

VERMONT SUPERIOR COURT  
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CIVIL DIVISION  
Case No. 111-6-20 Oscv

Letourneau et al vs. Key Auto Sales, Inc. et al

## ENTRY REGARDING MOTION

Title: Motion for Summary Judgment; Cross Motion for Summary Judgment ; Netherlands Insurance Company's Cross-Motion for Partial Summary Judgment (Motion: 1; 2)  
Filer: Kevin E. Brown; Alexander G Henlin  
Filed Date: December 23, 2021; January 24, 2022

The motion is GRANTED IN PART and DENIED IN PART.

Parties to the present case have filed competing motions for summary judgment. Plaintiffs Amanda Letourneau, as a party injured in the collision under litigation, and Steven Adler, as Administrator of the Estate of Esperanza Robles, who died as a result of the collision, seek summary judgment on the following issues: (1) whether the limits of insurance provided by the Garage Coverage Form (the Policy) are available to compensate Plaintiffs and (2) whether Plaintiffs may recover under both the Garage Operations–Covered Autos liability coverage and the Vermont Uninsured Motorists Coverage provided by the Policy.

Defendant Netherlands Insurance Company (Netherlands), which provides auto insurance to Defendant Key Auto Sales (KAS), opposes Plaintiffs' Motion and seeks summary judgment that Plaintiffs may not recover under both the Garage Operations and Uninsured Motorists provisions of the Policy.

### Factual and Procedural Background

The parties do not contest the following facts, except where specifically noted. KAS is a used car sales business owned and operated by Ben Mossa and Dennis Choquette. In 2016, KAS purchased Policy No. CVP 8396946 from Netherlands to provide insurance coverage for vehicles which it owns. In April 2016, KAS accepted in trade a Honda Prelude (the Vehicle),

and both the previous owner and Joshua Cole (on behalf of KAS) signed the certificate of title. KAS took possession of the Vehicle, and KAS became the sole owner of the Vehicle.

Cole, separate and apart from his role as an employee of KAS, expressed an interest in acquiring the Vehicle from KAS, but KAS never signed over to Cole the certificate of title to the Vehicle. In addition, there was no bill of sale, written memorialization of a price term, or payment by Cole for the Vehicle. Plaintiffs contest Netherlands' allegation that Cole verbally agreed to pay \$500 for the Vehicle and that Cole placed his own registration plates on it.

Another KAS employee, Nathan Mathieu, inspected the Vehicle. The parties agree that Mathieu's inspection was faulty and incomplete, and that he improperly affixed a Vermont Inspection sticker to the Vehicle. On May 29, 2016, Cole negligently operated the Vehicle and crashed into a tree. Amanda Letourneau and Esperanza Robles were passengers at the time of the collision. As a result of the collision, Letourneau was injured, resulting in the amputation of her right leg, and Robles died.

The underlying cases, *Letourneau v. Key Auto Sales* (Case No. 120-5-18 Oscv), and *Adler v. Cole* (Case No. 111-5-18 Oscv), were filed in May 2018, seeking damages for Letourneau's and Robles' injuries. Plaintiffs subsequently joined together to bring this declaratory action on June 8, 2020, to determine insurance coverage in the underlying cases. Plaintiffs filed a motion for summary judgment on December 23, 2021.

Plaintiffs seek summary judgment that the limits of both types of liability insurance are available to compensate them in their underlying cases, as well as a declaration that Plaintiffs are also entitled to uninsured motorist insurance coverage. Defendant Netherlands responded and filed a cross motion for summary judgment on January 24, 2022. Netherlands opposes Plaintiffs' motion and seeks summary judgment that Plaintiffs are not entitled to both liability and uninsured motorist coverage. Plaintiffs filed a reply to Netherlands' opposition to their motion together with a response to Netherlands' cross motion on March 2, 2022. Netherlands filed its reply to Plaintiffs' opposition on March 25, 2022.

### Summary Judgment Standard

Before the court are the parties' cross-motions for summary judgment. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). The court may enter summary judgment when, "after adequate time for discovery, a party fails to make a showing sufficient to establish the existence of an element essential to [his or] her case and upon which [he or] she has the burden of proof." *Gallipo v. City of Rutland*, 2005 VT 83, ¶ 13, 178 Vt. 244 (quotation marks omitted).

