

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

NATIONWIDE GENERAL )  
INSURANCE COMPANY ) C.A. No. 05C-10-039 (JTV)  
)  
Plaintiff, )  
)  
v. )  
)  
CHARLES F. MENDES and )  
JOSEPH E. BRADLEY, RICHARD E )  
CRAMER, THOMAS M. )  
LEONARD, and KATHLEEN )  
REYNOLDS, )  
)  
Defendants. )

*Submitted: February 23, 2007*

*Decided: May 31, 2007*

Neil R. Lapinski, Esq., Swartz Campbell, Wilmington, Delaware. Attorney for Plaintiff.

T. George Lees, Esq., Rawle & Henderson, Wilmington, Delaware. Attorney for Defendant Bradley.

Gregory A. Morris, Esq., Liguori, Morris & Yiengst, Dover, Delaware. Attorney for Defendant Cramer.

Kelly D. Geloff, Esq., Tunnell & Raysor, Georgetown, Delaware. Attorney for Defendant Leonard.

Jeffrey J. Clark, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Defendant Reynolds.

Charles F. Mendes, *Pro Se*.

Joseph E. Bradley, *Pro Se*.

*Upon Consideration of Plaintiff's  
Motion For Summary Judgment*  
**DENIED**

**VAUGHN, President Judge**

**OPINION**

On October 25, 2005, Nationwide General Insurance Company (“Nationwide”) instituted this declaratory judgment action against defendants Joseph Bradley (“Mr. Bradley”) and Charles Mendes (“Mr. Mendes”) to determine its duty to indemnify or defend either in a personal injury action pending against them in this Court.<sup>1</sup> On February 23, 2007, the plaintiffs in the underlying personal injury action, Richard Cramer (“Mr. Cramer”), Kathleen Reynolds (“Mrs. Reynolds”) and Thomas Leonard (“Mr. Leonard”), were joined as defendants in this case.

The underlying tort action is the result of a car accident that occurred in Kent County, Delaware on April 19, 2003. The plaintiffs in the underlying action allege that they were seriously injured when Mr. Bradley ran the 1991 Ford Thunderbird he was driving through a stop sign, colliding with their vehicle.<sup>2</sup> Included as a defendant in the underlying action is Mr. Mendes, Mr. Bradley’s uncle. The defendants in this action maintain that Mr. Mendes owned the Ford Thunderbird driven by Mr. Bradley on April 19, 2003 and that the vehicle was insured by Nationwide under Mr. Mendes’ policy. The defendants assert two alternative theories of liability against Mr. Mendes:

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<sup>1</sup> *Reynolds v. Bradley, et. al.* C.A. No. 03C-11-040 RBY. Two additional personal injury actions arising from the same accident, *Leonard v. Bradley, et. al.* C.A. No. 05C-04-016 THG and *Cramer v. Bradley, et. al.* C.A. No. 05C-04-027, have been consolidated with *Reynolds v. Bradley*.

<sup>2</sup> Plaintiffs were occupants of a 1992 Mercury Topaz at the time of the collision.

*Nationwide v. Mendes, et al.*  
C.A. No. 05C-10-039 (JTV)  
May 31, 2007

*respondeat superior* and negligent entrustment.<sup>3</sup>

Before the Court now is Nationwide's request for summary judgment, specifically, a declaration that they owe no duty to indemnify or defend Mr. Bradley and/or Mr. Mendes in the underlying personal injury action. Mrs. Reynolds, Mr. Leonard and Mr. Cramer have opposed Nationwide's motion for summary judgment.<sup>4</sup>

### STANDARD OF REVIEW

Summary Judgment should be rendered if the record shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.<sup>5</sup> The facts must be viewed in the light most favorable to the non-moving party.<sup>6</sup> Summary judgment will not be granted if the record indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.<sup>7</sup>

### DISCUSSION

Nationwide contends that legal title to the 1991 Ford Thunderbird passed from Mr. Mendes to Mr. Bradley on November 26, 2002 when both parties endorsed the

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<sup>3</sup> Whether Mr. Mendes is in fact liable under either theory is not at issue in this motion.

