The Key in Ignition Rule: Leaving Your Car Unattended Under VTL § 1210(a)

A report in March revealed that over the span of just two days, twelve vehicles were stolen from homes in Hauppauge and Saint James on Long Island. In each of the incidents, the car was left unlocked. Some still had the key fob inside. Most of the vehicles have since been recovered and no injuries have been reported because of the thefts, but authorities have warned citizens to ensure that they lock their cars and do not leave their keys in their unattended vehicles. With car thefts becoming more prevalent, it is important for car owners in New York to be aware of the laws that dictate their possible liability in these situations.

Permissive Users Under VTL § 388

Under New York Vehicle and Traffic Law (hereinafter "VTL") § 388, the owner of a vehicle is liable for any death or injuries resulting from negligence in the operation of such vehicle by any permissive user, express or implied. This statute creates a strong presumption that the driver of a vehicle is operating it with the owner's consent which can only be rebutted by substantial evidence that the vehicle was not operated with the owner's express or implied permission.

In Bernard v. Mumuni, 6 N.Y.3d 811 (2006), a vehicle owner sold his minivan but left the country before the exchange was completed. Before leaving, he entrusted the vehicle to his friend to complete the sale. When the friend's son returned home from college and saw the keys to the car sitting on the kitchen table, he mistakenly believed the keys were to a car his father had previously promised to get him. The son took the keys, drove the minivan to run errands, and got into an accident. The injured party brought this suit, alleging liability against the owner-defendant via § 388.

The owner moved for summary judgment, claiming his friend's son did not have permission to drive his minivan. The court denied this motion, finding that the question of consent was one for a jury as genuine issues of fact arose from the parties' conflicting testimonies. While the owner's friend stated the vehicle was left to him without any use restrictions, the owner stated he did not give his friend permission to drive the vehicle. The Court found there was enough evidence for a reasonable jury to find that there was implied permission for the friend's son to use the vehicle and the son's lack of a driver's license is not enough to rebut this evidence.

This case is the high-water mark of extending implied permissive use under § 388. Courts now generally interpret the statute more conservatively and liability under § 388 is getting increasingly difficult to prove.

Implied Permissive Use Under VTL § 1210(a)

VTL § 1210(a) provides that that no person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the vehicle, and setting the brake. The provision for removing the keys from the vehicle does not require the removal of keys hidden from sight about the vehicle for convenience or emergency. To avoid liability under this provision, a motorist need only ensure that the ignition key is 'hidden from sight' and need not additionally conceal it so that the key is 'not readily discoverable by a prospective car thief without extreme difficulty'. If the vehicle owner does not comply with these precautions, they are said to have given implied consent to use their vehicle and can be liable for damages under VTL § 388.

"Hidden from Sight"

In Piano Exchange v. Weber, 168 A.D.3d 1017 (2d Dept. 2019), a thief stole a car from a married couple's driveway. The keys to the vehicle were in the glove compartment of another one of the couple's vehicles that was also in the driveway. The thief crashed the car into a wall and truck belonging to the plaintiff. The plaintiff brought this action against the couple and the thief for the damages. The couple submitted testimony that stated that the car was in their driveway, and they knew nothing of the crash until they were notified by police. Additionally, the key was hidden in the glove compartment of another car that was on their private property. This evidence was sufficient to prove that the keys were "hidden from sight" as such to avoid liability. Summary judgment for the couple was granted.

In Manning v. Brown, 91 N.Y.2d 116 (1997), a high school girl stole her grandparents' car from the parking lot of a local community college. The car was left unlocked, but to find the keys the girl had to rummage through the center console of the car, eventually finding them under a stack of papers. She and two of her friends took a joyride around the town in the car. On their way to return the car, the girl went to change the radio back to the station that it was previously set on, so her grandfather did not notice she took it. While doing this, the car swerved and crashed into a pole. One of her friends in the car brought this suit against the girl and her grandparents for her personal injuries. The girl admitted that she neither asked for nor received permission from her grandparents to drive the car and that she had to search around the front seat for the keys, indicating that they were not left in plain sight. She then pled guilty to the theft of the vehicle. The court found that this evidence was substantial enough to find that the granddaughter was not driving with her grandparents' permission and summary judgment was granted for the grandparents.

