Prosser, Law of Torts, 4th Ed. at 200 (1979). This essentially is a question of legislative intent. ^{4/}

^{2/} See supra n. 1.

^{3/} The determination as to whether a person's act or failure to act meets the statutory standard of a reasonable person is properly a function of the jury or finder of fact. See, e.g., Marks v. Mobil Oil Corp., 562 F.Supp. 759, 768 (E.D. Pa. 1983); Springer v. Joseph Schlitz Brewing Co., 510 F.2d 468, 473 (4th Cir. 1975).

^{4/} Application of the negligence per se doctrine is very closely related to the process for determining whether a private cause of action is available for a statutory violation. "Both . . . address the question of whether the policy behind the legislative enactment will be appropriately served by using it to impose and measure civil damage liability." Frederick v. Thomas, 578 F.2d 513, 517 n. 8 (3d Cir. 1978). The doctrine of negligence per se is concerned with "determining whether a statute supplies the standard of conduct of a reasonable man." Swanston v. Government of the Virgin Islands, 17 V.I. 158, 162 (D.V.I. 1980).

Section 417 was enacted on January 3, 1968, along with the remainder of Chapter 38. ^{5/} As is clear from the language of the statute, it requires a renter of vehicles to keep a wide variety of information about its vehicles and their registration as well as information about the person renting the vehicle, including his permanent address. As a result, the relevant questions are why is a renter of vehicles required to keep this information and for whose benefit?

The last line of section 417 provides that the required information "shall always be open to inspection by the Commissioner [of Public Safety] or his designee." It would appear, therefore, that at least one purpose behind section 417 is to ensure that the Department of Public Safety has a complete record of all persons driving rental vehicles on public roads. Section 418 of Title 20 provides that all renters of vehicles must ensure that all rental vehicles have liability insurance, "whereby the insurer agrees to pay . . . on behalf of the driver . . . all sums which such driver shall become legally obligated to pay as damages . . . caused by accident." Subsection (b) provides that

^{5/} Section 417 provides:

No licensee may rent a drive-yourself car to another person until he shall have examined such other person's driving license and verified that such other person is legally authorized to operate a motor vehicle in the Virgin Islands. Every licensee shall keep a register containing the number of the registration license and license plates of the rented vehicle, and the name, the local address, and the permanent address of the person renting the vehicle. Such register shall also contain the pertinent information, including the number and the issuance and expiration dates, the person's Virgin Islands driving license and the person's foreign driving license in any case where the person's Virgin Islands license is a temporary permit. Such register shall always be open to inspection by the Commissioner or his designee.

it is the renter of the motor vehicle who will be liable to any party injured by the driver of a rental vehicle that is for any reason uninsured. Section 418 thus requires liability insurance or, in its absence, imputes liability for damage caused by the driver of a rental vehicle to the renter of the vehicle.

The obvious purpose of section 418 is to ensure that persons wrongfully injured by drivers of rental vehicles will have recourse to a source of funds to compensate them. Continental Insurance Co. v. Bodie, 18 V.I. 76, 83 (D.V.I. 1984). There is no evidence that Caribbean Jeep did not insure the vehicle. To the contrary, it represents that the vehicle was insured at the time of the accident.

When the information keeping requirements of section 417 are examined in conjunction with the imputed liability of section 418, it appears that another purpose of section 417 is to enable anyone who must pay for damage caused by the driver of a rental vehicle to locate that driver.⁶ Indeed, section 419 provides that a party injured by the driver of a rental vehicle may enforce his judgment against the driver "directly against the insurer," and section 419(b) provides that nothing in the imputed liability and mandatory insurance sections shall affect any rights the insurer or renter of the vehicle "may have to proceed, by subrogation or otherwise, against any person whose negligent or reckless use or operation of a drive-yourself car was the

⁶ This purpose is made more apparent by a review of the legislative history of the bill that included sections 417 and 418. See Leg. Debate on Bill 3478, 7th Spec. Sess., 7th Leg. Sess. of the V.I., December 18, 1967, at 14-58.

proximate cause of personal or property damage." There is nothing in the language of section 417, or anywhere else in Chapter 38, that suggests that section 417 is intended to protect persons in the plaintiff's position.

