

IN THE SUPREME COURT OF OHIO

KURT HUSKONEN, et al.

Appellants,

vs.

AVIS RENT-A-CAR-SYSTEM, INC., et al.

Appellees.

08-2107

On Appeal from the Lorain County
Court of Appeals, Ninth Judicial District

Court of Appeals Case No. 08CA009334

MEMORANDUM IN SUPPORT OF JURISDICTION
OF PLAINTIFF APPELLANTS

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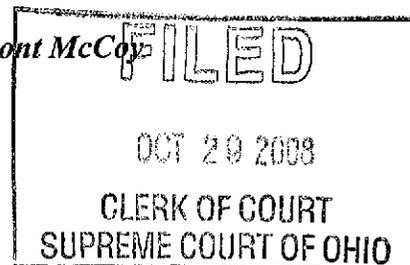


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**EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST**

The resolution of the conflict of laws issue presented by this case is of great public and general interest with wide ranging effects for anyone who transacts business in the interstate system. This case involves a rental car leased in one state, New York, that negligently caused an accident in another state, Ohio. The precise issue presented is which state's law governs the liability of the rental car company for its lessee's negligence. New York statutory law in effect at the time of the accident imposes vicarious liability on vehicle owner's for the negligence of the vehicle's authorized driver. Ohio common law, in direct conflict, does not impose vicarious liability. The appellate court incorrectly determined that Ohio law should apply to determine the legal liability of the rental car company arising from its rental contract entered into in New York. This result is not only irreconcilable with existing Ohio case law, it subjects contracting parties to ever changing laws depending on where the subject matter of their contract may be located at any given time.

The appellate court's erroneous resolution of this conflict of laws issue has wide ranging implications in many contexts beyond just that of rental car companies and car accidents. As businesses and individuals enter into transactions and contracts involving subject matter that moves across state lines, it is essential that parties to these transactions be able to consistently and predictably determine what law will govern any issues that arise out of that transaction. As other Courts have wisely recognized, the law of the state where a contract is entered into should govern any issues arising out of the contract regardless of where the precipitating cause of those issues may have occurred. *See Stallworth v. Hospitality Rentals, Inc.*, 515 So.2d 413, 417 (Fal. App. 1987); *Stathis v. National Car Rental Sys., Inc.*, 109 F.Supp.2d 55 (D. Mass. 2000);

Newcomb v. Haywood, 15 Mass. L. Reporter 531, 2003 WL 138404, *3 (Mass. Super. 2003).

This Court should accept jurisdiction of this matter and resolve this issue so that parties can predict with certainty the law that will govern the rights and obligations arising from a contract or transaction involving subject matter that is in or may be transported to more than one state.

STATEMENT OF THE CASE AND FACTS

This case revolves around a contract to rent a car. On April 3, 2003, Appellee Avis Rent-A-Car-Systems, Inc.¹ rented a New York registered vehicle in the State of New York to New York resident, Raushalia Dickerson. (“Rental Agreement,” Ex. 1 to Avis’ Dispositive Motions). At the time the rental contract was entered into, Section 388 of New York’s Vehicle and Traffic Law was in effect and applied to the transaction. This statute imposes vicarious liability on New York vehicle owners for the negligence of those using their vehicles with permission:

Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner.

New York Vehicle and Traffic Law § 388(1).

The following day, New York resident Lamont McCoy, while operating the Avis vehicle on the Ohio Turnpike in Amherst, Ohio, entered into Plaintiff-Appellant Kurt Huskonen’s lane of travel colliding with Mr. Huskonen’s vehicle. (Pltffs. Answer and Responses to Avis’ First Set of Interrogs. and Requests for Prod. of Docs., Response to Interrog. No. 23, Exhibit 3 to Avis’ Dispositive Motions). Mr. Huskonen sustained life threatening injuries as a result of the accident. While he has recovered to some degree, Mr. Huskonen continues to suffer permanent

¹The vehicle was either owned or rented by Avis or Defendant-Appellee Cendant Car Rental Group, Inc., an affiliate of Avis. For purposes of this Memorandum both are referred to collectively as “Avis.”

brain injury and physical deficits and requires daily medical treatment. (Response to Interrog. Nos. 10, 23). Appellants maintain that New York Vehicle and Traffic Law Section 388 governs the rental contract and imposes vicarious liability on Avis for the damages caused by Lamont McCoy's negligent operation of its vehicle.