When determining whether there is a disputed issue of material fact, a court must afford the party opposing summary judgment the benefit of all reasonable doubts and inferences. *Carr v. Peerless Insurance Co.*, 168 Vt. 465, 476 (1998). However, a non-moving party cannot rely on bare allegations, unsupported generalities, or speculation to defeat a properly supported motion for summary judgment. See V.R.C.P. 56(c), (e); *Webb v. Leclair*, 2007 VT 65, ¶ 14, 182 Vt. 559 (mem.). "[C]onclusory allegations without facts to support them are insufficient to survive summary judgment." *Robertson v. Mylan Laboratories, Inc.*, 2004 VT 15, ¶ 48, 176 Vt. 356. Thus, an opposing party's allegations must be supported by affidavits or other documentary materials which show specific facts sufficient to justify submitting his or her claims to a factfinder. See *Robertson*, 2004 VT 15, ¶ 15; *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996).

### Liability Coverage

#### **1. Garage Operations – Covered Autos**

The Garage Operations – Covered Autos provision of KAS's policy states, in relevant part, the following:

#### **SECTION II - LIABILITY COVERAGE**

##### **A. Coverage [ . . . ]**

##### **2. "Garage Operations"– Covered "Autos"**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from "garage operations" involving the ownership, maintenance or use of covered "autos". [ . . . ]

#### **SECTION VI – DEFINITIONS**

H. “Garage operations” means the ownership, maintenance or use of locations for garage business and that portion of the roads or other accesses that adjoin these locations. “Garage operations” includes the ownership, maintenance or use of the “autos” indicated in Section I of this Coverage Form as covered “autos”. “Garage operations” also include all operations necessary or incidental to a garage business.

Plaintiffs seek a declaratory judgment that the limit of the Garage Operations–Covered Autos policy is available to compensate them in the underlying cases. Plaintiffs allege that coverage is available because the Vehicle was a “covered auto” under the Policy, which KAS had given Cole permission to drive, and that the term “garage operations” includes the use of such a vehicle. Netherlands alleges, in opposition to their argument, that there are material facts in dispute as to whether KAS or Cole owned the Vehicle at the time of the collision, and whether the car was being used for covered “garage operations.”

The parties dispute whether a change in ownership of the Vehicle was in progress when the collision occurred, but this issue is not material to the question whether a change in ownership had in fact occurred before the collision. Although KAS and Cole may or may not have believed that KAS had transferred ownership of the Vehicle to Cole, the statutory requirements are clear. To determine whether a transfer by an owner is effective other than as between the parties, the court looks to 23 V.S.A. §§ 2023, 2024, and 2026, which is part of the Certificates of Title Act. 23 V.S.A. § 2023(d). Here, the applicable provision is § 2024, which provides:

When the dealer transfers the vehicle to a person, other than by the creation of a security interest, he or she shall simultaneously execute the assignment and warranty of title by filling in the spaces on the certificate of title or as prescribed by the Commissioner. . . . The certificate shall be mailed or delivered to the Commissioner with the transferee’s application for a new certificate.

It is undisputed in this case that no attempt was made to comply with the express requirements of the Certificates of Title Act.

The cases Netherlands cites for alternative means of determining ownership of the Vehicle, under which the disputed facts would be material, are distinguishable from the instant case, and, therefore, unpersuasive. In the case of *In re Estate of George*, the dispute was between the alleged transferee of an interest in a vehicle and the estate of the alleged transferor, and thus involved ownership of the vehicle as between the parties. *In re Estate of George*, 2021