The court's conclusion also is supported by the fact that Chapter 38 includes a specific penalty for violations of any provision of the chapter or any rule or regulation issued pursuant to it. Section 423(b) specifically subjects any violator of Chapter 38 to a fine of not more than \$500 or revocation of the licensee's business license.

Finally, the conclusion that section 417 is not intended to protect persons injured by drivers of rental vehicles is bolstered by the fact that 20 V.I.C. §543(a)(1976) expressly provides:

"Any non-resident who operates a motor vehicle in the Virgin Islands . . . shall be deemed to have appointed the Government Secretary of the Virgin Islands as his agent upon whom may be served the process in any action against him arising out of any accident or collision occurring within the Virgin Islands. . . . (c) The provisions of this section shall also apply to a resident . . . who departs from the Virgin Islands after the accident, and who remains absent therefrom continuously for a period of 30 days after the accident, whether such absence is intended to be temporary or permanent."

Section 543, then, by specifically addressing the harm that the plaintiff asserts section 417 is intended to protect against--inability to locate a defendant for service of process--is persuasive evidence that the Legislature did not enact section 417 for that purpose.

In fact, it is the plaintiff's own failure to comply with the service requirements of section 543 that has resulted in her

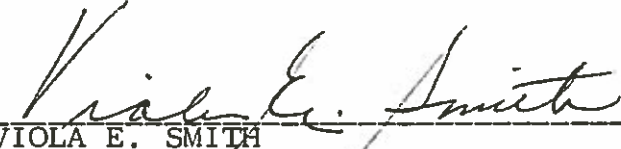
present predicament. The plaintiff filed this suit on March 22, 1983. A copy of the summons and complaint were served on the Lieutenant Governor on April 12, 1983, pursuant to 20 V.I.C. §543. Despite the mandate of section 543(b) that the plaintiff send the defendant driver notice of the action "not later than the day following commencement of the action," the plaintiff waited until September 23, 1983, and October 18, 1983, to send two different certified letters to Morse to give him notice of the proceedings. Both were returned because the address did not exist, but the plaintiff never notified the court of her failure to notify Morse, nor did she seek a court order for "such additional notice . . . as justice may require." 20 V.I.C. §543(b). She also failed to resort to substituted service under the Virgin Islands Long Arm Statute, 5 V.I.C. §4901 et seq. (1967). Instead, the plaintiff moved for entry of default against Morse in March of 1985. This court, though, by order of the Honorable Ishmael A. Meyers on April 12, 1985, found, in view of the 120-day requirement for service imposed by Rule 4(j), Fed.R.Civ.P., that "[i]t was incumbent on plaintiff's attorney to file the appropriate motion for substituted service or for an extension of time pursuant to Rule 6(b), Fed.R.Civ.P., on or before July 20, 1983." Having failed to take such action, the complaint against Morse was dismissed, pursuant to Fed.R.Civ.P. 12(b)(2), for lack of jurisdiction over the person.

Finally, the plaintiff's claim that she has been injured by Caribbean Jeep's failure to comply with section 417, even

assuming that the plaintiff had been able to establish negligence per se, must fail for lack of causation. "Not every breach of a legal duty is actionable in tort." Iron Mountain Security v. American Specialty Foods, Inc., 457 F.Supp. 1159, 1166 (E.D. Pa. 1978). Once a plaintiff has shown that the doctrine of negligence per se is applicable, to "hold the [defendant] liable, its conduct . . . must still be a legal cause of harm to the plaintiff." Swanston v. Government, supra at 167. Here, it is the plaintiff's failure to satisfy section 543, and not Caribbean Jeep's failure to comply with section 417, that is the cause of the plaintiff's inability to obtain judgment against Morse. There being no genuine issue as to any material fact and no basis in law for denying the defendant's motion for summary judgment, it will accordingly be granted.


HENRY L. FEUERZEIG
Judge of the Territorial Court

ATTEST:


VIOLA E. SMITH
Administrator/Clerk of the Court