On April 4, 2005, Plaintiffs-Appellants Kurt Huskonen, Shelley Huskonen, Kory Wallace Huskonen, and Kaley Ann Huskonen filed suit in the Cuyahoga County Court of Common Pleas against Defendants Lamont McCoy, Avis, Cendant, and Nationwide seeking damages arising from the bodily injury suffered by Kurt Huskonen in the accident.² The Huskonens' made claims against McCoy based on negligence. The Huskonens further alleged that Avis is vicariously liable for Defendant McCoy's negligence pursuant to its rental contract under New York Vehicle and Traffic Law Section 388. Also on April 4, 2005, Jed Hedlund filed suit in the Lorain County Court of Common Pleas against McCoy, Avis, and Kurt Huskonen seeking damages arising from the accident based on each parties' alleged negligence. On July 1, 2005, the Cuyahoga County Court of Common Pleas granted Avis' Motion to Transfer Venue and ordered the Huskonens' case transferred to the Lorain County Court of Common Pleas where it was consolidated with Hedlund's case.

On January 12, 2007, Avis filed its Dispositive Motions in the trial court moving for summary judgment against all parties. With respect to the Huskonens' claims, Avis argued that it was entitled to judgment as a matter of law because Ohio law, not New York law, controls and does not permit a claim against it for vicarious liability. The Huskonen Plaintiffs also filed a Motion for Partial Summary Judgment on January 16, 2007 arguing that New York law controls and, as a matter of New York law, Avis is vicariously liable for the negligence of Defendant

² The claims against Nationwide are for UM/UIM coverage and are not at issue in this appeal.

Lamont McCoy. On December 27, 2007, the Lorain County Court of Common Pleas granted summary judgment to Avis concluding that Ohio law governs Avis' liability and that, under Ohio law, Avis is not liable for Defendant McCoy's negligence. This order did not dispose of all the claims of all the parties. On January 24, 2008, the trial court amended its December 27, 2007 journal entry to contain the Civ. R. 54(B) certification that there is no just reason for delay.

A timely appeal was taken to the Ninth District Court of Appeals. The Court of Appeals affirmed the decision of the trial court and concluded that New York law does not apply and, therefore, Avis is not vicariously liable for Defendant McCoy's negligence. Appellants timely filed a Motion to Certify a Conflict with the Ninth District on the basis that its decision in this case is in conflict with the decision of the Mahoning County Court of Appeals, Seventh Appellate District, in *Cooper v. Nationwide Mutual Ins. Co.*, No. 95 CA 81, 1998 WL 355851 (Ohio App. 7th Dist., Mahoning County 1998). This Motion was denied on October 23, 2008.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: Contract conflict of law principles require the application of the law of the place where the relationship between a tortfeasor and a potentially liable third party was formed to determine the liability of the third party regardless of where the tortfeasor's negligence occurred.

In our ever shrinking world involving the constant crossing of state lines and interstate dealings, conflict of law issues arise frequently and have come before this Court on several occasions. See e.g., *Nationwide Mut. Ins. Co. v. Ferrin*, 21 Ohio St.3d 42 (1986); *Morgan v. Biro Mfg. Co.*, 15 Ohio St.3d 339, 342 (1984); *Ohoyan v. Sfecco Ins. Co. of Illinois*, 91 Ohio St.3d 474 (2001) (contract conflict of law principles governed suit involving interpretation of an insurance contract issues in Ohio involving a car accident in Pennsylvania); *American Interstate Ins. Co. v. G&H Service Center, Inc.*, 112 Ohio St.3d 521 (2007) (conflict regarding the law applicable to workers' compensation subrogation claim where Louisiana resident working in