<sup>4</sup> Mrs. Reynolds, Mr. Leonard and Mr. Cramer filed separate, but virtually identical motions in opposition to Nationwide's motion for summary judgment. For convenience, Mrs. Reynolds, Mr. Leonard and Mr. Cramer will be collectively referred to as "the defendants" throughout this Opinion.

<sup>5</sup> Superior Court Civil Rule 56(c).

<sup>6</sup> *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. 1995).

<sup>7</sup> *Liberty Mutual Ins. Co. v. Devlin*, 1998 Del. Super. LEXIS 109 at \*9.

*Nationwide v. Mendes, et al.*  
C.A. No. 05C-10-039 (JTV)  
May 31, 2007

vehicle's certificate of title and registration card during an alleged sale.<sup>8</sup> As evidence of the transfer, Nationwide has proffered the following: a photocopy of the vehicle's purported bill of sale;<sup>9</sup> a photocopy of the purported back of the vehicle's certificate of title,<sup>10</sup> which contains no vehicle identifying information; a photocopy of the front of the vehicle's registration card;<sup>11</sup> and finally, a photocopy of the purported back of the vehicle's registration card, which again, contains no vehicle identifying information.<sup>12</sup>

The defendants argue that Nationwide's proffered evidence regarding the transfer of legal title is insufficient as a matter of law to rebut the Division of Motor Vehicles' ("DMV") registration records, which list Mr. Mendes as the owner on April 19, 2003.

Under Delaware laws regulating ownership of a motor vehicle, an owner is "a

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<sup>8</sup> *Delvin*, 1998 Del. Super. LEXIS 109 (holding that legal title to a vehicle passed when title was endorsed by the seller and buyer).

<sup>9</sup> The alleged bill of sale was signed as follows: Seller, "Charles Mendes," Buyer, "Joseph E. Bradley," and Witness, "Paul E. Bradley." The alleged bill of sale indicates a November 26, 2002 sale date.

<sup>10</sup> The photocopy of the purported back of the title indicates an assignment of title on November 26, 2002 from Charles Mendes to Joseph Bradley.

<sup>11</sup> The photocopy of the front of the vehicle's registration card indicates that Charles Mendes had the vehicle titled in his name as of May 23, 2001, but is otherwise unhelpful.

<sup>12</sup> The photocopy of the purported back of the registration card is signed by "Charles Mendes," as seller, and "Joseph Bradley," as buyer. It indicates a November 26, 2002 sale date.

***Nationwide v. Mendes, et al.***  
C.A. No. 05C-10-039 (JTV)  
May 31, 2007

person who holds legal title of a vehicle...”<sup>13</sup> “Proof that a motor vehicle is registered by a Certificate of Title in a person's name creates a *prima facie* case of ownership.”<sup>14</sup> However, that presumption is rebuttable.<sup>15</sup>

Mr. Mendes testified that he filled out and mailed in the bottom portion of the vehicle’s title to the DMV following the vehicle’s sale. However, it is undisputed that on April 19, 2003, Mr. Mendes was still the registered owner of the 1991 Ford Thunderbird.<sup>16</sup> The original title and registration card for the Thunderbird have not been produced, presumably, because the documents have been lost. Nationwide has produced only photocopies of documents that could, or could not be, related to the alleged November 26, 2002 transfer of title. Specifically, Nationwide has proffered what appears to be the back of a vehicle’s certificate of title; however, the back of the title contains no vehicle identifying information. Additionally, the photocopy of what is purported to be the back of the vehicle’s registration card contains no vehicle identifying information.

I conclude that the proffered evidence is insufficient to determine as a matter of law that legal title passed from Mr. Mendes to Mr. Bradley prior to the April 19, 2003 accident. Issues remain, such as the credibility of Mr. Bradley and Mr. Mendes.

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<sup>13</sup> *Devlin*, 1998 Del. Super. LEXIS 109 at \*11-12 *citing* 21 *Del. C.* § 101(45).

<sup>14</sup> *Id.* at \*12 *citing* *Finkbiner v. Mullins*, 532 A.2d 609, 613 (Del. Super. 1987).

<sup>15</sup> *Id.*

<sup>16</sup> Mr. Mendes was still the owner of the Thunderbird on February 20, 2007, according to a Division of Motor Vehicles’ title search.

