

FILED

JUL 13 2006

Court File No. 631/03

DEPOSE

ONTARIO

**SUPERIOR COURT OF JUSTICE
PETERBOROUGH SMALL CLAIMS COURT**

BETWEEN:

**CAA INSURANCE COMPANY (ONTARIO) and
GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA LIMITED**
Plaintiffs

- and -

STEVE DAYNES and APRIL SCHLACTER
Defendants

REASONS FOR DECISION

1. CAA Insurance Company (Ontario) were the insurers of a vehicle leased by the Plaintiff, General Motors Acceptance Corporation of Canada Limited, to a one Suzanne Daynes. The vehicle was destroyed as a result of a car fire which occurred near the intersection of Hunter Street and Water Street in the City of Peterborough on Sunday, May 25th, 2003 at around 9:00 p.m.
2. The issue in this action is whether the Defendants Steve Daynes, the son of Suzanne Daynes, and/or his then common-in-law spouse April Schlacter were responsible for setting the fire or whether it was accidental in origin.
3. It is the Plaintiffs' position that the fire was deliberately set by one or both of the Defendants and that it originated in the right rear passenger foot well area. The fire occurred towards the end of the term of the Lease and it is the Plaintiffs' theory that the Defendants were motivated to avoid any penalties or charges that would have been made when the vehicle was turned in at the end of the Lease for certain collision damage and liability for excess kilometre charges. The Plaintiffs also maintain that the Defendants had an exclusive opportunity to set the fire, as the vehicle was in their sole position on the

evening in question. To prove that the fire was of incendiary origin, the Plaintiffs rely upon the report of Oshawa Appraisal Services who inspected the vehicle following the fire and the author of that report states that:

"There was no visible signs of wiring damages under the hood area. We have never experienced a fire loss of this nature to a Saturn automobile. The extent of this fire loss is consistent with being deliberately set."

The author of this report does not offer his credentials or qualifications for arriving at this conclusion and he does not offer any analysis to support his conclusion that the fire loss was consistent with it being deliberately set.

4. The Plaintiffs also attended the report of one Michael Paczek, a former police officer with extensive experience in investigating automobile collisions, vehicle thefts, frauds, and stage collisions, but with no apparent credentials in investigating alleged arsons. He opined that the point of origin of the fire was in the interior passenger area and further opines that there does not appear to be evidence to indicate the point of origin as being under the dash. He notes that the brake and accelerator were undamaged by fire and that there was no evidence of melting plastic under the dash.
5. The main pillar of the Plaintiffs' case was the evidence of Mr. Brian James, a forensic engineer with qualifications in the area of vehicle fire investigations, among other things. It was his opinion, based upon his inspection of the vehicle, that the burn patterns show that the area of fire origin was on the rear floor directly behind the front passenger seat. He indicated that while there was some smoke and heat damage in the dashboard area, he stated that the fire damage to this vehicle clearly indicates that the fire did not initiate within the dashboard as reported by the insured. Mr. James was of the view that the fire was incendiary or deliberately set because there were no accidental sources of ignition in the area that he identified as being the point of origin. He opined that it did not appear

that flammable liquids were used, but rather combustible papers such as newspaper or magazines may have been ignited.

6. The Defendants called Robert Knox, acting Fire Captain of the Peterborough Fire Department and Sergeant John Lyons of the Peterborough Lakefield Community Police Service as their witnesses. Mr. Knox testified that by the time he and his fellow firefighters arrived at the scene, the fire had been suppressed. At that time, there was no open flame, but there was smoke and steam coming from under the dash. He stated that he assumed it was an electric fire and therefore disconnected the battery cable. He testified that in his view, the fire appeared to have originated under the dash on the passenger side, but he agreed that he did not take a look under the dash to determine whether or not there had been an electrical malfunction in that area. He was, however, adamant that the fire appeared to him to have originated in the right front passenger compartment because of the extensive burn damage to the interior of the right front passenger door. He also indicated that whoever had extinguished the fire had used a dry chemical extinguisher and the right front passenger area appears to have been the area where the extinguisher had been discharged. Mr. Knox agreed that he was not a trained fire investigator, but said that it was part of his job to look for suspicious circumstances and that if there were such circumstances, he would have called in qualified fire investigators. He did not do so in this case.

7. Sergeant John Lyons, a police officer with 21 years experience attended the scene. The vehicle fire was out at the time of his arrival. He asked the fire personnel if there was any evidence of origin and was advised that the fire appeared to have started in the dash area and was electrical in origin. The dashboard area was pointed out to him and what he saw appeared to confirm what he had been told. Sergeant Lyons also agreed that he was not a trained fire investigator. He also spoke to the Defendants who advised him as to their whereabouts and the events leading up to the fire. No further investigation was

conducted by Sergeant Lyons and there was no evidence that any charges were laid against either of the Defendants.

