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A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS
SECREST WARDLE

What NOT to Do When Renting a Car

By Mohammad G. Beydoun **September 7, 2023**

In *Evans v Avis Budget Car Rental, LLC*, unpublished opinion per curiam of the Court of Appeals, issued August 10, 2023 (Docket No. 361808), the Court of Appeals found that the Defendant (Avis Budget Car Rental) was entitled to summary disposition of Plaintiff's PIP claim because Plaintiff was unable to present evidence to show a genuine issue of material fact with respect to whether Plaintiff was (1) "willingly operating or willingly using a motor vehicle or motorcycle" that (2) was unlawfully taken by someone, and (3) the person seeking benefits "knew or should have known" that the motor vehicle was taken unlawfully.

Plaintiff was involved in a motor vehicle accident while driving a rental car that his then-girlfriend had rented from Avis. Above the signature line on the rental agreement was language stating, in pertinent part, "[n]o additional drivers allowed without prior written consent." It was undisputed that Plaintiff's girlfriend never attempted "to obtain such consent or to have Plaintiff listed as an authorized driver of the rental car." Following the accident, Plaintiff sought personal injury protection (PIP) benefits through Defendant as the no-fault insurer of the rental car. Following discovery, Defendant moved for summary disposition under MCR 2.116(C)(10).

In their motion, Defendants asserted that there was no genuine issue of material fact concerning whether Plaintiff was entitled to recover no-fault PIP benefits under MCL 500.3113(a) because Plaintiff had "unlawfully taken" the rental vehicle and was not listed as an authorized driver under the Avis rental agreement. Plaintiff "knew or should have known" that the car was taken unlawfully. In response, Plaintiff alleged that there was a question of fact regarding whether his conduct constituted an "unlawful taking" under MCL 500.3113(a) because Plaintiff had no reason to believe that he lacked the authority to drive the rental vehicle as he and his girlfriend consistently rented cars for the past several years for Plaintiff's use. The trial court granted Defendants' motion, determining that there was no genuine factual dispute regarding whether Plaintiff had "unlawfully taken" the vehicle rented by his girlfriend or whether Plaintiff "knew or should have known" that the vehicle had been taken unlawfully.

SECREST WARDLE NOTES

In *Ahmed v Tokio Marine Am Ins Co*, 337 Mich App 1, 10 (2021), the Court of Appeals established a three-prong test to evaluate claims under MCL 500.3113(a) and determined that "the disqualification applies to any person (1) 'willingly operating or willingly using a motor vehicle' that (2) was unlawfully taken by someone, and (3) the person seeking benefits 'knew or should have known' that the motor vehicle was taken unlawfully." Therefore, in determining whether a taking is "unlawful," a breach of a vehicle rental agreement between two parties is conclusive proof of a party's unauthorized, and therefore unlawful, use of a motor vehicle. If a rental agreement requires authorization, either expressed or implied, it must be given by the vehicle owner (rental company) not the renter. As such, the language of the rental agreement is binding in determining who is authorized to use the rented vehicle.

On appeal, the Court addressed two main issues. The first is whether Plaintiff's use of the motor vehicle rented by his girlfriend constituted an "unlawful taking" under the Michigan Penal Code. The second is whether Defendant demonstrated facts to determine that Plaintiff "knew or should have known" that his operation of the rental vehicle was unlawful.[1]

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Regarding the first issue, Plaintiff argued that Defendant failed to establish that he had "unlawfully taken" the rental car under MCL 500.113(a) because Plaintiff was a named driver on his girlfriend's automobile insurance policy, Plaintiff had a valid driver's license at the time of the accident, and his girlfriend regularly rented vehicles on Plaintiff's behalf. Despite this argument, the binding rental agreement between Avis and Plaintiff's girlfriend explicitly prohibited additional drivers from operating the rental vehicle without the written consent of Avis. As such, the Court of Appeals recognized that it is well established that a breach of a vehicle rental agreement between two parties is conclusive proof of a party's unauthorized, and therefore unlawful, use of a motor vehicle. See *Ahmed*, 337 Mich App at 13. The vehicle's owner was Avis, not Plaintiff's girlfriend, and Avis did not give Plaintiff express or implied permission to drive the rental vehicle. The rental agreement did the exact opposite. The plain language of the agreement stated that no "additional drivers are allowed without prior written consent." Thus, Plaintiff's use of the vehicle was unlawful.

Regarding the second issue, Plaintiff argued that Defendants presented insufficient evidence to demonstrate that Plaintiff "knew or should have known" that he did not have permission to drive the rental vehicle because the deposition testimony established that Plaintiff's girlfriend had an extensive history of renting vehicles, particularly from Avis, to provide Plaintiff with transportation. The Court of Appeals found that Plaintiff's subjective belief that he had permission to use the rental vehicle was not sufficient to demonstrate that he did not take the vehicle unlawfully. (Citing, *Ahmed*, 337 Mich App at 24.) A plaintiff's actual knowledge of his lack of authorization is unnecessary "so long as a plaintiff should have known that he or she was taking a motor vehicle contrary to the owner's directive." Id. at 25. The Court of Appeals rejected Plaintiff's argument, stating that Plaintiff's deposition testimony established that he was aware that the vehicle he was operating was a rental car, and because Plaintiff was highly familiar with the process of renting vehicles, particularly from Avis, he should have known that "a person may not simply take what he knows to be another's property without taking any steps to determine if the owner authorized the taking." (Citing, *Ahmed*, 337 Mich App at 27.)

Plaintiff next argued that he was never given explicit notice that he was not authorized to drive his girlfriend's rental vehicle. (Citing, *Spectrum*, 492 Mich at 537-538.) The Court of Appeals noted that a vehicle owner is not required to make such an explicit statement to anyone not authorized to drive it.

[1] MCL 500.3113(a) provides in pertinent part:

A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
(a) the person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

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