

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2014-001935

Omni Insurance Group,

Appellant,

v.

Lionel Evans and Lionel
Evans, as the Personal
Representative of the Estate of
Antonio Dickey

Respondents.

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SC Court of Appeals

INITIAL BRIEF OF APPELLANT



Douglas E. Leadbitter (SC/Bar #68430)

Michael Todd Loftis (SC/Bar # 68545)

Douglas E. Leadbitter, LLC

Post Office Box 945

Blythewood, South Carolina 29016

803.728.3272 Telephone

803.746.0900 Facsimile

Attorney for Appellant Omni Insurance Company

Other Counsel of Record:

**Eric M. Poulin, Esquire
ANASTOPOULO LAW FIRM, LLC
2557 Ashley Phosphate Road
North Charleston, South Carolina 29418
803.779.2300 Telephone
803.333.0364 Facsimile
Email: eric@akimlawfirm.com**

Attorney for Respondent Lionel Evans

**Jonathan P. Edwards, Esquire
JONATHAN EDWARDS LAW OFFICE, LLC
Post Office Box 100547
Florence, South Carolina 29052
843.661.1181 Telephone
843.661.1391 Facsimile
Email: jedwards@fmarion.edu**

Attorney and Personal Representative for Respondent Estate of Antonio Dickey

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STATEMENT OF THE ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN HOLDING THAT LIONEL EVANS WAS A GUEST PASSENGER IN THE SUBJECT VEHICLE AT THE TIME OF THE ACCIDENT?
2. DID THE CIRCUIT COURT ERR IN HOLDING THAT THERE IS NO PRACTICAL OR LEGAL DIFFERENCE BETWEEN THE FACTUAL SCENARIO PRESENTED IN THE ROLLISON CASE, AND THAT AT ISSUE IN THE PRESENT CASE?
3. DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT ON THE ISSUE OF WHETHER LIONEL EVANS KNEW OR SHOULD HAVE KNOWN THAT THE VEHICLE WAS STOLEN.

STATEMENT OF THE CASE

Appellant filed the instant declaratory judgment action against Respondent pursuant to the Uniform Declaratory Judgment Act to determine if Respondent Lionel Evans was entitled to Uninsured Motorist coverage under the policy on the stolen vehicle in which he was a passenger at the time of an accident that caused him bodily injury. A Hearing on Respondent's Motion for Summary Judgment was held on June 18, 2014 before the Honorable Michael G. Nettles. Judge Nettles granted Summary Judgment for Respondent by Order filed with the Florence County Clerk on August 11, 2013. Appellant filed a Notice of Appeal. The Initial Brief of Appellant follows.

FACTS

Defendant Lionel Evans alleges that he was seriously injured on February 9, 2009, during an automobile accident in which Evans was riding as a passenger in a 2003 Chevrolet Trailblazer, license # CSN 192, and VIN 1GNDS135X32159091. A man named Antonio Dickey was driving the vehicle at the time of the accident. Dickey died from the accident. The vehicle was owned by Rederick Thompson and insured under Omni Insurance Policy No. 3389124. The vehicle was stolen on February 2, 2009 from Redrick Thompson. At the time of the February 9, 2009 accident, decedent Antonio Dickey was operating the stolen Thompson vehicle.

Due to injuries sustained in this accident, Evans filed suit against Dickey in the Florence County Court of Common Pleas in an action styled as Lionel Evans v. Estate of Antonio Dickey, 2014-CP-21-1063R. Citing the alleged theft of the vehicle, Omni determined that Dickey was not a permissive driver, and therefore refused to defend or indemnify Dickey under the liability coverage of the Policy. Evans thereafter served copies of the pleadings upon Omni as an Uninsured Motorist carrier of the stolen Thompson vehicle pursuant to S.C. Code Ann. § 38-77-150. Omni appeared to defend the underlying action as potential Uninsured Motorist Carrier and separately filed this declaratory judgment action seeking a declaration that Evans is not entitled to Uninsured Motorist coverage under the Omni policy. Defendant Evans answered and filed counterclaims for bad faith and fraudulent misrepresentation. By Order dated July 24, 2013, Judge Nettles dismissed Defendant's counterclaims. Defendant Evans filed a Motion for Summary Judgment that was granted by Judge Nettles by Order dated August 11, 2014, finding there is Uninsured Motorist coverage for Evans under the Omni policy issued to the owner of the vehicle Redrick Thompson.