8. Mr. James Bennett who is also a qualified fire protection and forensic engineer inspected the vehicle on behalf of the Defendants on June 24th, 2004. In his opinion, the fire originated within the right front dash area of the vehicle where he found the insulation on the electrical conductors located in the right front area of the dash consumed and five fuses, which were located in the interior fuse panel, were blown and one fuse had foil wrapped on the fuse. In his view, there was an electrical malfunction under the dash causing fire which fell down onto combustible materials in the right front foot well. He said that there was no evidence that this fire was deliberately set and he also noted that the Plaintiffs' experts apparently did not examine the wiring and fuse panel, nor did they take into consideration the fire suppression efforts and their analysis of the fire and burn patterns. He was also of the view that the fire damage in the right rear passenger compartment was secondary to the main fire in the front right passenger compartment.
9. Both of the Defendants testified. At the time of the incident, they had been living together for about three years and had one child. By the time of the trial, they had married and had two more children. At the time of the incident, they lived in Lindsay where they had moved in the Fall of 2002 and worked together in Mr. Daynes' business located at the corner of Water Street and Hunter Street in the City of Peterborough. They testified that they borrowed the car in question from Steven Daynes' mother for personal and business use and that they intended to purchase the vehicle from GMAC at the end of the lease and had made inquiries from GMAC in that regard. Ms. Schlacter also testified that she had made arrangements to finance the purchase of the vehicle from GMAC. Mr. Daynes testified that he had made arrangements with a mechanic to have the collision damage to the vehicle repaired and the mechanic was called to confirm this.

10. Ms. Schlacter testified that she had driven the vehicle from Lindsay to Peterborough to pick up her husband and daughter and on route had noticed a smell and then smoke coming from the vents on the right passenger side of the vehicle. She said that she continued to drive to the office because she knew there was a phone there. When she arrived at the office, she left the car running on the street and ran into the office to phone for help. While in the process of doing so, she saw lights outside at which time she went out and saw a man holding a fire extinguisher speaking to a police officer. She said that both the police officer and the firefighter at the scene told her that the fire was electrical and had come from under the dash.
11. Mr. Daynes testified that he came on the scene shortly after with his daughter, at which time he observed Ms. Schlacter speaking to the police officer.

Analysis and Conclusion

12. Although the Plaintiffs' Claim alleges negligence as well as arson, the only issue at trial was whether or not the fire was deliberately set and the case will be decided on that basis. There was no evidence or suggestion at trial that the fire was caused by the Defendants' negligence and therefore, the negligence claim is dismissed.
13. The onus of proving arson is of course upon the Plaintiff and the standard of proof of an allegation of criminal conduct requires a higher degree of probability than would otherwise be required when considering proof on the balance of probabilities.
14. In the result, I find that the Plaintiffs have not met the burden of proof required in a case of alleged arson and would therefore dismiss the Plaintiffs' claim for the following reasons:

(a) While there is no question that the Defendants had the sole and exclusive opportunity to set fire to the car, they have in my opinion successfully refuted any notion that they had a motive to do so. They had made arrangements to pay GMAC the full residual value of the vehicle and to make any necessary repairs. They therefore did not have any intent to avoid any penalties that would have been payable upon the vehicle being turned in either for collision damage or excess kilometres. In fact, there was no evidence at all that the kilometres on the vehicle exceeded the allotted amount.

(b) I find in the balance of probabilities that the fire originated under the dashboard on the passenger side of the vehicle and the fire was probably electrical in origin. I accept the evidence of April Schlacter that this was where she noticed odours and smoke emanating from. I also accept the evidence of Robert Knox that this was the fire appeared to have originated. Both Mr. Knox and Mr. Bennett found residual chemicals from the fire extinguisher that was used to extinguish the fire in the right front seat area and this was evidence that the fire originated in this area as well because, in my view, it is more likely than not that a person attempting to extinguish a fire would direct their efforts at the seat of the fire.

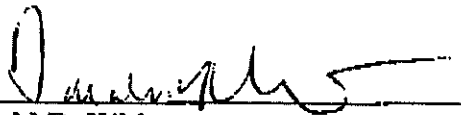
(c) I found the evidence of the Defendants to be truthful and as I have stated previously, I find that they did not have any motives to deliberately set fire to the vehicle.

(d) Finally, I accept the evidence of Mr. Bennett because I find that his investigation to have been more thorough and his analysis to be more compelling than that of the Plaintiffs' expert.

15. With respect to the issue of damages, if the Plaintiffs had been successful, the Plaintiffs' damages would have been assessed in the sum of \$9,319.47.

16. In the result, the action is dismissed with costs to the Defendants. If the parties are unable to agree on costs, I would ask counsel to provide me with written submissions thereto or alternatively, to arrange a telephone conference call.

Dated this 13th day of July, 2006.



Donald D. White
Deputy Court Judge