

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Morash v. Burke, 2006 NSSC 364

Date: 20061214
Docket: SH. No. 175525
Registry: Halifax

Between:

Lawrence Bradley Morash

Plaintiff

-and-

**Charles D. Burke, Jerome Anthony Thomas, Laura Marsh and
ING Halifax, a body corporate**

Defendants

-and-

Allstate Insurance Company of Canada, a body corporate

Third Party

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Judge: The Honourable Justice Robert W. Wright

Heard: November 27, 28 and 29, 2006 at Halifax, Nova Scotia

Written

Decision: December 14, 2006

Subject: Identity of owner and operator of motor vehicle causing injury to plaintiff
- statutory presumption of owner's consent to drive vehicle - s. 114(1) of the
Insurance Act and s. 248 of the *Motor Vehicle Act*.

Summary: The plaintiff, while working as a security officer at The Bay store in a local mall, was run down in the parking lot as he was pursuing a shoplifter. The van that struck him, driven by a second individual, was being used as the getaway vehicle.

Shortly before trial, counsel reached an agreement on quantum of damages to be paid to the plaintiff in the all inclusive sum of \$162,500. The ultimate question for the court to decide was whether that sum was to be paid by Allstate, the liability insurer of the registered owner of the vehicle at the time of incident, or by ING, the plaintiff's Section D (uninsured motorist) insurer.

Issues:

- A. The identity of the vehicle which struck the plaintiff;
- B. The identity of the owner of that vehicle;
- C. The identity of the driver of that vehicle;
- D. Whether the driver had the owner's consent to operate it when the incident occurred.

Result: Based on the court's findings of credibility, it was held that the vehicle which struck the plaintiff was the van then under the registered ownership of the defendant Jerome Thomas, that Mr. Thomas was still the owner when the incident occurred and that the driver of the van when it struck the plaintiff was the defendant Charles Burke.

The court also found that the owner of the van had failed to rebut the statutory presumption that it was being operated by the defendant Charles Burke with his consent when the plaintiff was injured. It followed from s.114(1) of the *Insurance Act* and s. 248(3) of the *Motor Vehicle Act* that Allstate was responsible to pay the plaintiff's damages claim as the issuer of the owner's liability policy in effect at the time. The action against ING was dismissed.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.