Argument

I. The Circuit Court erred in finding that Lionel Evans was a “guest” in the subject vehicle at the time of the accident.

The Circuit Court relies on Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008), in making its determination that Lionel Evans was a “guest” in the vehicle at the time of the February 9, 2009 accident. Appellant disagrees that Lionel Evans was a “guest” insured in the vehicle because at all times that Lionel Evans was a passenger in the vehicle, the vehicle was a stolen vehicle.

A. Rollison facts are distinguishable from the present case

In Rollison the facts before the Court were: A passenger was injured in a single-car accident while a grandson was operating a vehicle owned by his grandfather without the grandfather’s permission. Prior to the accident, the passenger had observed the grandson operating other vehicles owned by the grandfather. On the night of the accident, the passenger assumed the grandson had permission to operate the vehicle because the grandson told the passenger that the grandfather had given him the vehicle.

The facts in the present case are that the vehicle involved in the accident was owned by Redrick Thompson. The vehicle was stolen from Redrick Thompson on February 2, 2009. On February 9, 2009 the vehicle, operated by Antonio Dickey, was involved in a single-car accident which resulted in the death of Antonio Dickey and injuries to Lionel Evans. During his deposition, Mr. Evans was asked “Do you know a gentleman by the name of Redrick Thompson?” and Evans response was “No.” *Deposition of Lionel Evans* Page 6, Lines 20-22.

In Rollison the vehicle involved in the accident was being operated, without permission of the owner, by a relative of the owner. The passenger knew the owner of the vehicle, was aware of the relationship between the owner and the driver, and had knowledge that the driver

had operated other vehicles of the owner on prior occasions. In the present case, the vehicle involved in the accident was stolen at the time of the accident.

B. Whether Evans is a mere passenger or a “guest” depends on the facts and circumstances of each case.

In Rollison the Court held “we emphasize that whether one is a mere passenger or a “guest” for purposes of determining an “insured” is largely dependent upon the facts and circumstances of each case, particularly the relationships among the involved parties.” Rollison, 378 S.C. 600, at 612, 663 S.E. 2d 484, at 490 (2008). The Court based its decision in Rollison on the determination that “On the day of the accident, Reed drove to Rollison's home during daylight hours and invited him to drive to another friend's home. Based on Reed's invitation, Rollison by implication had the consent of Wright, the named insured. Furthermore, there is no evidence that Rollison had reason to know that Reed was not a permissive user of Wright's vehicle. On multiple occasions Rollison witnessed Reed drive off Wright's sales lot. Rollison also believed that Reed had permission to drive the vehicle because he had possession of the keys to the vehicle, a supposed gift from Wright, and had never been reprimanded by Wright for driving off the sales lot.” Rollison, 378 S.C. 600, at 613, 663 S.E. 2d 484, at 490 (2008).

The facts of this case are wholly different from the Rollison facts because the vehicle was stolen. Evans did not have any knowledge of the owner of the vehicle or any prior relationship between Antonio Dickey and the owner of the vehicle. In the present case the parties agree that the vehicle was stolen when Lionel Evans was a passenger in the vehicle. Therefore, because the vehicle was stolen, Lionel Evans was not a “guest” in the vehicle and was merely a passenger of the stolen vehicle at the time of the accident and is therefore not entitled to recover under the Uninsured Motorist coverage portion of the Omni insurance policy issued to the vehicle owner.

II. The Circuit Court erred in holding that there is no practical or legal difference between the factual scenario presented in the Rollison case, and that at issue in the present case.

The Circuit Court Order states “There is no practical or legal difference between the factual scenario presented in the Rollison case and that at issue in the present case.” The Circuit Court further held “That the Rollison case involved family members is of little consequence.” and “I decline to draw a distinction between facts of the Rollison case and those presently at issue, and find that the legal analysis in Rollison is binding in the present matter.”

