

SHORT FORM ORDER

SUPREME COURT-STATE OF NEW YORK

SCAN

PRESENT:

HON. BRUCE D. ALPERT

Justice

TRIAL/IAS, PART 9

DIANE SARA TORNELLO,

MOTION SEQUENCE #s 3-4

Plaintiff,

INDEX NO. 16219/98

-against-

MOTION DATE:  
November 22, 2000

OYSTER BAY NISSAN, ANTHONY CELARDO, GEORGE  
CELARDO, LORETTA CELARDO and BERNARD  
CELARDO,

ACTION NO. 1

Defendants,

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

LIBERTY MUTUAL INSURANCE COMPANY  
a/s/o DIANE SARA TORNELLO,

INDEX NO. 325/00

ACTION NO. 2

Plaintiff,

-against-

GEMINI ENTERPRISES, INC., d/b/a OYSTER BAY  
NISSAN, ANTHONY CELARDO, GEORGE  
CELARDO, LORETTA CELARDO,

Defendants.

The following papers read on these applications for summary judgment:

Notices of Motion	XX
Opposing Papers	XXXXX
Reply Papers	XXXX
Memoranda of Law	XXX

Upon the foregoing papers it is ordered that the motion by defendants, George, Loretta and Bernard Celardo, in action # 1, exclusively, for the summary dismissal of plaintiff's complaint pursuant to CPLR 3212 is granted as to George and Bernard Celardo, but denied as to Loretta Celardo, and the motion by defendant, Gemini Enterprises, Inc. d/b/a Oyster Bay Nissan ("Nissan"), for the summary dismissal of plaintiffs' complaints in Actions # 1 and # 2 pursuant to CPLR 3212 is denied in its entirety.

At the outset the Court notes that a motion for consolidation of the above-captioned actions was submitted and determined prior to submission of the applications at bar. The subject motion was granted to the extent that the two actions were joined for trial, pursuant to this Court's order dated August 25, 2000.

The following facts are not in dispute. On May 20, 1998, plaintiff Tornello was a passenger in a 1980 Corvette driven by defendant, Anthony Celardo. This defendant lost control of the vehicle, and it struck a tree. As a consequence, Ms. Tornello is alleged to have sustained serious injuries. At the time of the subject occurrence, the host vehicle was adorned with the dealer plate for Anthony Celardo's demo-vehicle, a 1998 Nissan Altima GLE which he was permitted to drive by his employer, Nissan. On the day of the accident, Anthony Celardo removed the license plate from the demo-vehicle and affixed it to the Corvette, a vehicle for which license plates appear not to have been assigned.

At the time of its purchase in 1984, Anthony's mother, defendant, Loretta Celardo, was listed as the title owner of the Corvette. From 1988 until 1991, Anthony's wife, Donna Celardo, was listed as the title owner. In 1991, title to the motor vehicle was returned to Loretta Celardo. At the time of the

accident, records of the Department of Motor Vehicles continue to reflect Loretta Celardo as the owner of the vehicle.

The identity of the title owner at the time of the accident is the subject of a vigorous dispute. Anthony, George, Loretta and Bernard Celardo insist that title thereto was transferred by Loretta Celardo to Anthony Celardo on May 14, 1998, six days before the accident. On that date, Loretta Celardo allegedly executed the back of the certificate of title as “seller”, and Anthony Celardo allegedly executed the certificate as “buyer”. The certificate of title was dated and the odometer reading was recorded by George Celardo, Anthony’s father.

Plaintiff, however, insists that the Celardos transferred the title to the Corvette after the accident and back-dated the transfer in order to insulate George and Loretta Celardo from vicarious liability for the injuries sustained in the accident. Plaintiff further analyzes the history of legal title to the subject vehicle in support of her theory that title was only transferred subsequent to the vehicle’s destruction in the underlying accident.