course of his employment with a Louisiana trucking company was injured in Ohio by an Ohio corporation). These decisions have developed Ohio's conflict of laws jurisprudence and provide guidance to the lower courts in resolving these issues. Significant conflict issues, however, remain unresolved by this existing body of law. While the facts of this case deal with the conflict between a New York statute and Ohio common law in the context of a car accident, the principles established by the appellate court's decision have wide ranging impact for anyone involved in the interstate system. Furthermore, the result in this case is inconsistent with other Ohio appellate court decisions and this Court's opinion in *Nationwide Mut. Ins. Co. v. Ferrin*, 21 Ohio St.3d 42 (1986). This Court should accept jurisdiction of this case to resolve these inconsistencies so that parties entering into contracts in one state involving subject matter capable of being transported to another state can determine with certainty their legal obligations under such contracts.

Ohio has adopted the *Restatement (Second) of the Law, Conflict of Laws*, to address conflict of law issues. *Miller v. State Farm Mut. Automobile Ins. Co.*, 87 F.3d 822 (6th Cir. 1996). The Restatement conflict analysis differs depending on whether the action is based in tort or contract. *Id.* at 824. "It is well-settled in Ohio that in cases involving a contract, the law of the state where the contract is made governs interpretation of the contracts." *Nationwide Mut. Ins. Co. v. Ferrin*, 21 Ohio St.3d 43, 44 (1986) (internal citation omitted). For actions sounding in tort, "a presumption is created that the law of the place of the injury controls unless another jurisdiction has a more significant relationship to the lawsuit." *Morgan v. Biro Mfg. Co.*, 15 Ohio St.3d 339, 342 (1984). With respect to vicarious liability conflict issues, the Restatement makes clear that "vicarious liability may be imposed under the local law of the state *where the relationship between the one sought to be held liable and the tortfeasor is centered.*"

Restatement § 174, comment c (emphasis added). Under Ohio law, courts use a “selective approach to choice of the law governing particular issues.” *Restatement of the Law 2d, Conflict of Laws* (1971), Section 188, Comment d. In other words, both contract and tort conflict law could apply in a particular case to resolve different choice of law issues. *Id.* For example, Ohio conflict of laws jurisprudence recognizes that, despite the fact that the triggering event of a lawsuit is a tort, where “the true heart of the matter” involves interpretation of contracts, contract conflict rules apply. *Miller v. State Farm Mut. Ins. Co.*, 87 F.3d 822, 826-27 (6th Cir. 1996).

The threshold issue presented by this conflict of laws is whether tort or contract conflict of law principles apply. The Huskonens maintain that their claim against Avis is contractual in nature. Avis entered into a contract with Rashaulia Dickerson for a car rental. (Pltffs.’ Mot. for Partial Summ. J., Ex. 1). It is axiomatic that all statutes in effect at the time and place a contract is made are part of the contract as if they had been expressly incorporated therein. *Wood v. Lovett*, 313 U.S. 362 (1941). Section 388 was in effect at the time of this transaction in the state where it was made and, therefore, applied to it. Thus, Avis’s liability does not arise from any tort law, rather it arises from its contract to rent a car. Contract conflict of law principles should have been applied and the law of New York, the state where the contract was made, should govern.

In both the trial and appellate courts, the Huskonens cited to two Ohio cases that seemingly require the application of contract conflict principles in this case. *Nationwide Mut. Ins. Co. v. Ferrin*, Case No. 83AP-1115, 1985 WL 9813 (Ohio App. 10th Dist. 1985), *aff’d* 21 Ohio St.3d 43 (1986); *Cooper v. Nationwide Mut. Ins. Co.*, 1998 WL 355851 (Ohio App. 7th Dist. 1998). The trial court never addressed either decision. The appellate court also ignored

Cooper and made only a passing reference to *Ferrin* as standing for the proposition that the law of the place of contracting governs the interpretation of a contract. See Decision and Journal Entry of the Lorain County Court of Appeals at p. 5. Thus, neither the trial court nor the appellate court have offered any explanation as to how their resolution of this case is consistent or compatible with either *Cooper* or *Ferrin*.

