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SUPREME COURT
COURT OF APPEALS

IN THE
MISSISSIPPI SUPREME COURT
FOR THE STATE OF MISSISSIPPI

DOCKET NO. 2008-CA-01062

AAA COOPER TRANSPORTATION,
Plaintiff-Appellant,

v.

CHUCK PARKS, Individually and
d/b/a DILLINGHAM MOTORS, and
DILLINGHAM MOTORS,
Defendant-Appellee.

Appeal from the Circuit Court of Tippah County, Mississippi

BRIEF FOR APPELLANT

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Certificate of Interested Persons

AAA COOPER TRANSPORTATION,

Plaintiff-Appellant,

v.

No. 2008-TS-01062

CHUCK PARKS, Individually and
d/b/a DILLINGHAM MOTORS, and
DILLINGHAM MOTORS,

Defendant-Appellee.

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. AAA Cooper Transportation, Plaintiff-Appellant;
2. Chuck Parks, Defendant-Appellee;
3. Dillingham Motors, Defendant-Appellee;
4. T. C. Poplar, Defendant;
5. Amy Kimkel, Defendant;
6. Taucia Poplar, Defendant.

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Statement of the Issues

- I. Whether the trial court abused its discretion in denying AAA Cooper Transportation's motion for additional discovery before responding to Chuck Parks's and Dillingham Motors's motion for summary judgment when T. C. Poplar had not responded to written discovery despite an order granting a motion to compel and an order on a motion for sanctions, when Chuck Parks had not produced important documents, such as bills of sale, before the response was due despite a motion to compel further responses to written discovery and a deposition revealing the existence of such documents, and when Taucia Poplar had not been joined as a party and no discovery had been taken from her despite the fact that a motion to amend complaint had been filed and set for hearing shortly after she was identified as a potential party and a material witness to the case.

- II. Whether the trial court erred in granting summary judgment to Chuck Parks and Dillingham Motors when there are genuine issues as to whether Parks employed T. C. Poplar given that Chuck Parks and T. C. Poplar swear that there was no employment relationship but another witness swears that Chuck Parks employed T. C. Poplar, when there are genuine issues as to whether Chuck Parks sold the vehicle to T. C. Poplar given that there are genuine issues as to the date and amount of the alleged sale, and Chuck Parks did not produce important documents, which are the best evidence of a sale, and did not properly assign title, and when there are genuine issues as to whether Chuck Parks negligently provided T. C. Poplar with a vehicle given that Chuck Parks did not remove the old Illinois license plates, did not provide a temporary tag, did not ask to see Poplar's driver's license, and did not ask to see any identification from T. C. Poplar.

Statement of the Case

A. Proceedings Below

On March 28, 2007, AAA Cooper Transportation filed a complaint against T. C. Poplar, Amy Kimkel, Chuck Parks, and Dillingham Motors.¹ The complaint alleged that T. C. Poplar was directly liable to AAA Cooper Transportation for negligence and negligence per se.² Also, the complaint alleged that Amy Kimkel, Chuck Parks, and Dillingham Motors were directly liable to AAA Cooper Transportation for negligence.³ Finally, the complaint alleged that Chuck Parks and Dillingham Motors were vicariously liable to AAA Cooper Transportation because they employed Poplar.⁴

On April 20, 2007, T. C. Poplar was served with the complaint. Also, on April 30, 2007, Chuck Parks and Dillingham Motors were served with the complaint. Finally, on May 16, 2007, Amy Kimkel was served with the complaint.

On May 22, 2007, T. C. Poplar answered the complaint and filed a counter-complaint.⁵ On June 8, 2007, after being given an extension of time to respond to the complaint by AAA Cooper Transportation, Chuck Parks and Dillingham Motors answered the complaint.⁶ On June 13, 2007, AAA Cooper Transportation answered the counter-complaint.⁷

On July 6, 2007, AAA Cooper Transportation served interrogatories, requests for production of documents, and requests for admission, on T. C. Poplar.⁸ Also, on that

¹ C.P. 1:1-6.

² C.P. 1:3-4.

³ C.P. 1:5.

⁴ C.P. 1:2-3.

⁵ C.P. 1:7-11.

⁶ C.P. 1:12-18.

⁷ C.P. 1:20-21, 24-26.

⁸ C.P. 1:22-23.

same day, AAA Cooper Transportation served interrogatories and requests for production of documents on Chuck Parks and Dillingham Motors.⁹ On July 31, 2007, T. C. Poplar responded to AAA Cooper Transportation's requests for admission.¹⁰ However, T. C. Poplar did not respond to AAA Cooper Transportation's interrogatories or requests for production of documents. On that same day, Chuck Parks and Dillingham Motors responded to AAA Cooper Transportation's written discovery.¹¹

On August 28, 2007, AAA Cooper Transportation filed a motion to determine the sufficiency of T. C. Poplar's answers to requests for admission.¹² Also, on that same day, AAA Cooper Transportation filed a motion to compel T. C. Poplar to respond to AAA Cooper Transportation's interrogatories and requests for production of documents.¹³ Further, on or about that same day, counsel for AAA Cooper Transportation wrote counsel for Chuck Parks and Dillingham Motors an e-mail regarding the insufficiency of Parks's and Dillingham Motors's responses to written discovery. Finally, on that same day, AAA Cooper Transportation noticed its discovery motions for hearing on September 25, 2007.¹⁴

On or about September 12, 2007, Chuck Parks and Dillingham Motors filed a motion for summary judgment.¹⁵ The motion was supported by an affidavit from T. C. Poplar.¹⁶ Also, the motion was supported by an affidavit from Chuck Parks.¹⁷ Significantly, Parks and Dillingham Motors did not file an itemization of the facts relied upon and not genuinely disputed with the motion for summary judgment. Also,

⁹ C.P. 1:22-23.

¹⁰ C.P. 1:27-28.

¹¹ C.P. 96-111; R.E. 39

¹² C.P. 1:32-38.

¹³ C.P. 1:29-30.

¹⁴ C.P. 1:31, 39.

¹⁵ C.P. 1:40-44.

¹⁶ C.P. 1:45.

¹⁷ C.P. 1:46.

significantly, Chuck Parks and Dillingham Motors did not submit a memorandum of authorities in support of the motion for summary judgment.

AAA Cooper Transportation's motion to determine sufficiency and motion to compel were not heard on September 25, 2007, because of unexpected criminal matters on the trial court's docket. On October 15, 2007, counsel for AAA Cooper Transportation wrote counsel for Chuck Parks and Dillingham Motors a lengthy letter regarding the insufficiency of Parks's and Dillingham Motors's responses to written discovery.¹⁸ On or about October 19, 2007, AAA Cooper Transportation re-noticed its discovery motions for hearing on November 29, 2007.¹⁹ On October 26, 2007, counsel for Chuck Parks and Dillingham Motors responded to the letter.²⁰ On or about November 7, 2007, Chuck Parks and Dillingham Motors noticed their motion for summary judgment for hearing on November 29, 2007.²¹

On November 19, 2007, AAA Cooper Transportation responded to Chuck Parks's and Dillingham Motors's motion for summary judgment by asking the trial court to strike the motion because it did not include a memorandum of authorities and it did not include a itemization of the facts relied upon and not genuinely disputed.²² Also, AAA Cooper Transportation responded to Chuck Parks's and Dillingham Motors's motion for summary judgment by requesting additional time to perform discovery before responding to the motion.²³ On November 26, 2007, Chuck Parks and Dillingham Motors submitted a memorandum of authorities in support of the motion for summary

¹⁸ C.P. 1:112-114.

¹⁹ C.P. 1:49-50.

²⁰ C.P. 1:115-117.

²¹ C.P. 1:51-52.

²² C.P. 1:52-63.

²³ C.P. 1:52-63.

judgment. Also, on November 26, 2007, Chuck Parks and Dillingham Motors submitted an itemization of facts relied upon and not genuinely disputed.²⁴

On November 29, 2007, the trial court granted in part and denied in part AAA Cooper Transportation's motion to determine sufficiency.²⁵ Also, the trial court granted AAA Cooper Transportation's motion to compel T. C. Poplar to respond to written discovery.²⁶ Finally, the trial court granted AAA Cooper Transportation's motion for additional time to perform discovery before responding to Chuck Parks's and Dillingham Motors's motion for summary judgment.²⁷ The trial court ordered T. C. Poplar to respond to written discovery by December 31, 2007.²⁸ Also, the trial court ordered AAA Cooper Transportation to take Chuck Parks's deposition by February 1, 2008.²⁹ Finally, the trial court ordered AAA Cooper Transportation to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment by, at a minimum, March 1, 2008.³⁰

On January 2, 2008, AAA Cooper Transportation filed a motion for sanctions because T. C. Poplar had not responded to written discovery despite the trial court's order.³¹ In the motion for sanctions, AAA Cooper Transportation moved the trial court to: 1) dismiss T. C. Poplar's counterclaim against AAA Cooper Transportation; 2) grant AAA Cooper Transportation a default judgment against Poplar; 3) strike Poplar's affidavit in support of Parks's and Dillingham Motors's motion for summary judgment; and 4) stay the proceedings on Parks's and Dillingham Motors's motion for summary judgment until AAA Cooper Transportation was able to take Poplar's deposition after a

²⁴ C.P. 1:73-74.

