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CASE SUMMARY: VEHICLE OWNER VICARIOUSLY LIABLE FOR ACCIDENT CAUSED BY UNKNOWN DRIVER

Vicarious liability affirmed for the owner of a vehicle driven by an unknown driver in an accident.

Insurance law – Automobile insurance – Consent to drive – Unidentified motorist – Statutory provisions – Vicarious liability – Practice – Appeals – Evidence

Megaro v. Vanstone, [2020] B.C.J. No. 1561, 2020 BCCA 273, British Columbia Court of Appeal, October 7, 2020, M.E. Saunders, G.J. Fitch and J.C. Grauer JJ.A.

The insurer appealed the trial judge's finding that the defendant vehicle owner was vicariously liable for personal injuries under s. 86(1) of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318. Section 86(1) imposes vicarious liability where a driver acquired possession of a motor vehicle with the express or implied consent of the vehicle's owner. In this case, the owner drove with three friends to a nightclub. The owner later gave the keys to one of his three friends and left the nightclub with his girlfriend in a taxi. Later that night, the vehicle was involved in an accident wherein the plaintiff was badly injured. The driver of the vehicle in the accident was never identified but was found at fault. At trial, the girlfriend testified that the owner had received a phone call shortly after arriving home from the nightclub. The owner then told her one of his friends was the driver in the accident but asked her to lie and say the vehicle was stolen. The owner did not testify at trial. Although it could not be determined who was the driver in the accident, the trial judge inferred that the driver was one of the owner's three friends who had express or implied consent to drive the vehicle, and imposed vicarious liability on the owner.

The insurer argued the trial judge had relied on inadmissible evidence to find the owner's vehicle was in the vicinity of the nightclub, one of the friends was the driver and the owner had consented to any of his friends driving the vehicle. The Court of Appeal agreed there was no direct evidence on any of the above points. The issue was whether the inferences drawn by the trial judge were based on accepted facts and reasonably supported by the evidence, as opposed to inferences based on speculation or conjecture.

The Court of Appeal held that the trial judge's findings were reasonably supported by the evidence at trial and dismissed the appeal. There were sufficient facts regarding the location of the nightclub, the accident and the owner's home to infer the vehicle was in the vicinity of the nightclub when the owner left. Further, although it was hearsay, it was open to the trial judge to rely on the girlfriend's statements for a circumstantial purpose. On this basis, the statements were sufficient grounds to infer the owner's involvement in the circumstances of the accident. Finally, the evidence of the four men traveling to the nightclub, the owner leaving early and the defensive attempt at deception was sufficient evidence to infer the owner's express or implied consent to one of the three friends to use the vehicle.

This case was digested by Michael J. Robinson, and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Michael J. Robinson at mrobinson@harpergrey.com.