In *Cooper* as in this case, the issue was whether the law of the place of the accident or the law of the place where the rental transaction occurred governs the obligation of a rental car company. *Cooper* involved a car accident caused by an Ohio resident while operating a rental car in New York that injured New York residents. The car was rented in Ohio by Syretha Cooper, an Ohio resident. While operating the vehicle in New York, Cooper became tired and allowed passenger Monet Hilson to drive the vehicle. Hilson caused a chain reaction collision. The injured New York residents brought an action in New York. Cooper brought a declaratory judgment action in Ohio to establish, *inter alia*, that the rental car company was obligated to pay first-party benefits under New York statutory law. Cooper argued, based on tort conflict of law principles, that this New York statutory requirement applied to the rental car company. The rental car company, however, argued that contract conflict rules should apply requiring the application of Ohio law. The court reasoned that if the rental contract was valid, contract conflict rules applied and the law of the place where the rental transaction occurred, not the place of the accident, governed the obligations of the rental car company. Issues regarding the validity of the rental contract prevented the court from definitively resolving the issue. The court was clear, however, that if the contract was valid, Ohio law governed. *Id.* at *7. Thus, *Cooper*, stands for the proposition that the law of the place where a valid rental contract is made governs

the obligations of a rental car company for the negligent operation of the leased vehicle regardless of where that negligence occurs.

Ferrin similarly applied Florida law to a case involving an Ohio accident. *Ferrin* arose from an automobile accident involving a semi-tractor owned and insured by an employer driven by an employee. Whether the employer's insurance policy provided coverage for the accident depended on whether the employee was using the vehicle with his employer's permission at the time of the accident. Resolution of the issue differed depending on whether Ohio or Florida law applied. The trial court concluded that application of Florida law was appropriate based on the facts that the employer's headquarters were in Florida, the employer's insurance policy had a Florida address, the employee was employed in Florida, and the employee left with the vehicle in Florida. *Id.* at *2. This Court affirmed emphasizing that "[i]t is well-settled in Ohio that in cases involving a contract, the law of the state where the contract is made governs interpretation of the contract." 21 Ohio St.3d at 44. *See also Ohayon v. Safeco Ins. Co. of Illinois*, 91 Ohio st.3d 474 (2001) (contract conflict of law principles governed suit involving interpretation of an insurance contract issued in Ohio involving a car accident in Pennsylvania); *Wallman v. Riverside Auto Sales, Inc.*, 909 F.2d 183 (6th Cir. 1990) (applying the law of the place where the vehicle was purchased, Indiana, to determine issues of ownership and liability arising from a Michigan accident).

The trial and appellate court's conclusion that this case presents a tort conflict of law analysis requiring the application of Ohio law is simply inconsistent with *Cooper* and *Ferrin*. *Cooper* and *Ferrin* present conflicts between the law of the state where the relationship between the tortfeasor and a potentially liable third party was formed and the law of the state of the accident. Ohio law, not New York's statutory requirements, applied to determine the *Cooper*

rental car company's legal responsibilities because Ohio was the state where it entered into the rental transaction. *Ferrin* affirms the principle that the law of the state where the relationship giving rise to liability was formed must govern issues relating to that liability. This case, however, stands for precisely the opposite principle that regardless of where a tortfeasor and third party form their relationship, the law of the place where the tort occurs determines the third party's liability for that tort.

Proposition of Law No. 2: Alternatively, under a tort conflict of law analysis, the state where the relationship between a tortfeasor and a potentially liable third party was formed has a more significant relationship to the vicarious liability issue than the law of the place of the injury and its law should govern.