²⁵ C.P. 1:79-80.

²⁶ C.P. 1:77-78.

²⁷ C.P. 1:81-82.

²⁸ C.P. 1:77-78.

²⁹ C.P. 1:81-82.

³⁰ C.P. 1:81-82.

³¹ C.P. 1:122-125.

default judgment was taken against him.³² Also, AAA Cooper Transportation filed a motion to compel Chuck Parks and Dillingham Motors to further respond to written discovery.³³ AAA Cooper Transportation set the motion for sanctions and motion to compel for hearing on January 10, 2008.³⁴

On January 10, 2008, the trial court denied AAA Cooper Transportation's motion to compel Chuck Parks and Dillingham Motors to further respond to written discovery.³⁵ Also, with respect to the motion for sanctions, the trial court ordered: 1) that T. C. Poplar dismiss his counter-complaint against AAA Cooper Transportation; 2) that Poplar offer to allow a judgment to be taken against him for the money demanded in the complaint by entering into an agreed judgment; and that 3) Poplar submit to a deposition by February 1, 2008.³⁶

Interestingly, the trial court ordered T. C. Poplar to voluntarily dismiss his counter-complaint against AAA Cooper Transportation rather than just dismissing it. Also, interestingly, the trial court ordered T. C. Poplar to voluntarily allow a default judgment to be taken against him rather than just entering a default judgment. Further, interestingly, the trial court did not address the fact that T. C. Poplar had not responded to written discovery despite an order granting a motion to compel even though T. C. Poplar's failure to respond to written discovery was the impetus for AAA Cooper Transportation's motion for sanctions. Finally, the trial court did not strike T. C. Poplar's affidavit in support of Chuck Parks's and Dillingham Motors's motion for summary judgment and did not stay the proceedings on Chuck Parks's and Dillingham Motors's

³² C.P. 1:122-125.

³³ C.P. 1:83-89.

³⁴ C.P. 1:118-121, 126-129.

³⁵ C.P. 1:138-139, 1:142-143, R.E.48-50.

³⁶ C.P. 1:140-141.

motion for summary judgment.³⁷ In sum, then, AAA Cooper Transportation left the hearing on its motion for sanctions without any immediate gain—the trial court did not dismiss the counterclaim, did not grant a default judgment, did not strike the affidavit, and did not stay the proceedings on the motion for summary judgment—but with an immediate obligation—take Poplar's deposition within the next 20 days without the benefit of written discovery responses.

On January 17, 2008, AAA Cooper Transportation took T. C. Poplar's deposition.³⁸ The deposition was taken pursuant to the trial court's order seven days earlier to take the deposition by February 1, 2008.³⁹ Also, the deposition was taken without the benefit of T. C. Poplar's responses to written discovery. This was despite the fact that a motion to compel had been filed and granted,⁴⁰ and that a motion for sanctions had been filed and ruled upon.⁴¹ In his deposition, T. C. Poplar identified a previously unknown material witness to the case, his daughter Taucia Poplar.⁴²

Also, on January 30, 2008, AAA Cooper Transportation took Chuck Parks's deposition.⁴³ In his deposition, Parks testified as to many documents that had not been produced to plaintiff.⁴⁴ This was after plaintiff's motion to compel further responses to written discovery had been heard and denied.⁴⁵ These documents included a bill of sale from Anna Jonesboro Motor Company, Inc.⁴⁶ Also, these documents included a bill of sale to T. C. Poplar.⁴⁷ On February 6, 2008, counsel for plaintiff again followed up

³⁷ C.P. 1:140-141.

³⁸ C.P. 1:145.

³⁹ C.P. 1:140-141.

⁴⁰ C.P. 1:29-30, 1:77-78.

⁴¹ C.P. 1:122-125, 1:140-141.

⁴² C. P. 2:264-268.

⁴³ C.P. 1:146.

⁴⁴ C.P. 3:338, 341, 362-364, 368, 385, R.E. 55-56, 61-62, 67.

⁴⁵ T. 3-32, C.P. 1:138-139, 1:142-143.

⁴⁶ C.P. 3:363; R.E. 61.

⁴⁷ C.P. 3:368; R.E. 62.

with counsel for defendants through an e-mail asking for all documents mentioned in Parks's deposition. On February 7, 2008, counsel for defendants responded to counsel for plaintiff's e-mail asking for specific document requests. On February 19, 2008, after waiting for the transcript of Chuck Parks's deposition, counsel for AAA Cooper Transportation propounded specific document requests to counsel for Chuck Parks and Dillingham Motors through an e-mail. Counsel for AAA Cooper Transportation never received the document before the deadline for responding to the motion and was never able to question Chuck Parks regarding the documents in a deposition.

On February 7, 2008, in response to the depositions, AAA Cooper Transportation filed a motion to amend complaint.⁴⁸ The motion to amend complaint asked, among other things, to add Taucia Poplar as a defendant.⁴⁹ At that time, AAA Cooper Transportation requested that defendants consent in writing to the motion. On February 13, 2008, through an e-mail, AAA Cooper Transportation followed up with defendants regarding consent in writing to the motion. On February 15, 2008, through a telephone call, plaintiff followed up with defendants again regarding written consent to the motion. During the telephone call, counsel for T. C. Poplar stated that he could not consent to a motion which proposed to add the daughter of his client as a defendant. However, counsel for Poplar also stated that he would not oppose the motion if it were presented to the trial court. On the same day as the telephone call, counsel for Chuck Parks and Dillingham Motors expressed his preference that the motion be heard on the same day as the hearing on Parks's and Dillingham Motors's motion for summary judgment. However, counsel for Parks and Dillingham Motors never stated whether his client would consent in writing to the motion or whether they would oppose the motion. On

⁴⁸ C.P. 2:147-148.

⁴⁹ C.P. 2:147-148.

Monday, February 18, 2008, after obtaining dates from the court, AAA Cooper Transportation noticed the motion for hearing on Tuesday, February 26, 2008.⁵⁰ On Tuesday, February 19, 2008, Chuck Parks and Dillingham Motors responded to the motion by asking the court to delay the hearing on the motion.⁵¹ On Wednesday, February 20, 2008, AAA Cooper Transportation replied to the response.⁵² On that same day, the trial court indicated that it would delay the hearing on AAA Cooper Transportation's motion to amend until the hearing on Parks's and Dillingham Motor's motion for summary judgment.

On February 29, 2008, AAA Cooper Transportation submitted a substantive response to Chuck Parks's and Dillingham Motors's motion for summary judgment.⁵³ The substantive response argued, among other things, that T. C. Poplar's and Chuck Parks's testimony regarding the transaction should be excluded under the best evidence rule because Chuck Parks had not produced the bill of sale and other documents which were the best evidence of the transaction. In support of its substantive response, AAA Cooper Transportation filed 1) the deposition transcript of T. C. Poplar;⁵⁴ 2) the deposition transcript of Chuck Parks;⁵⁵ 3) the affidavit of Todd Leidold;⁵⁶ 4) an application for certificate of title form;⁵⁷ 5) the certificate of title;⁵⁸ and 6) a Mississippi Sales Tax Return Form.⁵⁹ In addition to the substantive response, AAA Cooper Transportation also requested additional time to perform discovery before

⁵⁰ C.P. 2:149-150.

⁵¹ C.P. 2:161-162.

⁵² C.P. 2:151-160.

⁵³ C.P. 2:163-205.

⁵⁴ C.P. 2:213 – 3:318.

⁵⁵ C.P. 3:319-421.

⁵⁶ C.P. 2:206.

⁵⁷ C.P. 3:422-424.

⁵⁸ C.P. 3:425-426.

