DOCKET NO.: UWY-CV20-6056589-S	:	SUPERIOR COURT
JAMES D'ELIA	:	JUDICIAL DISTRICT OF WATERBURY
V.	:	AT WATERBURY
LIBERTY MUTUAL INSURANCE COMPANY ET AL	:	JUNE 3, 2024

MEMORANDUM OF DECISION
RE: MOTION FOR SUMMARY JUDGMENT

BACKGROUND & FACTS

Before the court is the defendant ELRAC, LLC's (ELRAC) motion for summary judgment in response to the plaintiff James D'Elia's amended complaint (complaint). Count one of the complaint sought uninsured motorist benefits against the defendant, Liberty Mutual Insurance Company; count two of the complaint alleges negligence against the defendant, Edreice Harrell; and count three of the complaint alleges negligent entrustment against ELRAC. It is the third count that is the subject of the instant motion for summary judgment.

Count three of the complaint alleges the following facts.[1] On February 1, 2020, at 10:00 p.m., the plaintiff was operating his 2014 Toyota Corolla on Blake Street in New Haven when his vehicle was impacted by a 2019 Dodge Charger rented to Harrell by ELRAC. At the time of the collision, the 2019 Dodge Charger was being operated by an unknown driver. ELRAC is alleged to have negligently entrusted the 2019 Dodge Charger to Harrell when it knew, or in the exercise of due care should have known: (a) that he did not maintain automobile liability insurance; (b) that he did not purchase automobile liability insurance on the Dodge Charger through Enterprise; (c) that he would entrust the vehicle to other unauthorized users; (d) that he

[1] Additional facts as alleged in the complaint will be addressed as necessary.

was not a safe or responsible driver; and (e) that he would not safeguard the keys to the vehicle or otherwise protect the vehicle from unauthorized use. See Compl., Count Three, ¶ 8.

On November 13, 2023, ELRAC filed the instant motion for summary judgment. On May 9, 2024, the plaintiff filed an objection to ELRAC's motion for summary judgment. A remote hearing was held on May 20, 2024, at which time both parties were heard.

DISCUSSION

ELRAC moves for summary judgment as to count three, which alleges negligent entrustment. Specifically, ELRAC argues that "the plaintiff has failed to state a claim of negligent entrustment as a matter of law: ELRAC, LLC did not knowingly entrust a vehicle to an incompetent operator, nor were the plaintiff's injuries the result of known, alleged incompetence." See Docket Entry No. 137.00.

In his objection, the plaintiff asserts that there are genuine issues of material fact and, thus, ELRAC's motion for summary judgment should not be granted. The plaintiff argues that the issues of fact are whether ELRAC entrusted a vehicle to someone that ELRAC knew or should have known was incapable, unwilling, or unlikely to safeguard its safe and proper use and to safeguard and secure the vehicle against use by unauthorized and unsafe drivers.

For the reasons set forth below, the motion for summary judgment is GRANTED.

I. Legal Standard of Review

The standard for summary judgment in Connecticut is well established. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving

party." (Internal quotation marks omitted.) *Graham* v. *Commissioner of Transportation*, 330 Conn. 400, 414-15, 195 A.3d 664 (2018).

"The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *Doe* v. *West Hartford*, 328 Conn. 172, 191-92, 177 A.3d 1128 (2018). "Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue." (Internal quotation marks omitted.) *Ferri* v. *Powell-Ferri*, 317 Conn. 223, 228, 116 A.3d 297 (2015).

II. Negligent Entrustment Generally

In order to prove negligent entrustment, "a plaintiff must demonstrate that (1) the defendant has entrusted a potentially dangerous instrumentality to a third person (2) whom the entrustor knows or should know intends or is likely to use the instrumentality in a manner that involves unreasonable risk of physical harm, and (3) such use does in fact cause harm to the entrustee or others." *Soto* v. *Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 81, 202 A.3d 262 (citing Restatement [Second] of Torts § 308), cert. denied sub nom. *Remington Arms Co., LLC* v. *Soto*, 140 S. Ct. 513, 205 L. Ed. 2d 317, 88 U.S.L.W. 3155 (2019).

