The Approaching Aston Martin

To those readers who, like the author, have attained a certain vintage, the words "agent" and "Aston Martin" in proximity to each other immediately suggest one thing – "Bond, James Bond." Although those words are present, the master spy is nowhere to be found in the October 1, 2007 decision of the United States District Court for the Southern District of West Virginia, Charleston Division, in *Edmonds v. Kessler.*

According to the Court, on October 18, 2005, Dean S. Edmonds, Jr. was driving a "rare" 1962 Aston Martin DB4 "in a vintage car rally near the town of Nettie" in Summers County.

James Hefner, driving the personal pickup truck of John Kessler, pulled out from a side road onto the main road where Edmonds was driving. Edmonds honked the Aston Martin's horn and Hefner stopped in the middle of the main road. Edmonds swerved to avoid Hefner and struck a guardrail, damaging the Aston Martin. (Actually, a lot better than Bond did in *Goldfinger,* he swerved and put his DB5 into a brick wall.)

Edmonds sued both Hefner and Kessler. Kessler had needed to move a dump truck, and had asked Hefner to follow in Kessler's pick-up. Edmonds claimed Kessler should be held vicariously liable. Kessler argued there was no relationship making him legally responsible, since Hefner was not working for Kessler, but was moving the pick-up as a favor.

After the accident, Hefner was found down the road speaking with Kessler. The defendants explained that Hefner left to inform Kessler of the accident. Edmonds argued that Hefner fled the scene.

The defendants made three motions for partial summary judgment, asking the Court to dismiss certain of Edmonds' claims without a trial.

The Court first assessed the defendants' motion for partial summary judgment that Hefner was not Kessler's employee. "Under West Virginia law, the test for vicarious liability based on a principal-agent relationship consists of four factors: 1) selection and engagement of the servant, 2) payment of compensation, 3) power of dismissal, and 4) power of control. . . . It is not essential, however, that the first three factors be met; the power of control is determinative."

"[A] principal can be liable for the torts of a gratuitous [uncompensated] agent. . . . The fact that Hefner might have been driving the truck as a favor to Kessler is, therefore, not dispositive on the issue of whether or not Kessler could be held liable for the actions of Hefner.

"Hefner was clearly moving the truck for Kessler's benefit and not his own. The undisputed facts make clear that Kessler requested Hefner drive the pick-up truck in order to assist Kessler's business. Taking the facts in the light most favorable to the plaintiff [treating Edmonds' unproven allegations as true solely for purposes of deciding the motion], the Court is unable to find that Hefner was not serving as Kessler's employee or agent for the purpose of moving the pick-up truck. Consequently, the defendants' motion for summary judgment on the non-employee status of Mr. Hefner is DENIED."

The Court then turned to the defendants' motion for partial summary judgment regarding Edmonds' claim that the Aston Martin had diminished in value. "[I]f the owner of a vehicle, which is damaged and subsequently repaired can show a diminution in value based upon structural damage after repair, then recovery is permitted for that diminution in addition to the cost of repair, but the total shall not exceed the market value of the vehicle before it was damaged. . . . [Here, b]ecause repairs have not yet been completed on the vehicle, the defendants motion for summary judgment on diminution in value is DENIED WITHOUT PREJUDICE as premature [it could be brought again later]."

Finally, the Court did grant the defendants' motion for partial summary judgment eliminating Edmonds' claim for punitive damages. "[T]o recover punitive damages . . . is necessary to show, 'gross fraud, malice, oppression, or wanton, willful, or reckless conduct or criminal indifference to civil obligations affecting the rights of others' or that 'legislative enactment authorizes it.'"

"Reckless conduct" requires that "the actor has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow."

"Nothing from the facts indicates behavior rising to the required degree of egregiousness. Even making all possible inferences in favor of the plaintiff, the Court cannot find support for a claim of punitive damages based on recklessness. To the contrary, the failure to stop at the end of a side road, without other extenuating factors, seems quintessentially to be garden variety negligence. Further, under the circumstances in which the accident took place, flight from the scene would not indicate the kind of conscious indifference to consequences necessary to find Mr. Hefner reckless."

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