⁵⁹ C.P. 3:427-430.

responding to the motion⁶⁰ After AAA Cooper Transportation submitted a substantive response to Chuck Parks's and Dillingham Motors's motion for summary judgment, including the argument that testimony regarding the transaction should be excluded under the best evidence rule because Parks had not produced the bill of sale, Parks produced additional documents, including the bill of sale from Anna Jonesboro Motor Company, Inc. to Parks and the bill of sale from Chuck Parks to T. C. Poplar. On March 14, 2008, Chuck Parks and Dillingham Motors replied to the response.⁶¹

On March 19, 2008, AAA Cooper Transportation filed an amended motion to amend complaint.⁶² The amended motion to amend complaint sought, among other things, to clarify AAA Transportation's claims against Chuck Parks and Dillingham Motors to include negligence, negligence per se, negligent entrustment, and respondeat superior.⁶³ On March 21, 2008, Chuck Parks and Dillingham Motors responded to the amended motion to amend complaint.⁶⁴

On May 13, 2008, the trial court denied AAA Cooper Transportation's motion for additional discovery and granted Chuck Parks's and Dillingham Motors's Motion for summary judgment.⁶⁵ Also, on that date, the trial court found that there was no just reason for delay in entering a judgment in favor of Chuck Parks and Dillingham Motors.⁶⁶ Further, on May 13, 2008, the trial court granted in part and denied in part AAA Cooper Transportation's amended motion to amend complaint.⁶⁷ The trial court

⁶⁰ C.P. 2:163-205.

⁶¹ C.P. 4:452-460.

⁶² C.P. 3:431-443.

⁶³ C.P. 3:431-443.

⁶⁴ C.P. 4:446-450.

⁶⁵ C.P. 4:461-463, R.E. 7-9.

⁶⁶ C.P. 4:461-463, R.E. 7-9.

⁶⁷ T. 33-60.

allowed AAA Cooper Transportation to add Taucia Poplar as a defendant.⁶⁸ However, the trial court denied AAA Cooper Transportation the ability to amend its complaint as to Chuck Parks and Dillingham Motors.⁶⁹

B. Statement of Facts

T. C. Poplar is a 51 year old resident of Alcorn County, Mississippi.⁷⁰ For the past 6 years, T. C. Poplar states that he has been unemployed because he is disabled.⁷¹

Chuck Parks is a 40 year old resident of Alcorn County, Mississippi.⁷² For the past 12 years, Chuck Parks has been the sole proprietor of Dillingham Used Cars.⁷³ Also, during that time, Chuck Parks has been a landlord, running the business out of his office at Dillingham Used Cars.⁷⁴ Chuck Parks has never received any formal training on how to be a used car dealer.⁷⁵ Also, he has never produced any documents showing that he is licensed, bonded used car dealer, whose site has been inspected by the Mississippi State Tax Commission.⁷⁶

Dillingham Used Cars is located in Tippah County, Mississippi, on United States Highway 72.⁷⁷ Dillingham Used Cars sits on approximately 10 unpaved acres, and has an office, a shop, and a mobile home.⁷⁸ The mobile home, which Chuck Parks began renting out when he acquired the business, is 10 yards from the shop and 30 yards from

⁶⁸ T. 33-60.

⁶⁹ T. 33-60.

⁷⁰ C.P. 2:225-226.

⁷¹ C.P. 2:227.

⁷² C.P. 3:326; R.E. 52

⁷³ C.P. 3:328; R.E. 52.

⁷⁴ C.P. 3:339-341; R.E. 55-56.

⁷⁵ C.P. 3:343; R.E.56.

⁷⁶ C.P. 1:102-111; R.E. 39-47.

⁷⁷ C.P. 3:329; R.E. 53.

⁷⁸ C.P. 3:329-331. R.E. 53.

the office.⁷⁹ Dillingham Used Cars has about 1,000 cars, approximately 35 of which are for sale, and the rest of which are for salvage.⁸⁰ Other than Chuck Parks, Dillingham Used Cars has 2 employees, Ann Parks, a secretary, and Rebecca Dillingham, a part-time secretary.⁸¹

On December 14, 2005, Chuck Parks, doing business as Dillingham Used Cars, purchased a green 1996 Dodge Avenger from Anna Jonesboro Motor Company, Inc., at an auction in Illinois.⁸² Chuck Parks testified that he could not remember how much he paid for the vehicle.⁸³ However, a bill of sale, provided to AAA Cooper Transportation after it was required to respond to Chuck Parks's and Dillingham Motors's Motion for Summary Judgment, shows that Parks paid \$100.00 for the car.⁸⁴ The green 1996 Dodge Avenger was transported from Illinois to Mississippi on a truck.⁸⁵

Some time after the automobile arrived in Mississippi, T. C. Poplar was driven to Dillingham Used Cars by his daughter, Taucia Poplar.⁸⁶ Taucia Poplar was accompanied by her husband, Mackey.⁸⁷ The reason that T. C. Poplar was driven to Dillingham Used Cars was because he did not have a driver's license.⁸⁸ Also, he did not have a vehicle. Taucia and Mackey may have also been with T. C. Poplar to pay for a car, since he was unemployed.⁸⁹

⁷⁹ C.P. 3:333; R.E. 54.

⁸⁰ C.P. 3:330; R.E. 53.

⁸¹ C.P. 3:335-336; R.E. 54.

⁸² C.P. 3:363; R.E. 61.

⁸³ C.P. 3:363; R.E. 61.

⁸⁴ T. 50-51.

⁸⁵ C.P. 3:370; R.E. 63.

⁸⁶ C.P. 2:262.

⁸⁷ C.P. 2:262.

⁸⁸ C.P. 2:271.

⁸⁹ C.P. 2:264-265.

After the group arrived at Dillingham Used Cars, the green 1996 Dodge Avenger was apparently transferred from Chuck Parks to T. C. Poplar.⁹⁰ The only document evidencing the deal was a "bill of sale."⁹¹ In other words, documents such as a buyer's guide, privacy notice, consumer credit disclosure, sales tax return, and other documents incident to a car sale, which are the best evidence of the transaction, were never drawn up. After the alleged transfer, Mackey drove Taucia Poplar's vehicle off of the car lot.⁹² And, Taucia Poplar drove the green 1996 Dodge Avenger off of the lot.⁹³

Given the lack of documentation, it is difficult to know the specifics of the transaction on the car lot that day, or even what day the deal took place. The bills of sale, which were not produced to AAA Cooper Transportation until after it was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment, show that on December 14, 2005, Anna Jonesboro Motor Company, Inc., a dealer in Illinois, sold the vehicle to Chuck Parks for \$100.00, and that on December 14, 2005, Chuck Parks, a dealer in Mississippi, sold the vehicle to T. C. Poplar for \$4,750.00.⁹⁴ Also, the bill of sale shows that T. C. Poplar provided a down payment of \$750.00 and financed the balance of \$4,000.00 through Dillingham Used Cars. Finally, the bill of sale reveals that no sales tax was withheld. Chuck Parks explains the lack of sales tax by stating that T. C. Poplar was a resident of the State of Tennessee when the vehicle was sold.⁹⁵ However, as is more fully discussed below, Chuck Parks never asked to see any form of identification from T. C. Poplar.

⁹⁰ C.P. 3:364-365; R.E. 61.

⁹¹ C.P. 3:371; R.E. 63.

⁹² C.P. 2:262.

⁹³ C.P. 2:262.

⁹⁴ T. 50-51.

⁹⁵ C.P. 3:371; R.E. 63.

Looking at the bills of sale, as a matter of common sense, it does not seem possible that Anna Jonesboro Motor Company, Inc., a dealer in Illinois, sold the car to Chuck Parks on one day, and then Chuck Parks, a dealer in Mississippi, sold the car to T. C. Poplar on that same day. Also, as a matter of common sense, it does not seem probable that Chuck Parks could buy an automobile for \$100.00 on one day and then sell it for \$4,750.00 on that same day for a 4,650% profit. Further, the bill of sale does not itemize what was paid for the car and what was paid as interest. Moreover, no documents, such as receipts, bank records, sales tax records, or other accounting records, which are the best evidence of the transaction, were produced to verify that T. C. Poplar actually paid \$750.00 or that Chuck Parks actually received \$750.00.⁹⁶ Finally, the bill of sale did not identify Dillingham Used Cars' state issued lienholder number.

Despite the fact that he never produced the bill of sale, which is part of the best evidence of the contract, until after AAA Cooper Transportation was required to respond to the motion for summary judgment, Chuck Parks testified by affidavit regarding the transaction so that he could obtain summary judgment for himself.⁹⁷ In a deposition to discover more details about the statements in the affidavit, Chuck Parks testified that he possessed the automobile at Dillingham Used Cars, "maybe a day or two," before selling it to T. C. Poplar.⁹⁸ Also, Chuck Parks stated that he obtained a state issued lienholder number, and that the state issued lienholder number was on the bill of sale.⁹⁹ When the bill of sale was produced, after AAA Cooper Transportation was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment, it

⁹⁶ C.P. 1:102-111; R.E. 39-47.