ELRAC asserts that the plaintiff, as a matter of law, has not stated a claim as to negligent entrustment because he fails to meet two of the three criteria required for a negligent entrustment case. Specifically, ELRAC argues that the plaintiff cannot establish: (a) that ELRAC knowingly

entrusted a vehicle to a driver incompetent/incapable of operating a motor vehicle; and (b) proximate cause between the known competence and the plaintiff's injuries.

In *Soto* v. *Bushmaster Firearms International, LLC*, the Supreme Court examined the tort of negligent entrustment and adopted the test in Section 308 of the Restatement (Second) of Torts to be applied to entrustment of any potentially dangerous instrumentality: "In accordance with the majority view, this also is the rule set forth in the Restatement (Second) of Torts. Section 308 of the Restatement (Second) provides that [i]t is negligence to permit a third person to use a thing . . . [that] is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing . . . in such a manner as to create an unreasonable risk of harm to others. . . . 2 Restatement (Second), Torts § 308, p. 100 (1965). Section 390, which further defines the tort of negligent entrustment, provides that [o]ne who supplies . . . a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others . . . is subject to liability for physical harm resulting to them. 2 id., § 390, p. 314 . . . We take it as well established, then, that, in order to prove negligent entrustment, a plaintiff must demonstrate that (1) the defendant has entrusted a potentially dangerous instrumentality to a third person (2) whom the entrustor knows or should know intends or is likely to use the instrumentality in a manner that involves unreasonable risk of physical harm, and (3) such use does in fact cause harm to the entrustee or others." (Citations omitted; emphasis omitted; internal quotation marks omitted.) Id., 80-81.

The second element states, "[t]he rule that a cause of action for negligent entrustment will lie only when the entrustor knows or has reason to know that the direct entrustee is likely to use a dangerous instrumentality in an unsafe manner . . . ." Id., 81.

One of the essential elements of a negligent entrustment action is entrustment itself. "When Connecticut courts have been faced with situations where there were no allegations or evidence indicating that the defendant had knowledge that a tortfeasor with dangerous propensities would eventually drive a vehicle, the courts have not allowed a negligent entrustment claim to proceed. See, e.g ., [*Donati* v. *Sullivan*, Superior Court, judicial district of Hartford, Docket No. CV-03-0828572-S (August 7, 2007, *Stengel, J.*)] (granting motion for summary judgment when "allegations [did] not allege facts [bearing] on the issue of competency of the person to whom the car is loaned"); [*Dervil* v. *Perez*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-04-4001545-S (September 12, 2005, *Lewis, J.T.R.*)] (court granted motion to strike because plaintiff "has not alleged any facts suggesting that the defendant owner had actual or constructive knowledge of the defendant driver's dangerous propensities"); [*Griffin* v. *Larson*, Superior Court, judicial district of Ansonia-Milford at Derby, Docket No. CV-02-0079364-S (August 18, 2004, *Lager, J.*)] (granting summary judgment because plaintiff "failed to provide an evidential basis to support the essential element of negligent entrustment that [the defendant] knew or should have known that [the driver] was incompetent to operate ... [the] motor vehicle"); *Chung* v. *Place Motors, Inc*, Superior Court, judicial district of New London, Docket No. 560074 (February 11, 2003, *Hurley, J.T.R.*) (34 Conn. L. Rptr. 140, 142) (court granted motion to strike when "there is no allegation that the defendant-lessor . . . had any knowledge or reasonably ought to have known of the dangerous propensities of [the driver]")." (Internal quotation marks omitted.) *Angione* v. *Bloom*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-08-5006850-S (October 6, 2011, *Jennings, J.T.R.*).

A. Competency

It is undisputed that ELRAC never entrusted the Dodge Charger to the unknown driver who was involved in this motor vehicle accident. Instead, it is alleged that ELRAC entrusted the Dodge Charger to Harrell, who in turn entrusted the vehicle to someone else.

