



Licence Plate Searches in Motor Vehicle Claims

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A licence plate search is a rudimentary step in any action arising out of a motor vehicle accident and the failure to conduct one can result in adverse consequences for both plaintiffs and defendants.

In *Velasco v North York Chevrolet Oldsmobile Ltd.*, 2011 ONSC 85 (S.C.J.), Justice McEwen recently dismissed an action against the owner of a vehicle which was commenced outside the two year limitation period as the plaintiff's lawyers had relied solely upon the motor vehicle accident report which mistakenly identified the wrong party as the owner and ignored available information confirming ownership. As a result, the plaintiff failed to sue the proper owner in time.

Velasco arose from a multi-car motor vehicle accident that occurred on July 23, 2005 resulting in serious injuries to the plaintiff, Elizabeth Velasco. Her lawyers issued a statement of claim naming Denyer, the driver of one of the vehicles, as both the operator and owner as identified in the motor vehicle accident report completed by the investigating police officer. The true owner however was North York Chevrolet Oldsmobile Ltd. Denyer did not defend the action and was noted in default. Denyer's insurer denied coverage and added itself as a statutory third party to the action.

In its pleadings, the insurer wrongly admitted that Denyer owned the vehicle he was operating at the time of the accident. The plaintiff's lawyers therefore believed that Denyer owned the vehicle and did not request a motor vehicle licence plate search which would have disclosed the proper owner. However, within the two year limitation period, the plaintiff's lawyers received documentation, including the Crown Brief from the related criminal proceedings, that indicated the correct ownership of the vehicle. These documents were initially reviewed by a clerk, who did not notice the ownership documents. In January 2009, while preparing for examinations, the plaintiff's lawyers found the licence plate search contained within the Crown Brief and, at his examination, Denyer confirmed that the vehicle was leased. The plaintiff's lawyers issued a second statement of claim against North York in May 2009. North York and its excess insurer were first made aware of the accident in July 2009. North York successfully brought a summary judgment motion to dismiss the action on the basis that the action was statute-barred.

In his decision, Justice McEwen concluded that the plaintiffs failed to exercise reasonable or due diligence to discover the information with respect to the ownership of the vehicle. He noted that the plaintiff's lawyers should not have relied solely upon the motor vehicle accident report and that in each and every case plaintiff's counsel should obtain a motor vehicle licence plate search to determine ownership. However, this by itself did not result in a failure to exercise reasonable or due diligence because of the combined information in the motor vehicle accident report and the admission of ownership in the insurer's pleadings. Nevertheless, the ownership of the defendant's vehicle

remained a live issue given that the driver of the vehicle Denyer had not admitted ownership and any admission by Denyer's insurer was not binding on him due to its off-coverage position. Therefore, the plaintiff's lawyers ought not to have ignored the information contained in the Crown Brief concerning ownership and the plaintiffs, through their lawyers, ought to have known that they had a cause of action against North York in January 2007. While the failure to exercise due diligence lay with the plaintiff's lawyers and not the plaintiffs themselves, the acts of the lawyers did not vitiate the requirement of the plaintiffs to exercise due diligence.

While *Velasco* highlights the importance of conducting an ownership search on vehicles by plaintiff's counsel, it is equally applicable to defence counsel who ought not to assume that the plaintiff has properly conducted a licence plate search and has identified the correct party. This step is also important to ensure that defence counsel is making proper admissions or denials with respect to ownership of a vehicle since an error in that regard could potentially extend the limitation period for other parties, as suggested in *Velasco*.

Failure to properly identify the owner of a vehicle involved in a collision can defeat a claim where a limitation period is missed as a result of that failure. Licence plate searches should therefore be a part of the initial investigation of a motor vehicle claim at the adjuster level or should form part of the initial instructions to defence counsel when counsel is retained. ■