⁹⁷ C.P. 1:45; R.E. 45.

⁹⁸ C.P. 3:370; R.E. 63.

⁹⁹ C.P. 3:368; R.E. 62.

became clear that Chuck Parks's testimony was inconsistent with the bill of sale. As mentioned above, the bill of sale shows that Chuck Parks bought the car from Anna Jonesboro Motor Company, Inc. on one day and then sold it to T. C. Poplar on the same day. However, Chuck Parks testified that he possessed the vehicle for some time before selling it to Poplar.¹⁰⁰ Also, the bill of sale did not identify Dillingham Used Cars' state issued lienholder number. However, Chuck Parks testified that he obtained a state issued lienholder number, and that the state issued lienholder number was on the bill of sale.¹⁰¹

In addition to the inconsistencies between the bill of sale and Chuck Parks's testimony, the bills of sale also raised additional questions. In his deposition, Chuck Parks could not remember how much he paid for the vehicle.¹⁰² The bills of sale, which were produced after AAA Cooper Transportation took Chuck Parks's deposition, and after AAA Cooper Transportation was required to respond to Parks's and Dillingham Motors's motion for summary judgment, show that Chuck Parks purchased the vehicle for \$100.00 on one day and then sold it for \$4,750.00 on that same day. How did Chuck Parks obtain a 4,650% profit in such a short time period? Also, in his deposition, Chuck Parks testified that he obtained a state issued lienholder number, and that the state issued lienholder number was on the bill of sale.¹⁰³ However, the bill of sale did not identify Dillingham Used Cars' state issued lienholder number. What was Chuck Parks's state issued lien holder number? Finally, the bill of sale merely states that \$4,750.00 was paid for the vehicle and \$750.00 was paid on the day of the alleged

¹⁰⁰ C.P. 3:370; R.E. 63.

¹⁰¹ C.P. 3:368; R.E. 62.

¹⁰² C.P. 3:363; R.E. 61.

¹⁰³ C.P. 3:368; R.E. 62.

transaction. How much of the \$4,750.00 was for the car and how much of the \$4,750.00 was for interest?

In addition to testifying about information in the bill of sale, Chuck Parks also testified as to many other facts regarding the transaction, which would have been included in documents incident to a car sale, had those documents been prepared. First, from the testimony, it is clear that Chuck Parks did not ask to see T. C. Poplar's driver's license before allegedly selling him the vehicle.¹⁰⁴ This is so even though Chuck Parks knew that T. C. Poplar was disabled when he came to the car lot.¹⁰⁵ If Chuck Parks would have asked to see T. C. Poplar's driver's license, then he would have discovered that T. C. Poplar did not have a valid driver's license at the time of the transaction.¹⁰⁶ And, it was obvious that T. C. Poplar did not have a valid driver's license because he was driven to Dillingham Used Cars by his daughter, Taucia Poplar, who was accompanied by her husband, Mackey, and Taucia Poplar drove the green 1996 Dodge Avenger off of the car lot, while her husband, Mackey, drove her vehicle off of the lot.¹⁰⁷ Finally, incredibly, Chuck Parks never asked to see any identification from T. C. Poplar before handing the automobile over to him.¹⁰⁸

Also, it is undisputed that Chuck Parks did not remove the old Illinois license plates from the car before turning it over to T. C. Poplar.¹⁰⁹ Chuck Parks does not have an explanation for why he did not remove the old license plates, "I just didn't [do it]."¹¹⁰ Chuck Parks states that he sometimes leaves old license plates on when he sells a

¹⁰⁴ C.P. 3:373; R.E. 64.

¹⁰⁵ C.P. 3:353; R.E. 59.

¹⁰⁶ C.P. 2:271.

¹⁰⁷ C.P. 2:262.

¹⁰⁸ C.P. 3:373; R.E. 64.

¹⁰⁹ C.P. 3:374; R.E. 64.

¹¹⁰ C.P. 3:374; R.E. 64.

vehicle.¹¹¹ However, Chuck Parks also states that he sometimes takes old license plates off when he sells a vehicle.¹¹² As is more fully discussed below, one explanation for why Chuck Parks did not remove the old Illinois license plates is that, on the day of the alleged sale, Chuck Parks did not give T. C. Poplar documents regarding title, which are necessary to obtain new license plates for a vehicle. In addition to not removing the old Illinois license plates, temporary tags were not provided for the automobile before allowing it to be driven off of the lot.¹¹³

Finally, it is undeniable that Chuck Parks did not properly transfer title to T. C. Poplar, if title was transferred at all. Looking at the certificate of title, which was the only document produced before AAA Cooper Transportation was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment, Anna Jonesboro Motor Company, Inc., a dealer in Illinois, transferred the vehicle to Chuck Parks on December 14, 2005, and Chuck Parks, a dealer in Mississippi, transferred the vehicle to T. C. Poplar on December 14, 2005.¹¹⁴ As with the bill of sale, as a matter of common sense, it does not seem possible that Anna Jonesboro Motor Company, Inc., a dealer in Illinois, transferred the car to Chuck Parks on one day, and then Chuck Parks, a dealer in Mississippi, transferred the car to T. C. Poplar on that same day.

As mentioned above, in his deposition, Chuck Parks testified that he possessed the automobile at Dillingham Used Cars, "maybe a day or two," before transferring it to T. C. Poplar.¹¹⁵ And, in his deposition, Chuck Parks admitted that the only document drawn up on the day of the transaction was a "bill of sale."¹¹⁶ Thus, in his deposition,

¹¹¹ C.P. 3:375; R.E. 64.

¹¹² C.P. 3:375; R.E. 64.

¹¹³ C.P. 3:374; R.E. 64.

¹¹⁴ C.P. 3:425-426; R.E.46-47.

¹¹⁵ C.P. 3:370; R.E. 63.

¹¹⁶ C.P. 3:371; R.E. 63.

Chuck Parks admits that, on the day of the agreement, he did not give T. C. Poplar title to the vehicle,¹¹⁷ as is generally done in non-dealer transactions. And, in his deposition, Chuck Parks admits that, on the day of the deal, he did not complete an application for new certificate of title,¹¹⁸ to show that T. C. Poplar owned the automobile and that Dillingham Used Cars retained a security interest in the vehicle, as is generally done in dealer transactions.

Chuck Parks speculates that he may have transferred title to T. C. Poplar sometime after the alleged sale.¹¹⁹ However, because the date on the certificate of title is clearly erroneous, and because the certificate of title is the best evidence of the transfer, it is impossible to know exactly when Chuck Parks allegedly transferred the vehicle to T. C. Poplar.

Interestingly, as of today, Chuck Parks still retains the original certificate of title on the vehicle.¹²⁰ As this Court knows, title is evidence of ownership. Chuck Parks is at a loss to explain why he retains the original certificate of title on a vehicle that he allegedly sold to T. C. Poplar and that he allegedly transferred to T. C. Poplar sometime later. According to Chuck Parks:

I buy the cars. They mail me the titles. I hadn't gotten the title in the mail. I wrote him a Bill of Sale up where he purchased it. And he was going to come back and pick the title up. Okay. So he come back to – and, I guess, maybe he picked the title up. I mean, I know for sure he definitely signed it. He may have just gave it back to me. I mean, like I said, that's been how long ago.¹²¹

On December 30, 2005, at approximately 3:16AM, a blue 1999 Volvo VNM664, owned and operated by AAA Cooper Transportation, was totaled when it collided with

¹¹⁷ C.P. 3:371; R.E. 63.

¹¹⁸ C.P. 3:371; R.E. 63.

¹¹⁹ C.P. 3:392; R.E. 68.

¹²⁰ C.P. 1:102-111; R.E. 39-47.

¹²¹ C.P. 3:392; R.E. 68.

the green 1996 Dodge Avenger, Illinois license plate number 616800, on United States Highway 72 in Tippah County, Mississippi.¹²² At the time of the collision, T. C. Poplar was operating the green 1996 Dodge Avenger.¹²³ T. C. Poplar does not remember much about the 24 hour period before the accident:

Q: [Could you just tell me a little bit about what happened] the day before the accident or the day of the accident?

A: I don't remember.

Q: Do you have any idea what time you got up that day?

A: No.

Q: Any idea of who you saw that day?

A: No.

Q: Any idea of the places that you went that day?

A: No.

Q: So, just as I understand it, you have no recollection of that day, the 24-hour period preceding the accident, before the accident?

