

STATE OF MICHIGAN
COURT OF APPEALS

MARY AKMAKJIAN, Personal Representative
for the Estate of KIZER AKMAKJIAN,

Plaintiff–Appellee,

v

MAKE A DEAL AUTO SALES, INC.,

Defendant–Appellant,

and

MAZEN ADWAR YOHANA,

Defendant.

UNPUBLISHED

August 6, 1996

No. 181933

LC No. 93-453531

Before: Marilyn Kelly, P.J., and MacKenzie and R.J. Ernst*, JJ.

PER CURIAM.

Defendant Make A Deal Auto Sales (defendant) appeals by leave granted from an order denying its motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse.

On June 16, 1992, plaintiff’s decedent was struck and killed by a car driven by Mazen Adwar Yohana. Yohana had purchased the vehicle from defendant four days before the accident, on June 12, 1992. At the sale, defendant completed an application for Michigan title, obtained proof of insurance from Yohana, supplied him with a fifteen-day temporary registration certificate, and transferred possession of the vehicle to Yohana. The Secretary of State received the title application on June 17, 1992, one day after the accident.

Plaintiff subsequently brought this wrongful death action, alleging that Yohana was negligent in the operation of the car and asserting, as relevant to this appeal, that defendant was liable as the owner of the car pursuant to Michigan’s owner-liability statute, MCL 257.401; MSA 9.2101. According to plaintiff, defendant’s failure to deliver both possession of the vehicle and a certificate of title to Yohana on June 12, 1992 made the transfer of ownership interest ineffective on that date. The trial court denied

*Circuit judge, sitting on the Court of Appeals by assignment.

defendant's motion for summary disposition, concluding that an issue of fact existed as to whether defendant transferred ownership of the car to Yohana before the date of the accident.

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. We review the motion de novo, giving the benefit of any reasonable doubt to the nonmoving party to determine whether a record might be developed which might leave open an issue upon which reasonable minds could differ. *Jackhill Oil Co v Powell Production, Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995). When reviewing a motion for summary disposition, this Court considers the pleadings, depositions, affidavits, admissions and other documentary evidence available to it. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994).

Defendant argues that the trial court erred in denying its motion for summary disposition because plaintiff failed to establish a genuine fact issue as to ownership of the car. We agree. A car dealership is able to transfer title by following the steps set out in MCL 257.217(2); MSA 9.1917(2), which states, in pertinent part:

A dealer selling or exchanging vehicles required to be titled, within 15 days after delivering a vehicle to the purchaser . . . shall apply to the secretary of state for a new title, if required, and transfer or secure registration plates and secure a certificate of registration for the vehicle . . . in the name of the purchaser. . . . The purchaser of the vehicle . . . shall sign the application . . . and other necessary papers to enable the dealer . . . to secure the title, registration plates, and transfers from the secretary of state.

Transfers pursuant to this statute become effective on the date of the execution of either the application for title or the certificate of title. MCL 257.233(5); MSA 9.1933(5); *Goins v Greenfield Jeep Eagle, Inc*, 449 Mich 1, 14; 534 NW2d 506 (1995). Once the transfer is made, the dealership is absolved of any liability stemming from the negligent operation of the vehicle by the owner. MCL 257.240; MSA 9.1940.

Plaintiff does not contest that the application for title and the certificate of title were completed on June 12, 1992. Pursuant to MCL 257.233(5); MSA 9.1933(5) and MCL 257.37; MSA 9.1837, defendant ceased to own the car as of that date and, therefore, was no longer liable under MCL 257.401; MSA 9.2101 for injuries caused by its negligent use. Since no genuine issue of fact exists concerning the car's ownership at the time of Yohana's negligent acts, the trial court erroneously denied defendant's motion for summary disposition.

Reversed.

/s/ Marilyn Kelly
/s/ Barbara B. MacKenzie
/s/ Richard J. Ernst