Even if this case is properly governed by tort conflict of law principles, the appellate court failed to properly apply these tort principles to this case. In a tort action, the law of the place of the injury presumptively applies unless another jurisdiction has a more significant relationship to the particular issue. *Morgan, supra*. Whether a state has a more significant relationship is determined with respect to the following factors:

- (1) the place of the injury;
- (2) the place where the conduct causing the injury occurred;
- (3) the domicile, residence, nationality, place of incorporation, and place of business of the parties;
- (4) the place where the relationship between the parties, if any, is located; and
- (5) any factors under Section 6 which the court may deem relevant to the litigation.

Id. at 342, quoting Restatement § 145. The relevant factors that may be taken into account under Section 6 are:

- (a) the needs of the interstate and international systems,
- (b) the relevant policies of the forum,
- (c) the relevant policies of those interested states and the relative interests of those states in the determination of the particular issue,
- (d) the protection of justified expectations,
- (e) the basic policies underlying the field of law,

- (f) certainty, predictability and uniformity of result, and
- (g) ease in the determination and application of the laws to be applied.

Id. at 342. These facts and considerations are to be evaluated in accordance with their relative importance to the particular issue being litigated. *Id.* at 342. Here, the particular issue relates to Avis' vicarious liability. With respect to vicarious liability conflict issues, the Restatement makes clear that "vicarious liability may be imposed under the local law of the state *where the relationship between the one sought to be held liable and the tortfeasor is centered.*" § 174, comment c (emphasis added). *See also Cates v. Creamer*, 431 F.3d 456, 465 (5th Cir. 2005) (where conflict of laws arose regarding the issue of a car rental company's liability for rental car driver's negligence "[t]he most relevant relationship is that which arises from the lease of the automobile"). Pursuant to these authorities, the relationship between Avis and its authorized driver, not Avis and the Huskonens, is central to this conflict analysis. This relationship was based in New York involving a New York rental transaction, a New York authorized driver, and a New York registered vehicle. Ohio has no relationship to this transaction. Therefore, New York has a more significant relationship to this issue and its law should govern.

Regardless of whether tort or contract conflict principles apply, the Ninth District's decision creates inconsistency and unpredictability for parties entering into contracts in one state involving subject matter capable of being transported to other states. The confusion created by this decision's departure from the principles set forth in *Cooper* and *Ferrin* further muddies the already unsettled waters of Ohio's conflict of laws jurisprudence. Furthermore, under the rule established by this decision, the legal obligations governing such contracts change whenever its subject matter crosses state lines. If this rule is permitted to stand, contracting parties would be unable to ensure compliance with their statutorily imposed obligations or effectively assess the

cost of compliance. *See Stallworth v. Hospitality Rentals, Inc.*, 515 So.2d 413, 417 (Fla. App. 1987) (refusing to hold “that each time the rented car crossed the several state lines on the contemplated trip, the legal rule governing Hospitality’s vicarious liability to Florida occupants of the car would change in accordance with the local law of the state where the automobile happened to be in at that particular moment.”).

As one court noted with regard to a similar conflict between Maine’s vicarious liability law and Massachusetts’ common law:

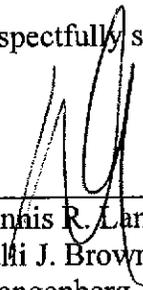
[T]he interstate system and rental companies have an interest in predictability. Maine and Massachusetts regulate owner liability and the insurance necessary for rental cars differently. National entered into a rental contract with [the tortfeasor] in accordance with the laws of Maine. It registered and insured the rental cars as required by Maine. It knew that Maine imposed owner liability. To adopt National’s position [that Massachusetts law applies] would be to subject tortfeasors and their victims to the various liability laws of the fifty states-predicated largely on where the accident occurred. Moreover, a rental company, regardless of where the car was registered, insured and rented, would be subject to vacillating laws.

