

WHAT ARE YOU SUING ME FOR? I HAD NO CONTROL: LESSOR FLEET LIABILITY

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In [Barz v Driving Force Inc.](#)^[1] the Court of Queen's Bench of Alberta ("Court") held that a vehicle rental company ("Lessor") was not liable to compensate a passenger ("Passenger") injured in one of its rented vehicles as part of a workplace accident. Lessors of vehicles are often held vicariously liable for accidents caused by a lessee driver. However, an accident that occurs in a workplace setting changes the legal landscape for lessor liability. This bulletin summarizes the decision and key takeaways for lessors of vehicles.

Background

The facts are simple:

- A truck was rented by Magna Electric Corporation ("Lessee") on a month-to-month rental agreement.
- Two of the Lessee's employees were in the truck: the Passenger and the driver ("Driver").
- The Driver crashed the truck into a ditch and the Passenger was injured.

The decision in *Barz* concerns the interplay between Alberta's *Workers' Compensation Act*^[2] and *Traffic Safety Act*^[3]. The *Traffic Safety Act*^[4] imposes vicarious liability on the owner of a vehicle for the actions of a driver. However, the *Workers' Compensation Act*^[5] applies where an accident occurs in a workplace setting and may limit the vicarious liability imposed by the *Traffic Safety Act*.

The Upshot

In Alberta, a lessor is typically exposed to vicarious liability for all of the injuries sustained by a plaintiff that were caused by consensual operation of the leased vehicle. However, *Barz* confirms that where the accident occurs in a workplace setting, a lessor may only be found responsible to pay for its proportionate share of liability. A lessor's proportionate share of liability will be zero percent where it does not exercise any supervision or control over the leased vehicle, and there is otherwise no act or omission by the lessor which contributed to the accident's causation. Effectively, the lessor will avoid paying anything to the injured plaintiff if the accident occurs in a workplace setting that is subject to the *Workers' Compensation Act*.

Relevant Legislation

Section 187(2) of the *Traffic Safety Act* deems a consensual driver of a vehicle to be the agent or employee of the owner of the vehicle. The definition of “owner” under the *Traffic Safety Act* is broad and includes renters and lessors of vehicles. The result is that a lessor is vicariously liable for loss or damage caused by operation of its vehicle.

Section 23(1) of the *Workers Compensation Act* removes causes of action as between an injured employee and certain employers or workers in respect of a workplace accident. The employer or workers receive immunity from an action by the injured employee. The rationale is that the *Workers’ Compensation Act* offers a compensation scheme for injured employees outside of a court action.

If a non-immune defendant is sued, then section 23(2) of the *Workers Compensation Act* provides that such defendant is only liable for its own fault on a several basis in an action by the injured employee, not on a joint and several basis for all damages sustained by the employee.

Is the Lessor Vicariously Liable?

In this case, the Lessor had given its consent to the Driver operating the vehicle and faced vicarious liability as a result of section 187(2) of the *Traffic Safety Act*. The Court found that the accident had occurred in a workplace such that the *Workers’ Compensation Act* applied. However, section 23(1) of the *Workers’ Compensation Act* did not operate to protect the Lessor from its vicarious liability arising under section 187(2) of the *Traffic Safety Act*.^[6] The Lessor had not been involved in the workplace accident other than by virtue of its rented vehicle.

Section 23(2) of the *Workers’ Compensation Act* limited the Lessor’s liability to its several vicarious liability.^[7] Had this accident occurred outside of a workplace setting, the Lessor may have been responsible jointly and severally for all of the damages sustained by the Passenger (subject to the limits provided for in the *Traffic Safety Act*).

How Should Liability Be Apportioned?

The Court then assessed the amount of several vicarious liability for which the Lessor was responsible. The Court found the Lessor had no supervision or control over the vehicle or the Driver, and thus was zero percent liable to the Passenger.

The Court cited *Mclver*^[8], where the Court of Appeal of Alberta considered the liability of a vehicle owner in another workplace accident. The owner in that case had left his vehicle at a mechanic for repairs and consented to the employees’ test driving it. The vehicle was taken by an employee and involved in a collision. To allocate loss, the Court considered whether the vehicle owner had supervision or direct contact with the negligent driver. The Court held that the vehicle owner did not have the power to supervise the driver and had no direct contact.^[9] The Court apportioned zero percent liability to the vehicle owner.

The Court held that “if a car owner who authorizes the use of his car has zero per cent liability [*McIver*], surely an owner finance company – or here, an owner leasing company – can have no more fault by virtue of having less control than the car’s actual owner.”^[10]

The Passenger argued that the rental agreement provided that the Lessor maintained certain control over the vehicle.^[11] The Court rejected that argument and held that the rental agreement only provided an abstract opportunity for the Lessor to exercise control over the vehicle but did not provide the Lessor with any actual control over the vehicle.^[12]

The Court held that there was no evidence establishing any amount of several liability for the Lessor. As a result, the Court upheld the lower court Master’s decision and found the Lessor zero percent liable for the damages.

Is the *Traffic Safety Act* Frustrated?

The Court then considered whether finding that the Lessor is zero percent liable frustrates the purpose of section 187 of the *Traffic Safety Act*. The purpose of section 187 is to enable plaintiffs injured in motor vehicle accidents to recover their damages expeditiously.

The Court held that section 187 was not frustrated by finding the Lessor is zero percent liable because of the workers’ compensation scheme, citing *McIver*:

Nothing in s 187 of the TSA expresses a preference for compensating loss caused by the consensual use of a vehicle through an action against the vicariously liable vehicle owner rather than some other mode of compensation. Where, as here, the Workers’ Compensation scheme provides compensation to the injured plaintiff, the objective of s 187 of the TSA – that plaintiffs injured by the consensual but negligent use of a vehicle are compensated – is satisfied.^[13]

Takeaways

Barz is helpful jurisprudence for Alberta vehicle lessors. A lessor may only be found liable for its own several vicarious liability where a rented or leased vehicle is involved in a workplace accident. Where that lessor does not exercise any supervision or control over the vehicle, and does not otherwise breach any duty of care, it is likely that the lessor will be found zero percent liable.

McMillan’s Automotive Group is well equipped to assist lessors of vehicles defend liability.

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[1][ps2id id='1' target='']*Barz v Driving Force Inc*, 2021 ABQB 248 [*Barz*].

[2][ps2id id='2' target=''] *Workers’ Compensation Act*, RSA 2000, c W-15.

[3][ps2id id='3' target=''] *Traffic Safety Act*, RSA 2000, c T-6.

[4][ps2id id='4' target=''] *Traffic Safety Act*, RSA 2000, c T-6, s. 187.

[5][ps2id id='5' target=''] *Workers' Compensation Act*, RSA 2000, c W-15, s. 23.

[6][ps2id id='6' target=''] *Barz* at para 4.

[7][ps2id id='7' target=''] *Barz* at para 3.

[8][ps2id id='8' target=''] *Mclver v McIntyre*, 2018 ABCA 151 [*Mclver*].

[9][ps2id id='9' target=''] *Mclver* at para 72.

[10][ps2id id='10' target=''] *Barz* at para 17.

[11][ps2id id='11' target=''] *Barz* at para 9.

[12][ps2id id='12' target=''] *Barz* at para 21.

[13][ps2id id='13' target=''] *Mclver* at para 64.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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