In Alvarez v. Bivens, 114 A.D.3d 526 (1st Dept. 2014), the defendant left his truck parked near Yankee Stadium. He locked the truck and left the key in a "hide-a-key" box inside the rear wheel frame. The car was stolen and was involved in an accident. The injured party brought a claim against the owner, alleging that he had violated VTL § 1210(a). The court found that the defendant's testimony that one would "have to kind of

be peeking around a little bit" to find the key in the box established that the key was not in plain view and that one would have to be actively looking for it to find it. Summary judgment was granted to the defendant.

Not "Hidden from Sight"

In Matter of Merchants Insurance Group v. Haskins et al., 11 A.D.3d 694 (2d Dept. 2004), a Yonkers man lent his van to a friend. The friend parked the van on a public roadway and left the keys on the dashboard. The van was later stolen from that road and involved in a car accident which injured the claimant. Since the friend, a permissive user, left the van parked on a public roadway with no attempt to conceal the keys in any way, the owner and driver were both liable for the injuries.

In Blassberger v. Varela, 129 A.D.3d 756 (2d Dept. 2015), a mother gave her daughter permission to use her vehicle. The daughter later picked up her friend and drove to a party in the car. On the way home, the daughter exited the vehicle and left her friend in the car unattended with the keys in the ignition. The friend drove away and was later pulled over by the police. The friend exited the vehicle and attempted to run away. The officer chased her, fell, and sustained injuries. He sued the mother and the friend to recover for his injuries. The mother moved for summary judgment, stating that her daughter's friend did not have permission to use her vehicle. The Court denied the motion, stating that she failed to support her claim with substantial evidence to prove that her daughter's friend was not using the car with her permission. The friend was left unattended in the car with the keys in the ignition, which constituted implied permissive use.

Vehicle and Traffic Laws § 1100(a) and § 129-b – Parking Lot

VTL § 1100(a) states that the provisions of § 1210(a) apply only: "upon public highways, private roads open to public motor vehicle traffic, and any other parking lot". A "parking lot" is defined by § 129-b as: "an area…of private property near or contiguous to and provided in connection with premises having one or more stores or business establishments and used by the public as a means of access to and egress from such stores and business establishments and for the parking of motor vehicles".

In Baldwin v. Garage Management Corp., 901 N.Y.S.2d 897 (Sup. Ct. Kings Cnty. 2008), a woman and her infant son were injured in a car accident that involved a vehicle that was stolen from a GMC parking garage. The injured parties filed actions against the thief and GMC. A default judgment was entered against the thief, while summary judgment was granted to GMC. The motion was granted because the garage was not a "parking lot" within the definition of § 129-b. While there were local restaurants and shops nearby, the garage was not used by the public as a means of access to and from the stores, as required by § 129-b. It was located on the bottom floor of a residential building on a street of only residential buildings.

In Hernandez v. Hagans, 21 A.D.3d 335 (1st Dept. 2005), the plaintiff's husband died from injuries sustained when his vehicle was struck by a car that was stolen from a nearby parking lot. The decedent's wife sued the thief, the vehicle owner, and the owners of the parking lot. She alleged that the parking lot owners, a bus company that supplies transportation for private schools, failed to provide adequate security to the lot. The vehicle owner and the parking lot owners moved for summary judgment, stating that their lot was not a "parking lot" within the meaning of § 129-b. The court granted this motion, finding that the lot was used to park the school buses used in the lot owner's business and private cars of its employees. There was no evidence that it was used by the public as a means of access to and egress from nearby stores and businesses.

Conclusion

VTL § 1210(a) requires vehicle owners to do four things before leaving their car unattended: stop the engine, lock the ignition, remove the key from the vehicle, and set the brake. This does not require the removal of keys that are in the car for convenience or safety. The vehicle owner need only ensure that the key is hidden from plain sight such that a person could not easily spot it while passing by. If these precautions are not taken, the vehicle owner could be found liable for damages caused by the driver while operating the stolen vehicle under VTL § 388.

This provision applies upon public highways, private roads open to public motor vehicle traffic, and any other parking lot. It is not applicable to one's private property, such as a homeowner's driveway or a company's private parking lot. Common sense tells us that it is advisable to remove keys and key fobs whenever a vehicle is left unattended, but since common sense is not so common, we have these cases to discuss.

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