*Nationwide v. Mendes, et al.*  
C.A. No. 05C-10-039 (JTV)  
May 31, 2007

Therefore, summary judgment is inappropriate on the issue at this time.

In addition to claiming that legal title had properly passed, Nationwide claims that because Mr. Mendes did not own the vehicle on April 19, 2003, he did not retain an insurable interest at the time. To support its position, Nationwide cites *Morgan v. State Farm Mutual Automobile Insurance Company*,<sup>17</sup> and *Malloy v. Fidelity and Guaranty Company*,<sup>18</sup> without elaboration.

In *Morgan* and *Malloy*, insurance coverage disputes were resolved based on the “equitable ownership” of the automobile at the time of an accident.<sup>19</sup> In both cases, the buyer was deemed to be the equitable owner of the vehicle at the time of an accident, despite the parties’ failure to properly transfer legal title at the time of sale. Thus, the seller’s ownership interest had extinguished, and the seller’s insurer was not liable for damages resulting from the accident.

*Morgan* and *Malloy* are distinguishable from the case at hand in one important way. In *Morgan* and *Malloy*, the Court determined that the parties had conducted a

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<sup>17</sup> 402 A.2d 1211 (Del. Super. 1979) (where insured was unaware of statutory procedure for transfer of title, had done everything legally required to relinquish ownership of automobile, and insured did not intend to retain insurable interest in automobile, failure to observe proper procedure for transfer of title did not invalidate the intended sale).

<sup>18</sup> 1992 Del. Super. LEXIS 318. (finding no insurance coverage because seller had no insurable interest even though her name remained on the registration and title to the vehicle after she relinquished possession and control of the vehicle and had no other ownership interest).

<sup>19</sup> Specifically, the cases address the issue of determining coverage of a vehicle when there has been a transfer that does not strictly comply with the proper procedure for transfer of title. The coverage determination is based on the absence or presence of an insurable interest in the vehicle established through the surrounding circumstances evidencing the intent of the seller to relinquish ownership of the automobile.

*Nationwide v. Mendes, et al.*  
C.A. No. 05C-10-039 (JTV)  
May 31, 2007

sales transaction that was simply flawed in some way. Here, the defendants challenge whether the sales transaction actually took place and the credibility of the parties that claim it did.

To a varying degree of detail and consistency, Joseph Bradley, Paul Bradley, Joseph's father, and Mr. Mendes, Joseph's uncle, each testified about the circumstances surrounding the alleged sale and ownership of the 1991 Ford Thunderbird via deposition. In summary, each contends that Mr. Mendes sold Joseph Bradley the Ford Thunderbird prior to April 19, 2003.

Although addressed only briefly by the defendants in their papers, it was clear through oral argument that the defendants seriously question the credibility of Mr. Mendes, Joseph Bradley, and Paul Bradley.<sup>20</sup> While the defendants may not have direct evidence contradicting the testimony of the just mentioned witnesses, I agree that factual issues, including credibility issues, exist which should be resolved by a jury. "When the court concludes that there are litigable issues of credibility that bear on material factual disputes, summary judgment is not appropriate."<sup>21</sup> Here, the only witnesses/signatories to the Thunderbird's sale are not only relatives, but also interested parties.

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<sup>20</sup> Specifically, the investigating officer at the scene of the April, 2003 accident reported that Canterbury Motors, Paul Bradley's used car dealership, owned the Thunderbird.

<sup>21</sup> *Johnson v. Shapiro*, 2002 Del. Ch. LEXIS 122 at \*12; *Cerberus Int'l, Ltd. v. Apollo Mgmt., L.P.*, 794 A.2d 1141, 1149 (Del. 2002) ("If the matter depends to any material extent upon a determination of credibility, summary judgment is inappropriate").

*Nationwide v. Mendes, et al.*

C.A. No. 05C-10-039 (JTV)

May 31, 2007

Whether the vehicle was sold by Mr. Mendes to Mr. Bradley is a disputed fact<sup>22</sup> and the credibility of witnesses involved in the alleged transaction are at issue; therefore, summary judgment is inappropriate on the issue.

For the above reasons, Nationwide's motion for summary judgment is *denied*.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary  
cc: Order Distribution  
File

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<sup>22</sup>*Devlin*, 1998 Del. Super. LEXIS 109 at \*9.