Stathis v. National Car Rental Sys., Inc., 109 F.Supp.2d 55 (D. Mass. 2000). *See also Newcomb v. Haywood*, 15 Mass. L. Reporter 531, 2003 WL 138404, *3 (Mass. Super. 2003) (“Application of each state’s law to rental business operating in that state, regardless of the location of a collision, promotes predictability and uniformity, allowing businesses to identify their insurance needs with confidence, based on known information.”). Rental car companies, or any business whose dealings involve the moving of items or people across state lines, should be able to determine with certainty the law that will govern their legal obligations related to those dealings. The rule established by the appellate court creates the tenuous situation that as the subject matter of a contract crosses state lines so does the governing body of law.

CONCLUSION

For all the foregoing reasons, this case involves matters of public and great general interest. The appellants request that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,



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I certify that a copy of this Memorandum in Support of Jurisdiction of Plaintiffs Appellants was sent by ordinary U.S. Mail on this 28th day of October 2008 to the following counsel for Appellees:

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COURT OF APPEALS

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IN COUNTY

STATE OF OHIO)
COUNTY OF LORAIN)

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IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

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KURT HUSKONEN, et al.

CLERK OF COMMON PLEAS No.
RON NABAKOWSKI

08CA009334

Appellants

9th APPELLATE DISTRICT

v.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 05CV141675

AVIS RENT-A-CAR SYSTEM, INC. et al.

Appellees

DECISION AND JOURNAL ENTRY

Dated: September 15, 2008

MOORE, Presiding Judge.

{¶1} Appellants, Kurt Huskonen et. al., appeal from the judgment of the Lorain County Court of Common Pleas which granted summary judgment in favor of Appellee, Avis Rent-A-Car. We affirm.

I.

{¶2} This case arose from a motor vehicle accident that occurred on April 4, 2003. Appellant, Kurt Huskonen ("Huskonen"), was injured when Lamont McCoy ("McCoy"), a New York resident, collided with Huskonen's vehicle while traveling on the Ohio Turnpike. Although McCoy was driving the rental car at the time of the accident, McCoy was not the authorized driver on the rental contract. Rather, an acquaintance of McCoy, Ms. Raushalia Dickerson ("Dickerson"), had rented the vehicle from Appellee, Avis-Rent-A-Car ("Avis") in New York. She was the only authorized driver on the rental contract.

{¶3} On April 4, 2005, Huskonen¹ filed suit in the Cuyahoga County Court of Common Pleas against Avis and Cendent Car Rental Group. Huskonen alleged that Avis was vicariously liable for McCoy's negligence pursuant to its rental contract under New York Vehicle and Traffic Law Section 388. The Cuyahoga County Court granted Avis' Motion to Transfer Venue on July 1, 2005. The court ordered Huskonen's case transferred to the Lorain County Court of Common Pleas, where it was consolidated with the suit filed by Huskonen's passenger during the accident, Jed Hedlund.

{¶4} On January 12, 2007, Avis filed a motion for summary judgment against all parties asserting that Ohio law, not New York law, controlled and did not permit a claim against it based on vicarious liability. Huskonen also filed a motion for partial summary judgment on January 16, 2007. In his motion, Huskonen asserted that Avis was liable for McCoy's negligence. On December 27, 2007, the trial court granted summary judgment to Avis concluding that Ohio law governed, and that Avis would not be liable for McCoy's negligence under Ohio tort law. Huskonen timely appealed the trial court's order, raising three assignments of error for our review. We have combined Huskonen's assignments of error for ease of consideration.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRONEOUSLY GRANTED AVIS’ MOTION FOR SUMMARY JUDGMENT IN APPLYING OHIO TORT LAW TO A CONTRACT DRAFTED IN NEW YORK WITH A NEW YORK RESIDENT.”

¹ Huskonen's family includes Shelly Huskonen, Kory W. Huskonen, and Kaley A. Huskonen. His family has brought suit making derivative claims on the basis of loss of consortium due to the injury to Huskonen.