In objection, the plaintiff does not claim that ELRAC had actual knowledge of the unknown driver's inexperience, incompetence, or propensities, but rather that ELRAC had constructive knowledge. The plaintiff claims the constructive knowledge is based on, inter alia, Harrell's ability to spend thousands of dollars renting various vehicles from ELRAC despite being listed as unemployed for each and every rental contract he signed. In addition, the plaintiff claims that ELRAC had constructive knowledge because Harrell was issued 23 different vehicles over the course of his rental from ELRAC from July 2019 to February 2020, was late numerous times in returning the vehicles, and was often late with making payments.

Connecticut law is clear that liability can only be imposed if the defendant entrusts the vehicle to the driver. *Buxbaum* v. *Bordeaux*, Superior Court, judicial district of New Haven, Docket No. CV-12-6026146-S (July 21, 2014, *Wilson, J.*) (citing *Mesner* v. *Cheap Auto Rental,* Superior Court, judicial district of New Haven, Docket No. CV-07-5009039-S [February 13, 2008, *Bellis, J.*]). Further, "constructive knowledge' of a renter's driving incompetence is based on facts that are openly apparent and readily discernible." (Internal quotation marks omitted.) *Delprete* v. *Senibaldi*, Superior Court, judicial district of New Haven, Docket No. CV-11-6024795-S (September 16, 2014, *Wilson, J.*).

"Liability cannot be imposed on a defendant under a theory of negligent entrustment simply because the defendant permitted another person to operate the motor vehicle. . . . Liability can only be imposed if (1) there is actual or constructive knowledge that the person to whom the automobile is loaned is incompetent to operate the motor vehicle; and (2) the injury

resulted from that incompetence." (Internal quotation marks omitted.) *Short* v. *Ross*, Superior Court, judicial district of New Haven, Docket No. CV-12-6028521-S (February 26, 2013, *Wilson, J.*) (55 Conn. L. Rptr. 668, 670).

The court finds that the allegations and undisputed material facts of this case are insufficient to maintain an action of negligent entrustment regarding the competency element. The undisputed facts show that ELRAC had no knowledge, either actual or constructive, of the alleged incompetence of the driver of the motor vehicle that collided with the plaintiff.

B. Causation

Regarding the third element, ELRAC argues that there is no genuine issue of material fact that the plaintiff's injuries did not result from the specific, known incompetence. Or "in other words, the plaintiff must bridge the gap between the conduct of the entrustor in granting access to the vehicle and the entrustee's tortious conduct by establishing that the accident was the result of the known incompetence." See Docket Entry No. 137. Therefore, ELRAC argues, the plaintiff's claim must fail.

In his objection, the plaintiff asserts that there is "ample" evidence to show direct causation between ELRAC's alleged negligence and the plaintiff's injuries. The argument is as follows: if ELRAC knew or should have known at any point in time before its last rental to Harrell that Harrell was sub-renting its vehicles to unknown or unauthorized drivers and/or that he was allowing unknown or unauthorized drivers to drive its vehicles, then ELRAC should have immediately stopped renting vehicles to Harrell. First, the plaintiff cites to no evidence to show that ELRAC knew or should have known that Harrell was subletting his vehicle; nor is there any evidence that the unknown driver was a sublessee of Harrell. But more importantly, even if these facts were proved and undisputed, the plaintiff cites no legal authority for how such facts would

prove causation in a negligent entrustment claim. In other words, even if ELRAC knew about any sublease between Harrell and this unknown driver, there is still no evidence that they knew that the sublessee was incompetent and that such incompetence caused the plaintiff injury. Such facts, whether undisputed or not, therefore, are not material. "Material facts are defined as facts which will make a difference in the result." *Lopez* v. *United Nurseries, Inc.*, 3 Conn. App. 602, 605, 490 A.2d 1027 (1985). "In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact, but rather to determine whether any such issues exist." (Internal quotation marks omitted.) *Maltas* v. *Maltas*, 298 Conn. 354, 365, 2 A.3d 902 (2010). "[I]ssue-finding, rather than issue-determination, is the key to the procedure." (Internal quotation marks omitted.) *Barasso* v. *Rear Still Hill Road, LLC*, 81 Conn. App. 798, 803, 842 A.2d 1134 (2004). The alleged disputed facts that the plaintiff points to are not material because they do not affect the outcome one way or the other.