A: I don't hardly remember nothing that day.¹²⁴

And, T. C. Poplar does not remember much about the trip immediately before the accident:

Q: And when did you begin that drive before the accident?

A: I don't remember.

Q: Do you remember what you were doing on that drive?

A: No.¹²⁵

However, police and fire department personnel who were present at the scene of the accident state that, at the time of the collision, T. C. Poplar was obviously intoxicated.¹²⁶ Also, T. C. Poplar was operating the vehicle without a license.¹²⁷ Further, T. C. Poplar had completely stopped the green 1996 Dodge Avenger in the left hand lane of United States Highway 72.¹²⁸ Moreover, T. C. Poplar had

¹²² C.P. 1:1-6.

¹²³ C.P. 2:282.

¹²⁴ C.P. 3:278.

¹²⁵ C.P. 2:279-280.

¹²⁶ C.P. 1:1-6.

¹²⁷ C.P. 1:1-6.

¹²⁸ C.P. 1:1-6.

turned off all of the lights on the automobile.¹²⁹ Further, T. C. Poplar had placed the transmission in park.¹³⁰ Finally, T. C. Poplar had engaged the emergency brake.¹³¹ Both T. C. Poplar and the driver of the AAA Cooper Transportation vehicle were injured in the collision.¹³²

At some point after the accident, the green 1996 Dodge Avenger found its way back to Dillingham Used Cars.¹³³ Chuck Parks states that the person who towed the vehicle from the scene of the accident knew that the vehicle was his and called him and told him where he could find the vehicle.¹³⁴ However, Chuck Parks does not remember the name of the person who towed the automobile from the scene of the accident.¹³⁵ Presumably the person who towed the car from the scene of the accident released the car to Chuck Parks because Chuck Parks still had the certificate of title for the car. In his deposition, Chuck Parks testified that he had documents regarding the person who towed the vehicle from the scene of the accident.¹³⁶ However, apparently, Chuck Parks can now not find those documents.

When the green 1996 Dodge Avenger arrived back at Dillingham Used Cars, it was totaled.¹³⁷ Also, T. C. Poplar had not insured the vehicle.¹³⁸ Despite the fact that the green 1996 Dodge Avenger was totaled, and that T. C. Poplar had not insured the vehicle, Chuck Parks testified that T. C. Polar continued paying for the vehicle for approximately one year until it was paid off.¹³⁹ Again, no documents, such as receipts,

¹²⁹ C.P. 1:1-6.

¹³⁰ C.P. 1:1-6.

¹³¹ C.P. 1:1-6.

¹³² C.P. 2:287.

¹³³ C.P. 3:383; R.E. 66.

¹³⁴ C.P. 3:380; R.E. 65.

¹³⁵ C.P. 3:380; R.E. 65.

¹³⁶ C.P. 3:362; R.E. 61.

¹³⁷ C.P. 3:379; R.E. 65.

¹³⁸ C.P. 2:275.

¹³⁹ C.P. 3:382-383; R.E. 66.

bank records, sales tax records, or other accounting records, which are the best evidence of the transaction, were produced to verify that T. C. Poplar actually paid money for the car after it was totaled or that Chuck Parks actually received money for the car after it was totaled.¹⁴⁰

Interestingly, Chuck Parks states that he reduced the amount of money that T. C. Poplar owed him for the vehicle once the vehicle was totaled.¹⁴¹ Chuck Parks does not remember how much he reduced the amount;¹⁴² however, he estimates that he reduced the amount by \$1,750.00.¹⁴³ Again, no documents, such as a new agreement, or other accounting records, which are the best evidence of the transaction, were produced to show how much Chuck Parks reduced the amount.¹⁴⁴ This is so even though Chuck Parks states that he has those documents at Dillingham Used Cars.¹⁴⁵ Chuck Parks seems to imply that he was willing to pay T. C. Poplar \$1,750.00 for the salvage value of the vehicle.¹⁴⁶ However, Chuck Parks admits that T. C. Poplar never transferred the car back to Dillingham Used Cars.¹⁴⁷ Also, Chuck Parks admits that he never made an application for certificate of salvage title. It is interesting that Chuck Parks would be willing to pay \$1,750.00 for the totaled green 1996 Dodge Avenger, when he allegedly paid \$100.00 for the non-totaled car, and allegedly had it sold for \$4,750.00.

In addition to continuing to pay for the totaled green 1996 Dodge Avenger, immediately after the accident, T. C. Poplar allegedly purchased another vehicle from

¹⁴⁰ C.P. 1:102-111; R.E. 39-47.

¹⁴¹ C.P. 3:384; R.E. 66.

¹⁴² C.P. 3:385; R.E. 67.

¹⁴³ C.P. 3:385; R.E. 67.

¹⁴⁴ C.P. 1:102-111; R.E. 39-47.

¹⁴⁵ C.P. 3:385; R.E. 67.

¹⁴⁶ C.P. 3:384; R.E. 66.

¹⁴⁷ C.P. 3:384; R.E. 66.

Chuck Parks.¹⁴⁸ Again, no documents regarding the transaction, such as a bill of sale, buyer's guide, privacy notice, consumer credit disclosure, sales tax return, and other documents incident to a car sale, which are the best evidence of the transaction, were ever produced to AAA Cooper Transportation before it was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment.¹⁴⁹ Given the lack of documentation, it is difficult to know the specifics of the transaction for this new car, or even what day the deal took place.

In addition to continuing to pay for the totaled green 1996 Dodge Avenger, and purchasing another vehicle from Chuck Parks, T. C. Poplar was also renting the mobile home at Dillingham Used Cars from Chuck Parks.¹⁵⁰ It is difficult to know exactly when T. C. Poplar rented the mobile home from Chuck Parks.¹⁵¹ Again, no documents regarding the relationship, such as an agreement, or accounting documents showing payments, which are the best evidence of the relationship, were ever produced to AAA Cooper Transportation.¹⁵²

As mentioned above, the mobile home, which Chuck Parks began renting out when he acquired the business, is 10 yards from the shop and 30 yards from the office.¹⁵³ Tenants who live in the mobile home often help out around the car lot.

According to Chuck Parks:

- Q: Does [the tenant living in the mobile home] work for you?
A: No, not really, I mean.
Q: Now, when you say not really, does he do some work, but not a lot of work, or what do you mean by that?
A: Well, he would if I needed him to do to town and pick up a car or ride with me over to town to pick a car up or go down to the paint

¹⁴⁸ C.P. 3:386-387; R.E. 67.

¹⁴⁹ C.P. 1:102-111; R.E. 39-47.

¹⁵⁰ C.P. 3:356; R.E. 59.

¹⁵¹ C.P. 3:356; R.E. 59.

¹⁵² C.P. 1:102-111; R.E. 39-47.

¹⁵³ C.P. 3:333; R.E. 54.

shop maybe and pick one up, he would do something like that for me, you know.¹⁵⁴

T. C. Poplar admits that he would often go to the shop when he lived in the mobile home at Dillingham Used Cars. According to T. C. Poplar, "I'd go around to the shop and stand around and look at them sometimes; sit down and talk to them."¹⁵⁵ Both T. C. Poplar and Chuck Parks deny an employment relationship.^{156, 157} However, Todd Leidold, in an affidavit, states that Chuck Parks told him that T. C. Poplar was his employee.¹⁵⁸ Also, Todd Leidold states that he saw T. C. Poplar working for Parks at Dillingham Used Cars.¹⁵⁹

¹⁵⁴ C.P. 3:334; R.E. 54.

¹⁵⁵ C.P. 2:252.

¹⁵⁶ C.P. 3:359-360.

¹⁵⁷ C.P. 2:248-249.

¹⁵⁸ C.P. 2:206.

¹⁵⁹ C.P. 2:206.

Summary of the Argument

The trial court denied AAA Cooper Transportation the ability to discover facts to dispute Chuck Parks's and Dillingham Motors's arguments. The trial court then granted Chuck Parks and Dillingham Motors summary judgment on the basis that there was no genuine issue as to any material fact. This goes against the general policy that liberal discovery is favored. It also goes against the general principle that summary judgment is disfavored, and that the law prefers a trial on the merits after full development of the facts and issues. Despite the fact that the trial court denied AAA Cooper Transportation discovery, AAA Cooper Transportation was able to develop genuine issues as to material facts. Therefore, the summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed. If, for some reason, the summary judgment in favor Chuck Parks and Dillingham Motors cannot be reversed at this time, then AAA Cooper Transportation should at least be given the opportunity to perform additional discovery and re-respond to Chuck Parks's and Dillingham Motors's motion for summary judgment.