ASSIGNMENT OF ERROR II

“THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT TO AVIS ON THE BASIS THAT NEW YORK DOES NOT HAVE A MORE SIGNIFICANT RELATIONSHIP TO THE ESSENTIAL ISSUE THAN OHIO WHERE ALL CONDUCT AND ACTIVITIES RELEVANT TO THE ISSUE OF AVIS’ LIABILITY OCCURRED IN NEW YORK AND NEW YORK HAS A SUBSTANTIAL INTEREST IN APPLYING ITS LAW.”

ASSIGNMENT OF ERROR III

“THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT TO AVIS AND CONCLUDED THAT IT WAS NOT VICARIOUSLY LIABLE FOR ITS RENTAL VEHICLE’S NEGLIGENT OPERATION WHERE NEW YORK LAW APPLIES AND, AS A MATTER OF NEW YORK LAW, AVIS IS VICARIOUSLY LIABLE.”

{¶5} In his assignments of error, Huskonen contends that the trial court erred in granting Avis’ motion for summary judgment. We do not agree.

{¶6} This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. We apply the same standard as the trial court, viewing the facts of the case in the light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party. *Viock v. Stowe-Woodward Co.* (1983), 13 Ohio App.3d 7, 12.

{¶7} Pursuant to Civil Rule 56(C), summary judgment is proper if:

“(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.” *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327.

{¶8} The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and pointing to parts of the record that show the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-93.

Specifically, the moving party must support the motion by pointing to some evidence in the record of the type listed in Civ.R. 56(C). *Id.* Once this burden is satisfied, the non-moving party bears the burden of offering specific facts to show a genuine issue for trial. *Id.* at 293. The non-moving party may not rest upon the mere allegations and denials in the pleadings but instead must point to or submit some evidentiary material that demonstrates a genuine dispute over a material fact. *Henkle v. Henkle* (1991), 75 Ohio App.3d 732, 735.

{¶9} Avis filed its motion for summary judgment on January 12, 2007. In its motion, Avis argued in part that Section 388(1) of New York's Vehicle and Traffic Law was not applicable in the instant case. Specifically, Avis argued that "Huskonens' claims against Avis are rooted in Section 388," and that due to conflict of law principles, this New York statute did not apply. Huskonen responded on February 2, 2007, contending that New York law applied to this case and that under Section 388, Avis was vicariously liable for McCoy's negligence. The trial court determined that New York law did not apply and therefore Avis could not be liable under Section 388. While we agree with the trial court's ultimate decision that Section 388 does not apply in this case and therefore Avis was not vicariously liable on that theory, we do not necessarily agree with the trial court's reasoning.

{¶10} "It is well established in Ohio that 'a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as a basis thereof.'" *Co Le'Mon, L.L.C. v. Host Marriott Corp.*, 9th Dist. No. 05CA008797, 2006-Ohio-2685, at ¶17, quoting *State ex rel. Carter v. Schotten* (1994), 70 Ohio St.3d 89, 92. Further, "[t]he trial court's ultimate judgment in this case was correct, and it is the court's ultimate judgment we are affirming in this Opinion." *Abdalla's Tavern v. Dept. Of Commerce, Div. Of State Fire Marshal*, 7th Dist. No. 02 JE 34, 2003-Ohio-3295, at ¶83.