VT 12, ¶¶ 1, 19, 214 Vt. 414. The explicit statutory exemption from the Certificates of Title Act, therefore, applied. See 23 V.S.A. § 2023(d) (providing that transfers not in compliance with §§ 2023 and 2026 or § 2024 are nonetheless effective “as between the parties”). In *Concord General Mutual Insurance Company v. Sumner*, the Court found that “all answers to ownership will not inevitably be found in the Certificate of Title Act.” *Concord Gen. Mut. Ins. Co. v. Sumner*, 171 Vt. 572, 573 (2000) (mem.). Because the Court looked to the U.C.C. to determine ownership in *Sumner*, Netherlands implies that it may be proper for this court to do so in this case. *Id.* at 574. Unlike the instant case, however, “no specific provisions in the Act govern[ed]” the situation in *Sumner*. *Id.* at 574., The Court did not find that answers to questions of ownership for insurance coverage purposes are never to be found in the Act, as Netherlands seems to suggest. Because the Certificates of Title Act specifies what is necessary to transfer a vehicle from a dealer to an individual, the general provision of the U.C.C. is inapplicable in this case. *Cf. Id.* (finding that the Certificates of Title Act did not supersede the general provisions of the U.C.C. because no specific Certificates of Title Act provision governed). No findings of fact, therefore, are required to reach the legal conclusion that KAS owned the Vehicle when the collision occurred. The Vehicle was, therefore, a covered auto. Additionally, because both parties agree that KAS permitted Cole to drive the Vehicle, and that any person driving a covered auto owned by KAS with the permission of KAS is an insured, Cole was an insured.

Netherlands’ argument regarding whether the collision resulted from “garage operations” does not assist it. Netherlands incorrectly contends that because Cole’s use of the Vehicle at the time of the collision did not have some additional nexus to KAS’ business as a garage, the garage operations liability insurance cannot apply. Although a residual sentence separate from that governing coverage of use of the Vehicle states that “[g]arage operations also include all operations necessary or incidental to a garage business[,]” this is phrased as an additional basis for coverage, and not as a restriction on coverage previously provided for, and the court declines to rewrite the Policy to create such an effect. Because “garage operations” include “the use of [covered] autos” without a requirement for the use to be necessary or incidental to a garage business, and because such an auto was used, the collision resulted from “garage operations”. The court, therefore, grants summary judgment to Plaintiffs on the availability of the limit of the

Garage Operations–Covered Autos liability insurance to compensate them for their injuries in the underlying cases.

## **2. Garage Operations–Other Than Covered Autos**

The Garage Operations–Other Than Covered Autos provision states, in relevant part, the following:

### **SECTION II—LIABILITY COVERAGE**

#### **A. Coverage**

##### **1. “Garage Operations” - Other Than Covered “Autos”**

- a. We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies caused by an “accident” and resulting from “garage operations” other than the ownership, maintenance or use of covered “autos”.

The definition of “garage operations” which applied to the “Garage Operations”–Covered Autos provisions also applies to the “Garage Operations”–Other Than Covered Autos provision.

Plaintiffs further seek on summary judgment a declaration that the limit of the Garage Operations–Other Than Covered Autos coverage is available to compensate them in the underlying cases. Plaintiffs allege that Mathieu improperly performed an inspection of the Vehicle on behalf of KAS. They allege that Mathieu was a KAS employee working on a KAS vehicle for KAS purposes. Netherlands disputes this and points to deposition testimony in which Mathieu testified that although Mathieu was a KAS employee, he believed that the Vehicle was owned by Cole and that he performed the inspection outside of his work duties on behalf of Cole. Netherlands does not dispute Plaintiffs’ allegation that Mathieu performed the inspection improperly.

The Court finds that there are material facts in dispute as to whether the inspection was performed within the scope of Mathieu’s employment. As Netherlands notes, whether a person is acting within the scope of his or her employment is “a fact-intensive inquiry.” Cf. *Cyr v. McDermott’s, Inc.*, 2010 VT 19, ¶13, 187 Vt. 392 (holding that whether a worker’s injury arose in the scope of their employment is a fact-intensive inquiry). These facts are unclear or are disputed. Mathieu was a KAS employee, and the Court has found that the Vehicle belonged to KAS at the time of the inspection, which would tend to support Plaintiffs’ claim that the inspection was performed on behalf of KAS. However, Mathieu testified that he believed the car

was already owned by Cole when he inspected it. It is not clear whether he used KAS equipment or premises in undertaking the inspection, or which actions by Mathieu constituted the inspection. In addition, Mathieu testified that he inspected the Vehicle outside of his normal work hours, and both he and the owners of KAS have testified that the inspection was carried out on behalf of Cole, rather than on behalf of KAS.

Because there are genuine issues of material fact regarding the question whether the inspection was carried out as part of Mathieu's duties as an employee of KAS, the court is unable to decide on summary judgment whether Plaintiffs are entitled to the Garage Operations–Other Than Covered Autos liability insurance to compensate them for their injuries in the underlying cases.