An owner is vicariously liable for injuries resulting from the negligent operation of the owned vehicle when operated with the express or implied permission of the owner. (Vehicle and Traffic Law §388) An owner is defined as a person having title to a vehicle. (Vehicle and Traffic Law §128) Although a vehicle’s title record constitutes prima facie evidence of ownership (Vehicle and Traffic Law §2108[c]), this presumption may be rebutted by evidence that another individual is, in fact, the owner of the vehicle at issue. (see, **Sosnowski v Kolovas**, 127 AD2d 756)

Where, as here, evidence to rebut the presumption is submitted, but that evidence is inconclusive, a triable question of fact is presented. (see, **Doughty v Johnson**, 155 AD2d 513;

**Sosnowski v Kolovas**, supra; Matter of **Chesworth v Block**, 145 AD2d 418; see also, **Dorizas v Island Insulation Corp.**, 254 AD2d 246, lv den 93 NY2d 810 [hearing held on issue of ownership]; cf., **Pearson v Redline Motor Sports, Inc.**, 271 AD2d 222 [1st Dept.] [defendant's evidence of transfer was uncontroverted])

Furthermore, a summary determination is particularly inappropriate here, because the credibility of Anthony, George and Loretta Celardo, who are possessed of exclusive knowledge of key facts, should not be determined by affidavits, but by the trier-of-fact after cross-examination. (see, **Clemente v Grow Tunneling Corp.**, 235 AD2d 331 [1st Dept.]; **Kindzierski v Foster**, 217 AD2d 998, 1000 [4th Dept.]; **French v Cliff's Place, Ltd.**, 125 AD2d 292; **Castillo v General Accident Insurance Company of America**, 111 AD2d 112 [1st Dept.])

In contrast, not a scintilla of evidence has been produced tending to demonstrate that either George or Bernard Celardo were among the title owners of the subject vehicle.

Based on the foregoing, the motion for summary judgment dismissing the complaint is granted as to defendants, George and Bernard Celardo, and denied as to defendant, Loretta Celardo. The litigation against the remaining defendants in action # 1 is severed and continued.

Nissan seeks summary judgment dismissing the complaint in both the personal injury action as well as the subrogation action initiated by Tornello's insurer to recover additional Personal Injury Protection paid to Tornello. Nissan's liability in the two actions is predicated on the alleged permissive use of its dealer plate on the Corvette at the time of the accident.

Anthony Celardo testified that he understood that he could use the Nissan dealer plate on owned and non-owned vehicles, and that his understanding was confirmed by the insurance card for the

demo-vehicle he was permitted to drive. Anthony Celardo further testified that Nissan's owner, Nick Guadano, expressly consented to the use of the dealer plate on the Corvette.

New York enforces a strong public policy to protect those injured through the negligent operation of motor vehicles. (see, **Motor Vehicle Accident Indemnification Corporation v Continental National American Group**, 35 NY2d 260) When a dealer permits the use of its plates in violation of the strict statutory requirements governing the dealer plates (Vehicle and Traffic Law §§415 and 416), the dealer is estopped from disclaiming liability and denying ownership pursuant to Vehicle and Traffic Law §388. (see, **Reese v Reamore**, 292 NY 292; **Getz v Searles**, 265 AD2d 839 [4th Dept.]; **Panzella v Major Chevrolet, Inc.**, 209 AD2d 594) The estoppel is not premised upon principles of contract law involving license plates (**Taylor v Botnick Motor Corporation**, 146 AD2d 81, 85 [3d Dept.]), but rather on the strong state policy which seeks to assure compensation to personal injury victims of automobile accidents. (see, **Brown v Harper**, 231 AD2d 483, 484; **Taylor v Botnick Motor Corporation**, supra)

As Nissan's denial of permissive use is flatly contradicted by its employee, Anthony Celardo, a material factual issue has been presented which necessitates a trial. (see, generally **Fulater v Palmer's Granite Garage, Inc.**, 90 AD2d 685, lv dsmd 58 NY2d 826; see also, **French v Cliff's Place, Ltd.**, supra) Consequently, Nissan's motion for summary judgment must be denied.

DATED: February 15, 2001

ENTERED  
FEB 21 2001  
NASSAU COUNTY  
COUNTY CLERKS OFFICE

J.S.C.