J.J. V. C.C.: Court Of Appeal Finds Garage And Car Dealership Owed Duty Of Care To Minor Who Stole Vehicle From Premise

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In a recent decision, J.J. v. C.C., 2016 ONCA 718, the Ontario Court of Appeal found that a garage and car dealership owed a duty of care to a minor who was injured after participating in the theft of a vehicle from the dealership's premises.

On a summer evening in 2006, two teenagers walked around their hometown with the intention of stealing from unlocked cars before finding themselves at Rankin's Garage & Sales — a business that serviced and sold cars and trucks. The garage property was not secured, and the two found an unlocked Toyota Camry with keys left in the ashtray. Despite not having a driver's license or any driving experience, one teen got behind the wheel and set off for a joyride with the plaintiff as his passenger. The vehicle crashed, and the plaintiff suffered a catastrophic brain injury.

The Trial Judge determined that the garage owed a duty of care to the minor plaintiff and a jury apportioned 37% responsibility to the garage for the teen's injuries. The primary issue on appeal was whether the Trial Judge had erred in finding that the garage owed a duty of care to the plaintiff in the circumstances, which included his participation in the theft.

The Court of Appeal canvased existing law considering whether a duty of care was owed in cases arising out of the theft of a vehicle. The Court of Appeal noted that in most cases, a duty of care was not owed to third parties and that one would think that the argument against liability in negligence would be at least as strong, if not stronger, where injuries were sustained by someone involved in the theft. The Court of Appeal found none of the prior case law to be analogous, and held that the Trial Judge had erred in finding that the asserted duty of care had already been recognized. The Court of Appeal applied the Anns-Cooper test to determine whether a duty of care existed.

The Court of Appeal found it reasonably foreseeable in the circumstances that minors might steal an unlocked car with keys in it and injure themselves doing so. The basis for this conclusion was that Rankin's Garage was easily accessible, there were no security

measures to keep people off the property after hours, cars were left unlocked with keys in them, and there was evidence of a history of theft in the area and from the garage itself.

The Court of Appeal also concluded that, on the facts presented, the actions of Rankin's Garage had a sufficiently close or direct effect on the plaintiff to establish proximity between the two. The Court of Appeal concluded that that the garage should have had minors like the plaintiff in mind when considering security measures, and that the care and control of many vehicles imposed a responsibility of securing them against minors. Securing vehicles by locking them and keeping keys secure was not an onerous obligation.

The Court of Appeal reached this conclusion on proximity despite no evidence that the plaintiff and his accomplice had ever attempted to steal before, or were known to the garage in any way.

Finally, the Court of Appeal did not feel that there were any residual policy concerns that would negate the existence of a duty. The Court of Appeal emphasized that the duty of care would only arise in specific circumstances that would strictly limit its application.

The Court of Appeal clarified that the case was "concerned with the duty of care owed by adults to minors". It was emphasized that the defendant operated a commercial garage that had care and control of a number of vehicles on its premises, and that the garage would be an inviting target for theft and joyriding by minors.

Furthermore, the Court of Appeal also concluded that the fact that the plaintiff had participated in the theft of the vehicle did not bar the plaintiff's ability to recover in tort. Rather, where a plaintiff's injuries are partially the result of their own wrongdoing, this is to be taken into account through contributory negligence. It is noteworthy that the jury apportioned 10% liability to the plaintiff.

The Court of Appeal's decision, although specific to the facts at issue, reinforces that businesses that have care and control of vehicles may owe a duty to ensure that the vehicles are secured and should implement appropriate security measures. The duty would have been met in this case by locking the vehicles and securing their keys.

At the same time, the fact that the plaintiff was a minor appears to have played a significant role in the Court of Appeal's conclusion on the existence of a duty of care. Nonetheless, the proximity analysis undertaken by the Court of Appeal is difficult to reconcile with prior case law. In particular, there appears to have been little factual support for the conclusion that there was a close and direct relationship between the garage and the plaintiff.

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