

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

|                                     |   |                     |
|-------------------------------------|---|---------------------|
| The St. Paul Property and Liability | : |                     |
| Insurance Company, a/s/o Delaware   | : | C.A. No. 04-11-0129 |
| Transit Company,                    | : |                     |
|                                     | : |                     |
| Plaintiff,                          | : |                     |
|                                     | : |                     |
| v.                                  | : |                     |
|                                     | : |                     |
| Rogers Brian Brown and              | : |                     |
| Lewis D. Levite,                    | : |                     |
|                                     | : |                     |
| Defendants.                         | : |                     |

**Decision after Trial**

**Trial: January 11, 2006**  
**Decided: January 13, 2006**

**Judgment is entered for the Defendant, Lewis D. Levite**

**Ronald W. Hartnett, Jr., Esquire, Marshall, Dennehey, Warner, Coleman & Goggin, 1220 North Market Street, P.O. Box 8888, Wilmington, Delaware 19899, Attorney for Plaintiff.**

**Lewis D. Levite, 14 Draper Drive, Dover, Delaware 19901, Pro Se Defendant.**

**Trader, J.**

In this civil action, St. Paul Property and Liability Insurance Company (St. Paul) seeks damages from the defendant, Lewis D. Levite (Levite), for subrogation payments paid to Theresa Williams under a policy of personal injury protection. St. Paul's theory of recovery is that the driver of the car, Rogers Brian Brown (Brown), was negligent in causing the injuries to Theresa Williams, and that Brown was operating the vehicle as an agent of Levite. St. Paul has not established by a preponderance of the evidence that Rogers Brian Brown was operating the car with the permission of Levite. Accordingly, judgment is entered for Levite for the costs of these proceedings.

At trial the only witness was the defendant, Levite, and the parties presented a stipulation as to other facts. The relevant facts are as follows: On January 10, 2002, there was an accident between a Delaware Transit bus and a blue Chevrolet Impala. Ms. Williams, a passenger on the bus, was injured and St. Paul paid her \$24,993.52 under a policy of personal injury protection benefits. Brown, the co-defendant, was the driver of the vehicle at the time of the accident.

In late summer or fall of 2001, Levite and his wife sold the car to Brown for \$500.00. Brown made a \$50.00 payment on the vehicle and two further payments of \$50.00 each. At the time of the sale, Levite signed the registration over to Brown but he retained the title to the vehicle until the purchase price was paid in full. Brown did not make any further payments on the Chevrolet and Levite lost contact with Brown after December 2001.

On November 19, 2004, St. Paul filed a civil action in this Court against Levite and Brown. I granted a motion for a default judgment against Brown on March 11, 2005

and denied a motion for default judgment against Levite. Therefore, the claim against Levite was set for trial.

St. Paul contends that Brown was operating the vehicle at the time of the accident with the permission of Levite. St. Paul's contention is incorrect.

The law of agency is set forth clearly by Chief Justice Steele in *Lang v. Morant*, 867 A.2d 182 (Del. 2005).

A party injured by the driver of another's vehicle may recover from the owner under a theory of vicarious liability. Thus, an owner is liable for the negligent operation of the vehicle by his agent or servant who at the time of the accident was engaged in the master's business or pleasure with the master's knowledge and direction. No principal-agent relationship exists, however, where an owner merely permits the other to use the vehicle for the latter's own purposes. The requisite indicia of agency in the automobile negligence context are ownership and control. Although a legal concept, agency depends on the presence of factual elements. It is thus a question usually reserved to the factfinder.

Levite sold the vehicle to Brown in the fall of 2001, and after that time he retained no control over Brown's operation of the vehicle. There is no evidence that Brown was performing any activities on behalf of Levite at the time of the accident. Thus, there is an absence of proof that Brown was operating the vehicle with the permission of Levite.

Additionally, although there is evidence that there was an accident, there is no evidence that Brown was negligent in causing the accident.

Based on the above findings of fact and conclusions of law, judgment is entered for Lewis D. Levite for the costs of the proceedings.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**