### Anti-Stacking Rule

The Vermont Uninsured Motorists provision of the Policy states, in relevant part, as follows:

#### **A. Coverage**

1. We will pay all sums the “insured” is legally entitled to recover as compensatory damages from the owner or driver of an “uninsured motor vehicle”. The damages must result from “bodily injury” sustained by the “insured”, or “property damage” caused by an “accident”. The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the “uninsured motor vehicle”.

2. With respect to damages resulting from an “accident” with a vehicle described in Paragraph **b.** of the definition of “uninsured motor vehicle”, we will pay under the coverage selected under this endorsement only if Paragraph **a.** or **b.** below applies:

**a.** The limit of any applicable liability bonds or policies have been exhausted by payment of judgments or settlements[. . .]

#### **F. Additional Definitions**

As used in this endorsement: [. . .]

4. “Uninsured motor vehicle” means a land motor vehicle or “trailer”: [. . .]

**b.** That is an underinsured motor vehicle. An underinsured motor vehicle is a land motor vehicle or “trailer” for which the sum of all liability bonds or policies at the time of an “accident” provides at least the amounts required by the applicable law where a covered “auto” is principally garaged but: [. . .]

(2) The available liability insurance has been reduced by payments to others injured in the “accident” to an amount which is less than the limits of this coverage applicable to the “insured”.

Plaintiffs in this case allege that because multiple parties (not limited to the Plaintiffs in this case) have large claims in the underlying cases, the amount available to compensate individual Plaintiffs under the liability coverage will be reduced to an amount which is less than the limit of the uninsured motorist coverage. Because of that, Plaintiffs contend that the Vehicle is effectively underinsured as to Plaintiffs, and so the Vermont uninsured motorist coverage under the Policy should be available to compensate Plaintiffs. Netherlands disagrees and argues that Plaintiffs are not entitled to recover from the uninsured motorist coverage portion of the Policy in a single vehicle collision, as occurred here.

Vermont case law is clear that “the underlying purpose of UIM [uninsured motorist] coverage [] is to protect the insured from the negligent driving of another, underinsured driver, not of the driver with whom he is riding.” *Progressive Cas. Ins. Co. v. MMG Ins. Co.*, 2014 VT 70 ¶ 30, 197 Vt. 253 (quotation omitted). Further, “allowing a person to receive benefits under both the liability and underinsured motorist provisions of a single policy would amount to an impermissible rewriting of the policy to increase the liability coverage[.]” because it would “effectively convert a form of coverage which is distinct from automobile liability insurance to additional liability coverage[.]” *Id.* ¶ 31. To do so would be to “rewrite the policy,” and “undercut the purpose of uninsured and underinsured motorist coverage statutes [by making] such coverage prohibitively expensive.” *Id.*

Given the clarity of Vermont law, summary judgment is denied to Plaintiffs and granted to Netherlands on the issue of the availability of uninsured motorist coverage under the KAS Policy. Because uninsured motorist coverage is not available under the undisputed facts of this case, the court does not need to determine the amount of damages in the underlying actions.

### **ORDER**

Based on the forgoing, Plaintiffs’ Motion for Summary Judgment is **Granted in Part** and **Denied in Part**. Defendant’s Cross Motion for Summary Judgment is **Granted**.

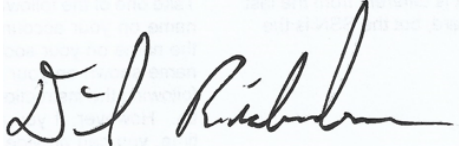
Plaintiffs are entitled to summary judgment that the incident was covered by the Garage Operations–Covered Autos liability insurance provision, but not as to the Garage Operations–Other Than Covered Autos liability insurance provision. The court denies summary judgment to



Plaintiffs on the issue whether they are entitled to recover from both the Garage Operations liability insurance as well as the Vermont Uninsured Motorists Coverage provided by the Policy.

Netherlands is entitled to summary judgment as to the issue that Plaintiffs may not recover under both the Garage Operations liability insurance as well as the Vermont Uninsured Motorists Coverage provided by the Policy.

Electronically signed on 10/31/2022 12:37 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background. The signature is fluid and cursive.

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Daniel Richardson  
Superior Court Judge