

Goodmans^{LLP} Update

Supreme Court of Canada Discusses Negligence and Duty of Care in Stolen Car Case

Today, in *Rankin (Rankin's Garage & Sales) v JJ*, the Supreme Court of Canada (SCC) overturned an Ontario Court of Appeal decision which found that an owner of a commercial car garage owed a duty of care to a teenager who was injured after he and his friend stole a vehicle from the garage and went on a joyride. While the SCC found that no duty of care had been established in this particular case, it acknowledged a duty of care could arise in these circumstances if a plaintiff were able to establish that the business ought to have foreseen the risk of personal injury arising from theft.

Facts and Lower Court Decisions

After two teenage friends spent the evening drinking alcohol and smoking marijuana, they made their way to Rankin's Garage. The property was not secured, and they found a set of keys in the ashtray of an unlocked vehicle. One of the teens decided to take the two of them out on a joyride. They were involved in an accident, and one of them (the passenger) suffered a catastrophic brain injury.

The injured passenger, through his litigation guardian, sued Rankin's Garage, the driver, and the driver's mother (who had supplied some of the alcohol). The trial judge concluded there was a duty owed by Rankin's Garage, and the jury found all defendants (and the plaintiff) had been negligent, apportioning the highest amount of liability (almost 40%) to Rankin's Garage.

The Ontario Court of Appeal dismissed the appeal by Rankin's Garage, upholding the trial judge's finding that a duty of care was owed to the plaintiff.

SCC Decision

The majority of the SCC held that since there was no established duty of care in these circumstances, the *Anns/Cooper* test must be applied to establish a novel duty. First, the plaintiff must show there is a relationship of proximity between him and the defendant in which the failure to take reasonable care might foreseeably cause loss or harm to the plaintiff. The proper question is whether a court has been persuaded that the risk of *the type of damage* that occurred was reasonably foreseeable to *the class of plaintiff* that was damaged. Second, if that is established, the burden shifts to the defendant to establish there are residual policy reasons why this duty should not be recognized.

The Court accepted that the evidence established Rankin's Garage ought to have known of the risk of theft of vehicles (it did not secure the property and sometimes left keys inside the unlocked vehicles). However, this alone could not be used to establish reasonable foreseeability of injury resulting from theft by minors. The fact that something is *possible* does not make it reasonably foreseeable. The multiple assumptions made by the Ontario Court of Appeal without evidentiary foundation (that a general risk of theft includes a risk of theft by minors, and that minors might harm themselves in joyriding, especially if they are impaired by alcohol or drugs) would mean theft by a minor was always foreseeable, which would fundamentally change tort law and result in a significant expansion of liability.

The Court distinguished lower court decisions which found a duty of care in similar circumstances, on the basis that those cases had an evidentiary basis for finding that injury subsequent to theft was reasonably foreseeable (e.g., leaving vehicle running in an area with bars near closing time; previous incident of minors stealing keys; minors were known to travel through the property). The Court rejected the notion that the plaintiff's illegal or immoral activity would negate a duty of care, if established.

In the result, the majority of the SCC allowed the appeal and dismissed the claim against Rankin's Garage. Two dissenting judges would have dismissed the appeal.

For the further information on this decision, please contact any member of our Litigation Group.

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