Argument

- I. **The summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed because the trial court abused its discretion when it denied AAA Cooper Transportation's motion for additional discovery before responding to Parks's and Dillingham Motors's motion for summary judgment.**

A. Standard of review.

This Court reviews a trial court's denial of a motion for additional discovery before responding to a motion for summary judgment for abuse of discretion.¹⁶⁰ Generally, a trial court abuses its discretion in denying a party's motion for additional discovery when that party has also filed a motion to compel.¹⁶¹ Also, a trial court abuses its discretion in denying a party's motion for additional discovery when the information sought is in the sole possession of the party moving for summary judgment.¹⁶² "Completion of discovery is, in some instances, desirable before the court can determine whether there is a genuine issue of material fact."¹⁶³ "Although the party opposing a motion for summary judgment must be diligent, that party must be given a fair opportunity to be diligent."¹⁶⁴ As the Mississippi Supreme Court has explained,

Rule 56(f) provides that when a party is unable to produce affidavits to oppose a motion for summary judgment, that party may instead file a motion or affidavit with the court explaining his inability to oppose the motion for summary judgment. In such cases, the court, at its discretion, may, if it finds the reasons offered to be sufficient, postpone consideration of the motion for summary judgment and order among other things that discovery be completed. The rule itself contemplates that the completion of discovery is, in some instances, desirable before the court can determine whether there is a genuine issue of material fact. This is especially true where the party seeking to invoke the protections of Rule

¹⁶⁰ *Prescott v. Leaf River Forest Products, Inc.*, 740 So. 2d 301, 307 (Miss. 1999).

¹⁶¹ *Burkhalter & Co. v. Wissner*, 602 So. 2d 835, 837 (Miss. 1992).

¹⁶² *Prescott*, 740 So. 2d at 308.

¹⁶³ *Id.*

¹⁶⁴ Jeffrey Jackson, *Mississippi Civil Procedure* § 11:36 (2002) (citing *Brown v. Credit Center, Inc.*, 444 So. 2d 358 (Miss. 1983) and *Smith v. H.C. Bailey Companies*, 477 So. 2d 224 (Miss. 1985)).

56(f) claims the necessary information rests within the possession of the party seeking summary judgment. However, the party resisting summary judgment must present specific facts why he cannot oppose the motion and must specifically demonstrate how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact.¹⁶⁵

B. T. C. Poplar had not responded to written discovery despite an order granting a motion to compel and an order on a motion for sanctions.

Generally, a trial court abuses its discretion in denying a party's motion for additional discovery when that party has also filed a motion to compel.¹⁶⁶ In this case, AAA Cooper Transportation not only filed a motion to compel T. C. Poplar to respond to written discovery,¹⁶⁷ which was granted,¹⁶⁸ but it also filed a motion for sanctions because T. C. Poplar did not respond to written discovery despite court order,¹⁶⁹ which was ruled upon.¹⁷⁰ Despite the motion to compel and the motion for sanctions, the trial court did not require T. C. Poplar to respond to AAA Cooper Transportation's written discovery before requiring AAA Cooper Transportation to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment. The trial court erred in this regard, and the summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed.

¹⁶⁵ *Prescott*, 740 So. 2d at 307-308 (Miss. 1999) (citations omitted).

¹⁶⁶ *Burkhalter & Co. v. Wissner*, 602 So. 2d 835, 837 (Miss. 1992).

¹⁶⁷ C.P. 1:29-30.

¹⁶⁸ C.P. 1:77-78.

¹⁶⁹ C.P. 1:122-125.

¹⁷⁰ C.P. 1:140-141.

C. Chuck Parks had not produced important documents, such as bills of sale, despite a motion to compel further responses to written discovery and a deposition revealing the existence of such documents.

Generally, a trial court abuses its discretion in denying a party's motion for additional discovery when the information sought is in the sole possession of the party moving for summary judgment.¹⁷¹ In this case, Chuck Parks never produced important documents regarding the transaction in his sole possession, such as bills of sale, before AAA Cooper Transportation was required to respond to Parks's and Dillingham Motors's motion for summary judgment, and has never produced documents that show how much T. C. Poplar actually paid for the vehicle.^{172, 173} Also, Chuck Parks has never produced important documents regarding his relationship with T. C. Poplar in his sole possession, such as documents regarding the dates that T. C. Poplar rented the mobile home at Dillingham Used Cars,¹⁷⁴ and documents regarding how the vehicle that Parks sold Poplar immediately after the accident. This is despite the fact that AAA Cooper Transportation propounded written discovery,¹⁷⁵ followed up on the written discovery responses by letter,¹⁷⁶ filed a motion to compel,¹⁷⁷ obtained a ruling on the motion to compel,¹⁷⁸ took Chuck Parks's deposition,¹⁷⁹ which revealed the existence of the documents,¹⁸⁰ and followed up on the deposition by letter. Because Chuck Parks never produced important documents, AAA Cooper Transportation was never able to ask Parks questions about these documents, such as how he purchased the vehicle for

¹⁷¹ *Prescott v. Leaf River Forest Products, Inc.*, 740 So. 2d 301, 308 (Miss. 1999).

¹⁷² T. 50-51.

¹⁷³ C.P. 3:385; R.E.67.

¹⁷⁴ C.P. 3:341-342; R.E. 56.

¹⁷⁵ C.P. 1:22-23.

¹⁷⁶ C.P. 1:112-114.

¹⁷⁷ C.P. 1:83-89.

¹⁷⁸ C.P. 1:138-139, 1:142-143.

¹⁷⁹ C.P. 1:146.

¹⁸⁰ C.P. 3:338, 341, 362, 363, 364, 368, 385; R.E.55-56, 61-62, 67.

\$100.00 on one day in Illinois and sold the vehicle for \$4,750.00 on the same day in Mississippi, for a 4,650% profit. The trial court erred in denying AAA Cooper Transportation's motion for additional discovery when Chuck Parks's deposition showed important documents in his sole possession that had never been produced to AAA Cooper Transportation. Therefore, the summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed.

D. Taucia Poplar, a necessary party learned of a month and a half before the deadline to respond, through a deposition occasioned by an order on a motion for sanctions, had not been joined and discovery had not been taken from her, despite a motion to amend complaint.

"Completion of discovery is, in some instances, desirable before the court can determine whether there is a genuine issue of material fact."¹⁸¹ Although the party opposing a motion for summary judgment must be diligent, that party must be given a fair opportunity to be diligent.¹⁸² In this case, T. C. Poplar did not respond to written discovery and identify relevant persons despite an order granting AAA Cooper Transportation's motion to compel.¹⁸³ Also, a month and a half before AAA Cooper Transportation was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment, T. C. Poplar submitted to a deposition,¹⁸⁴ pursuant to the trial court's order seven days earlier on AAA Cooper Transportation's motion for sanctions.¹⁸⁵ In his deposition, T. C. Poplar identified a previously unknown material

¹⁸¹ *Prescott v. Leaf River Forest Products, Inc.*, 740 So. 2d 301, 308 (Miss. 1999).

¹⁸² Jeffrey Jackson, *Mississippi Civil Procedure* § 11:36 (2002) (citing *Brown v. Credit Center, Inc.*, 444 So. 2d 358 (Miss. 1983) and *Smith v. H.C. Bailey Companies*, 477 So. 2d 224 (Miss. 1985)).

¹⁸³ C.P. 1:122-125.

¹⁸⁴ C.P. 1:145.

¹⁸⁵ C.P. 1:140-141.

witness to the case, his daughter Taucia Poplar.¹⁸⁶ T. C. Poplar testified that Taucia Poplar drove him to Dillingham Used Cars,¹⁸⁷ helped negotiate the deal with Chuck Parks,¹⁸⁸ paid for the vehicle,¹⁸⁹ received all the paperwork on the car,¹⁹⁰ and drove the automobile off of the lot.¹⁹¹ After T. C. Poplar's deposition, AAA Cooper Transportation filed a motion to amend complaint to include Taucia Poplar as a defendant and take discovery from her.¹⁹² AAA Cooper Transportation asked the defendants to agree to the motion to amend complaint; however, the defendants would not agree to the motion. AAA Cooper Transportation then set the motion to amend complaint for hearing.¹⁹³ However, Chuck Parks and Dillingham Motors filed a response to the motion and asked that the hearing on the motion be delayed until the hearing on Parks's and Dillingham Motors's motion for summary judgment.¹⁹⁴ And, the trial court delayed the hearing on AAA Cooper Transportation's motion to amend complaint until after the hearing on Chuck Parks's and Dillingham Motors's motion for summary judgment.¹⁹⁵ In these circumstances, the trial court erred in denying AAA Cooper Transportation's motion for additional discovery before responding to Chuck Parks's and Dillingham Motors's motion for summary judgment. AAA Cooper Transportation was diligent in filing a motion to amend complaint after T. C. Poplar's deposition; however, the trial court did not give AAA Cooper Transportation a fair opportunity to be diligent to obtain discovery from Taucia Poplar because it postponed the hearing on the motion to amend complaint

¹⁸⁶ C.P. 2:264-268.