Lastly, in his twenty-seven-page brief in objection to the instant motion, the plaintiff cites to *Short* v. *Ross*, supra, Superior Court, Docket No. CV-12-6028521-S, which he believes supports his position that the instant motion should be denied. First and foremost, the *Ross* opinion he cites was deciding a motion to strike. Of course, the standard on a motion to strike is different because, at the motion to strike stage, the court is assuming that all the facts as alleged are true. By contrast, at the summary judgment stage, the procedural posture of the instant case, the plaintiff must now come forward with the evidence to support the facts as alleged.

The plaintiff relies on the *Ross* court's language to urge this court to go beyond looking at what knowledge, if any, ELRAC had of the unknown driver's competence to sustain this action. The plaintiff points the court to the following language in that decision: "Accordingly, the court finds that in the context of a cause of action for negligent entrustment of an automobile,

incompetence does not mean a mere lack of driving skill but, instead, is more broadly defined to include other cause by which an entrustor knows or reasonably ought to know that a vehicle should not be entrusted to the entrustee." *Short* v. *Ross*, supra, Superior Court, Docket No. CV-12-6028521-S. However, such statement is not given its proper context for it to be applicable to the instant matter.

In *Ross*, the court, *Wilson, J.*, denied a motion to strike the negligent entrustment count against a defendant that was alleged to have negligently entrusted a rental truck to the individual defendant when they "knew, or should have known reasonably, that its truck would be used to haul and dispense alcohol in a college tailgating environment, that its truck would be operated within and around a pedestrian-dense environment, and/or that its truck would be operated in a college tailgating and pedestrian-dense environment by someone with insufficient experience operating large box trucks within this environment." (Internal quotation marks omitted.) Id. The court stated that although it was not clear precisely how or why the rental company should have known of the individuals usage of the rental truck, the facts as pleaded, when fairly read, alleged that the rental company knew or ought to have known the individual would use the truck in a dangerous way and risk injury to another, which was sufficient for purposes of a motion to strike. Id.

Importantly, the individual who was entrusted with the vehicle was the same individual who injured the pedestrian plaintiff while driving that vehicle. In the instant matter, it is undisputed that the driver of the motor vehicle with which the plaintiff collided was not the individual that ELRAC entrusted with the vehicle in question. *Ross* is thus of very limited use to this court in the instant matter because, here at the summary judgment stage, the plaintiff has provided no evidence that ELRAC knew or should have known that the unknown driver whom it

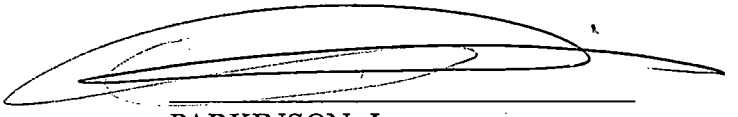
did not entrust with the vehicle would operate the vehicle in a dangerous way causing injury to the plaintiff.

CONCLUSION

The moving defendant, ELRAC, has produced evidence supporting its entitlement to summary judgment on the negligent entrustment claim. In response, the evidence presented by the plaintiff does not create a genuine issue of material fact for the reasons stated herein.

Accordingly, ELRAC's motion for summary judgment as to count three is GRANTED in its entirety and the objection thereto is OVERRULED.

SO ORDERED



PARKINSON, J.

Juris #442329

A JDNO was sent on June 3, 2024 notifying all counsel of record of the availability of this Memorandum of Decision in the electronic file and Sent by electronic means to RJD.

By the Clerk,

Matthew Stevens

TAC

6/3/2024