{¶11} In the instant case, the trial court reasoned that the New York law did not apply because the underlying cause of action was based in tort, and therefore Ohio law applied. “It is well-settled in Ohio that in cases involving a contract, the law of the state where the contract is made governs interpretation of the contract.” (Internal citations omitted.) *Nationwide Mut. Ins. Co. v. Ferrin*, 21 Ohio St.3d 43, 44. “Factors relevant to determining the applicable law in a contract case include the following: (a) the place of contracting; (b) the place of negotiations of the contract; (c) the place of performance; (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties.” (Internal citations and quotations omitted.) *Progressive Direct Ins. Co. v. Gross*, 1st Dist. No. C-070547, 2008-Ohio-2058, at ¶10. However, if the action sounds in tort, “a presumption exists that the law of the place of the injury controls unless another jurisdiction has a more significant relationship to the lawsuit.” *Id.* Further, it is clear under Ohio law that we are to take a “selective approach to choice of the law governing particular issues.” Restatement of the Law 2d, Conflict of Laws (1971), Section 188, Comment d. In other words, we are to look at each issue in a case separately “if it is one which would be resolved differently under the local law rule of two or more of the potentially interested states.” *Id.* Therefore, the instant case could be governed by either tort or contract law, or a combination of the two. If we were to determine that New York law applied to interpret the contract, our review of New York law would be limited to the cases, statutes, and regulations that govern the interpretation of contracts in New York. The remainder of the case could be governed by Ohio tort law. We decline, however, to make that determination here.

{¶12} In their arguments below and to this Court, the parties specifically reference Section 388(1) of New York's Vehicle and Traffic Law. This section states, in relevant part, that;

“Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner.”

We again note that the contract, the rental agreement, does not specifically reference this section. No New York court has held that Section 388 operates as an implied contractual provision between the owner of a vehicle and its driver. To the contrary, the New York Court of Appeals has held that Section 388 creates a tort action in which a driver's negligence is imputed to the vehicle's owner. *Argentina v. Emery World Wide Delivery Corp.* (N.Y. 1999), 715 N.E.2d 495, 496 (“The tort action here ... claim[s] that [the vehicle's owner] was liable for [plaintiffs'] damages under Vehicle and Traffic Law §388(1), which imposes liability on all vehicle owners for accidents resulting from negligence in the permissive ‘use or operation’ of their vehicles.”); *Mowczan v. Bacon* (N.Y. 1998), 703 N.E.2d 242, 243 (“Vehicle and Traffic Law §388 pertinently provides that the negligence of the user or operator of a motor vehicle is imputed to the owner.”); see, also, *Graham v. Dunkley* (N.Y. Sup. Ct. 2006), 827 N.Y.S.2d 513, 522 (“Vehicle and Traffic Law § 388 is a state statute in derogation of the state common law ... and it is part of New York State's substantive law of torts”), rev'd on other grounds, 852 N.Y.S.2d 169 (N.Y. App. Div. 2008).

{¶13} The New York legislature's goal in enacting Section 388 “was to ensure that owners of vehicles that are subject to regulation in New York ‘act responsibly’ with regard to those vehicles.” *Fried v. Seippel* (N.Y. 1992), 599 N.E.2d 651, 655 (quoting *Boxer v. Gottlieb*

(S.D.N.Y. 1987), 652 F. Supp. 1056, 1065). It imposes liability on the owner of a vehicle regardless of whether there is a contract between the owner and driver. See *Kline v. Wheels by Kinney* (C.A.4, 1972), 464 F.2d 184, 186.

{¶14} We again point out that in general, under Ohio conflict of law principles, we look to New York law to interpret a contract and to Ohio law to resolve tort issues. Therefore, Section 388(1) would only be relevant in this case if it were a statute utilized to interpret the rental agreement. As New York courts have repeatedly held that an action based on Section 388 is a tort action and because the section operates independently of any contractual relationship between a vehicle's owner and its driver, Section 388 does not govern the interpretation of the rental agreement. Accordingly, Section 388(1) cannot be used to interpret the rental agreement, and therefore, under Ohio conflict of law principles, does not apply to the instant case. Therefore, as a matter of law, Avis could not be held liable under Section 388(1). As such, the trial court did not err when it granted Avis' summary judgment on this issue, regardless of its reasoning.

III.

{¶15} Huskonen's assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.



CARLA MOORE
FOR THE COURT

WHITMORE, J.
DICKINSON, J.
CONCUR

APPEARANCES:

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RICHARD M. GARNER, Attorney at Law, for Appellees.