¹⁸⁷ C.P. 2:262.

¹⁸⁸ C.P. 2:263-264.

¹⁸⁹ C.P. 2:264-265.

¹⁹⁰ C.P. 2:268.

¹⁹¹ C.P. 2:262.

¹⁹² C.P. 2:147-148.

¹⁹³ C.P. 2:149-150.

¹⁹⁴ C.P. 2:161-162.

¹⁹⁵ T. 57.

until after the hearing on the motion for summary judgment. Therefore, the summary judgment in favor of Parks and Dillingham Motors should be reversed.

II. Even if the trial court did not abuse its discretion when it denied AAA Cooper Transportation's motion for additional discovery, the summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed because the trial court erred when it granted Chuck Parks and Dillingham Motors's motion for summary judgment when there are genuine issues as to material facts.

A. Standard of review.

An appellate court reviews a trial court's grant of summary judgment *de novo* or anew.¹⁹⁶ In other words, an appellate court does not defer to a trial court's grant of summary judgment.¹⁹⁷ Rather, the appellate court reviews the evidence anew to determine whether the moving party has proved that there is no genuine issue of material fact in the case and that it is entitled to judgment as a matter of law.¹⁹⁸

When reviewing the evidence, the appellate court must view the evidence in the light most favorable to the nonmoving party.¹⁹⁹ Also, when reviewing the evidence, the appellate court must give the nonmoving party the benefit of all reasonable and favorable inferences that can be drawn from the evidence.²⁰⁰ If the evidence is incomplete regarding a material fact, then summary judgment should be denied.²⁰¹ For

¹⁹⁶ *Lane v. Grand Casinos of Mississippi, Inc.-Gulfport*, 708 So. 2d 1377, 1379 (Miss. 1998).

¹⁹⁷ *Lane*, 708 So. 2d at 1379.

¹⁹⁸ *Moore ex rel. Benton County v. Renick*, 626 So. 2d 148, 151 (Miss. 1993).

¹⁹⁹ *Brown v. Credit Center, Inc.*, 444 So. 2d 358, 362 (Miss. 1983).

²⁰⁰ *Burkhalter & Co v. Wissner*, 602 So. 2d 835, 838 (Miss. 1992).

²⁰¹ *Westbrook v. City of Jackson*, 665 So. 2d 833, 837 (Miss. 1995)

example, when the motion turns on the interpretation of a contract, the absence of the contract in the record essentially precludes entry of summary judgment.²⁰²

In making its decision, the appellate court must resolve all doubts as to whether there is a genuine issue as to a material fact in favor of the non-moving party.²⁰³ In other words, an appellate court can reverse a trial court's grant of summary judgment, "when it has any doubt as to the wisdom of terminating the action prior to a full trial."²⁰⁴ As the Mississippi Supreme Court has noted, summary judgment, "should be denied unless the trial court finds beyond any reasonable doubt that the plaintiff would be unable to prove any facts to support his/her claim."²⁰⁵

B. There is a genuine issue as to whether Chuck Parks employed T. C. Poplar.

Under *respondeat superior*, an employer is generally held liable for the tortuous acts committed by his employees in the course and scope of their employment.²⁰⁶

Chuck Parks states that he never employed T. C. Poplar.²⁰⁷ Also, T. C. Poplar states that he was never employed by Chuck Parks.²⁰⁸ However, Todd Leidold, in an affidavit, states that Chuck Parks told him that T. C. Poplar was his employee.²⁰⁹ Also, Todd Leidold states that he saw T. C. Poplar working for Parks at Dillingham Used Cars.²¹⁰ Therefore, there is a genuine issue of material fact as to whether Chuck Parks

²⁰² *Lawler v. Government Employees Ins. Co.*, 569 So. 2d 1151, 1152 (Miss. 1990).

²⁰³ *Brown*, 444 So. 2d at 362.

²⁰⁴ *Donald v. Reeves Transport Co. of Calhoun, Georgia*, 538 So. 2d 1191, 1196 (Miss. 1989).

²⁰⁵ *Franklin v. Thompson*, 722 So. 2d 688, 691 (Miss. 1998).

²⁰⁶ *Richardson v. APAC-Mississippi, Inc.*, 631 So. 2d 143, 147-151 (Miss. 1994).

²⁰⁷ C.P. 3:359-360; R.E. 60.

²⁰⁸ C.P. 2:248-249.

²⁰⁹ C.P. 2:206.

²¹⁰ C.P. 2:206.

employed T. C. Poplar. And, the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment.

In addition to Todd Leidold's testimony, it is undisputed that T. C. Poplar lived in a mobile home at Dillingham Used Cars.²¹¹ The specific dates that T. C. Poplar lived in the mobile home are unclear,²¹² it part because Chuck Parks has not produced documents showing the dates that T. C. Poplar lived in the mobile home.²¹³ The mobile home is ten yards from the shop.²¹⁴ It is thirty yards from the office.²¹⁵ T. C. Poplar frequently visited the shop or office: "I'd go around to the shop and stand around and look at them sometimes; sit down and talk to them."²¹⁶ Chuck Parks testified that another person who lived in the mobile home sometimes helped out around Dillingham Motors:

- Q: Does [the tenant living in the mobile home] work for you?
A: No, not really, I mean.
Q: Now, when you say not really, does he does some work but not a lot of work or what do you mean by that?
A: Well, he would if I needed him to go to town and pick up a car or ride with me to over to town to pick a car up or go down to the paint shop maybe and pick one up, he would do something like that for me, you know. But as far as actual work or something like that, no, I mean.²¹⁷

AAA Cooper Transportation submits that the fact that T. C. Poplar lived at Dillingham Motors and that another person who lived at Dillingham Motors helped out around the car lot also creates a genuine issue of material fact as to whether Chuck Parks was involved in a master/servant relationship with T. C. Poplar.

²¹¹ C.P. 2:249-254.

²¹² C.P. 3:356; R.E. 59.

²¹³ C.P. 1:102-111, C.P. 3:357; R.E. 60.

²¹⁴ C.P. 3:333; R.E. 54.

²¹⁵ C.P. 3:333; R.E. 54.

²¹⁶ C.P. 2:252.

²¹⁷ C.P. 3:333-334; R.E. 54.

T. C. Poplar does not remember much about the 24 hour period before the accident:

Q: [Could you just tell me a little bit about what happened] the day before the accident or the day of the accident?

A: I don't remember.

Q: Do you have any idea what time you got up that day?

A: No.

Q: Any idea of who you saw that day?

A: No.

Q: Any idea of the places that you went that day?

A: No.

Q: So, just as I understand it, you have no recollection of that day, the 24-hour period preceding the accident, before the accident?

A: I don't hardly remember nothing that day.²¹⁸

And, T. C. Poplar does not remember much about the trip immediately before the accident:

Q: And when did you begin that drive before the accident?

A: I don't remember.

Q: Do you remember what you were doing on that drive?

A: No.²¹⁹

Therefore, there is a genuine issue of material fact as to whether T. C. Poplar was acting within the scope of his employment relationship with Chuck Parks or Dillingham Motors at the time of the accident. Therefore, the trial court erred in granting defendants' motion for summary judgment because there is a genuine issue of material fact as to whether Chuck Parks employed T. C. Poplar such that he would be liable to plaintiff under the doctrine of *respondeat superior* and/or negligent entrustment.

²¹⁸ C.P. 3:278.

²¹⁹ C.P. 2:279-280.