The Appellant contends there is a clear distinction between the non-permissive use of a vehicle by a family member of the vehicle owner, and the outright theft of a vehicle. There is a distinction between Rollison and the present case when looking at the facts from the passenger’s perspective. In Rollison, the passenger knew the owner of the vehicle and knew that the driver was the grandson of the vehicle owner. In the present case the passenger admitted he did not know the owner of the vehicle. The uncontroverted fact is that the vehicle was stolen at the time of the accident. Because of the distinction it is the position of the Appellant that Rollison does not control the outcome of the present action.

III. The Circuit Court erred in granting Summary Judgment on the issue of whether Lionel Evans knew or should have known that the vehicle was stolen.

The Circuit Court granted Respondent Evans’ Motion for Summary Judgment by stating that there is no genuine issue of material fact on the issue of whether Evans knew or should have known the vehicle was stolen. Respondent entered the deposition transcript of Respondent Lionel Evans into the record at the Hearing on Respondent Evans’ Motion for Summary Judgment.

Mr. Evans was a passenger in a stolen vehicle that was fleeing from law enforcement at the time of the accident. The testimony of Evans along with the other evidence of the accident

concerning the accident illustrate there are some issues of material fact and if presented at trial could result in the fact finder making a determination that Evans knew or should have known (of the non-permissive use) because the vehicle was stolen at the time of the accident, which would fall squarely with the Rollison holding. Therefore the Circuit Court's granting of Summary Judgment should be reversed.

CONCLUSION

For the reasons propounded and argued above, this Court should reverse the Circuit Court's granting of Summary Judgment to the Respondent and find that the Respondent is not entitled to Uninsured Motorist coverage under Appellant's policy or in the alternative remand the matter back to the Circuit Court for a Trial on the merits.



Douglas E. Leadbitter (SC Bar #68430)
Michael Todd Loftis (SC Bar # 68545)
Douglas E. Leadbitter, LLC
Post Office Box 945
Blythewood, South Carolina 29016
803.728.3272 Telephone
803.746.0900 Facsimile

Attorney for Appellant Omni Insurance Company

December 10, 2014

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal on Respondents Lionel Evans and Lionel Evens, as the Personal Representative of the Estate of Antonio Dickey by depositing a copy of it in the United States Mail, postage prepaid, on September 11, 2014, addressed to the attorneys of record, Eric M. Poulin, Anastopoulo Law Firm, LLC, 2557 Ashley Phosphate Road, North Charleston, SC 29418; and Jonathan P. Edwards, Jonathon Edwards Law Office, LLC, Post Office Box 100547, Florence, SC 29052.

December, 2014



Douglas E. Leadbitter (SC Bar #68430)
Michael Todd Loftis (SC Bar # 68545)
Douglas E. Leadbitter, LLC
Post Office Box 945
Blythewood, South Carolina 29016
803.728.3272 Telephone
803.746.0900 Facsimile
Attorneys for Appellant Omni Insurance Group

Douglas E. Leadbitter, LLC

Post Office Box 945
Blythewood, South Carolina 29016
telephone: 803.728.3272
cellular: 803.269.3483
facsimile: 803.746.0900
email: mtl@leadbitterlaw.com

Michael Todd Loftis
Attorney At Law

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

SC Court of Appeals

Re: Omni Insurance Company v. Lionel Evans and Lionel Evans, as the Personal Representative of the Estate of Antonio Dickey
Appellate Case No. 2014-001935
Claim No.: 2009-53471
DEL File No. 1.00068

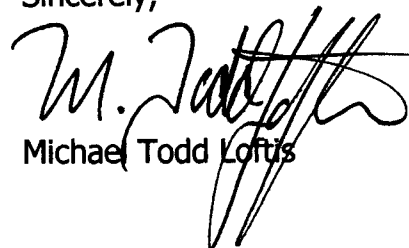
Dear Ms. Kitchings:

Enclosed for filing is an Initial Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal in the above referenced matter. Also enclosed are the following:

1. Proof of Service of the Initial Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal on Respondents;
2. A copy of the Initial Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal;
3. An extra four (4) copies of the Initial Brief of Appellant the Designation of Matter to be Included in the Record on Appeal and Proof of Service to receive a clocked copies back.

If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Michael Todd Loftis

MTL/clm

Enclosures

cc: Eric M. Poulin (w/enclosures)
Jonathon Edwards (w/enclosures)