C. There is a genuine issue as to whether Chuck Parks sold the vehicle to T. C. Poplar.

1. There is a genuine issue as to the date of the alleged sale.

In this case, the certificate of title, which was the only document produced before AAA Cooper Transportation was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment, shows that Anna Jonesboro Motor Company, Inc., a dealer in Illinois, transferred the vehicle to Chuck Parks on December 14, 2005, and Chuck Parks, a dealer in Mississippi, transferred the vehicle to T. C. Poplar on December 14, 2005.²²⁰ Also, the bills of sale, which were not produced to AAA Cooper Transportation until after it was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment, show that on December 14, 2005, Anna Jonesboro Motor Company, Inc., a dealer in Illinois, sold the vehicle to Chuck Parks for \$100.00, and that on December 14, 2005, Chuck Parks, a dealer in Mississippi, sold the vehicle to T. C. Poplar for \$4,750.00.²²¹ As a matter of common sense, it does not seem possible that Anna Jonesboro Motor Company, Inc., a dealer in Illinois, sold and transferred the car to Chuck Parks on one day, and then Chuck Parks, a dealer in Mississippi, sold and transferred the car to T. C. Poplar on that same day. And, Chuck Parks testified that he possessed the automobile at Dillingham Used Cars, "maybe a day or two," before selling it to T. C. Poplar.²²² Therefore, the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment because there is a genuine issue as to whether Chuck Parks sold the vehicle to T. C. Poplar

²²⁰ C.P. 3:425-426; R.E. 46-47.

²²¹ T. 50-51.

²²² C.P. 3:370; R.E. 63.

when there is a genuine issue as to the date of the alleged sale and whether the date of the alleged sale was after the date of the accident.

2. There is a genuine issue as to the amount of the alleged sale.

In this case, Chuck Parks testified that he could not remember how much he paid for the vehicle.²²³ Also, the bills of sale, which were not produced to AAA Cooper Transportation until after it was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment, show that on December 14, 2005, Anna Jonesboro Motor Company, Inc., a dealer in Illinois, sold the vehicle to Chuck Parks for \$100.00, and that on December 14, 2005, Chuck Parks, a dealer in Mississippi, sold the vehicle to T. C. Poplar for \$4,750.00.²²⁴ Further, the bill of sale shows that T. C. Poplar provided a down payment of \$750.00 and financed the balance of \$4,000.00 through Dillingham Used Cars. Moreover, the bill of sale reveals that no sales tax was withheld. And, the bill of sale does not itemize what was paid for the car and what was paid as interest. Finally, no documents, such as receipts, bank records, sales tax records, or other accounting records, which are the best evidence of the transaction, were produced to verify that T. C. Poplar actually paid money or that Chuck Parks actually received money for the vehicle.²²⁵ This was so even though Chuck Parks states that he has some of those documents at Dillingham Used Cars.²²⁶ As a matter of common sense, it does not seem probable that Chuck Parks could buy an automobile for \$100.00 on one day and then sell it for \$4,750.00 on that same day for a 4,650% profit.

²²³ C.P. 3:363; R.E. 61.

²²⁴ T. 50-51.

²²⁵ C.P. 1:102-111; R.E. 39-47.

²²⁶ C.P. 3:385; R.E. 67.

Given that the bills of sale were not produced until after AAA Cooper Transportation was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment, AAA Cooper Transportation was never given an opportunity to ask Chuck Parks how he obtained a 4,650% profit in one day. Therefore, the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment because there is a genuine issue as to whether Chuck Parks sold the vehicle to T. C. Poplar when there is a genuine issue as to the amount of the alleged sale.

3. There is a genuine issue as to whether title was transferred.

Title is evidence of ownership.²²⁷ In this case, the certificate of title, which was the only document produced before AAA Cooper Transportation was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment, shows that Anna Jonesboro Motor Company, Inc., a dealer in Illinois, transferred the vehicle to Chuck Parks on December 14, 2005, and Chuck Parks, a dealer in Mississippi, transferred the vehicle to T. C. Poplar on December 14, 2005.²²⁸ As a matter of common sense, it does not seem possible that Anna Jonesboro Motor Company, Inc., a dealer in Illinois, transferred the car to Chuck Parks on one day, and then Chuck Parks, a dealer in Mississippi, transferred the car to T. C. Poplar on that same day.

In his deposition, Chuck Parks testified that he possessed the automobile at Dillingham Used Cars, "maybe a day or two," before transferring it to T. C. Poplar.²²⁹

²²⁷ *Laurel Yamaha, Inc. v. Freeman*, 956 So. 2d 897, 905 (Miss. 2007).

²²⁸ C.P. 3:425-426; R.E. 46-47.

²²⁹ C.P. 3:370; R.E. 63.

And, in his deposition, Chuck Parks admitted that the only document drawn up on the day of the transaction was a "bill of sale."²³⁰ Thus, in his deposition, Chuck Parks admits that, on the day of the agreement, he did not give T. C. Poplar title to the vehicle,²³¹ as is generally done in non-dealer transactions. And, in his deposition, Chuck Parks admits that, on the day of the deal, he did not complete an application for new certificate of title,²³² to show that T. C. Poplar owned the automobile and that Dillingham Used Cars retained a security interest in the vehicle, as is generally done in dealer transactions.

Chuck Parks speculates that he may have transferred title to T. C. Poplar sometime after the alleged sale.²³³ However, because the date on the certificate of title is clearly erroneous, and because the certificate of title is the best evidence of the transfer, it is impossible to know exactly when Chuck Parks allegedly transferred the vehicle to T. C. Poplar.

Interestingly, as of today, Chuck Parks still retains the original certificate of title on the vehicle.²³⁴ Chuck Parks is at a loss to explain why he retains the original certificate of title on a vehicle that he allegedly sold to T. C. Poplar and that he allegedly transferred to T. C. Poplar sometime later. According to Chuck Parks:

I buy the cars. They mail me the titles. I hadn't gotten the title in the mail. I wrote him a Bill of Sale up where he purchased it. And he was going to come back and pick the title up. Okay. So he come back to – and, I guess, maybe he picked the title up. I mean, I know for sure he definitely signed it. He may have just gave it back to me. I mean, like I said, that's been how long ago.²³⁵

²³⁰ C.P. 3:371; R.E. 63.

²³¹ C.P. 3:371; R.E. 63.

²³² C.P. 3:371; R.E. 63.

²³³ C.P. 3:392; R.E. 68.

²³⁴ C.P. 1:102-111; R.E. 39-47.

²³⁵ C.P. 3:392; R.E. 68.

Therefore, the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment because there is a genuine issue as to whether Chuck Parks sold the vehicle to T. C. Poplar when there is a genuine issue as to whether title was transferred.

4. Important documents, which are the best evidence of the alleged sale, were never produced, and Chuck Parks cannot testify that he sold the vehicle to T. C. Poplar when he did not produce the documents.

When the motion turns on the interpretation of a contract, the absence of the contract in the record essentially precludes entry of summary judgment.²³⁶ The best evidence rule provides, "To prove the content of a writing . . . the original writing . . . is required"²³⁷ Stated another way, the rule holds, "[W]here a contract is reduced to writing, the writing is the best evidence of the contract, and oral proof of the contract is not allowed unless some valid excuse can be shown for the nonproduction of the contract."²³⁸ Another way to paraphrase the rule is that "A person will not be allowed to give secondary evidence of the contents of original papers which are in his possession and which he has refused to produce on notice"²³⁹ Chuck Parks cannot remember how much he paid for the vehicle.²⁴⁰ Chuck Parks states that he has a bill of sale from Anna Jonesboro Motor Company, Inc. showing how much he paid for the vehicle;²⁴¹ however, the bill of sale was never provided to AAA Cooper Transportation before it were required to respond to Chuck Parks's and Dillingham Motors's motion for summary

²³⁶ *Lawler v. Government Employees Ins. Co.*, 569 So. 2d 1151, 1152 (Miss. 1990).

²³⁷ Miss. R. Evid. 1002.

²³⁸ 29A Am. Jur. 2d *Evidence* § 1058 (2008).

²³⁹ 32A C.J.S. *Evidence* § 1115 (2008).

²⁴⁰ C.P. 3:363; R.E. 61.

²⁴¹ C.P. 3:363; R.E. 61.

judgment.²⁴² Chuck Parks states that he sold the vehicle to T. C. Poplar for \$4,750.00.²⁴³ Chuck Parks states that he has a bill of sale to T. C. Poplar showing how much he paid for the vehicle;²⁴⁴ however, the bill of sale was never provided to AAA Cooper Transportation before it was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment.²⁴⁵ Therefore, the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment because there is a genuine issue as to whether Chuck Parks sold the vehicle to T. C. Poplar when important documents, which are the best evidence of the alleged sale, were never produced, and Chuck Parks cannot testify that he sold the vehicle to T. C. Poplar when he did not produce the documents.

Used car dealers are required to provide buyer's guides, to protect customers from deceptive trade practices.²⁴⁶ "The information on the final version of the window form [buyer's guide] is incorporated into the contract of sale for each used vehicle."²⁴⁷ Also, used car dealers who sell cars through retail installment contracts are required to provide privacy notices, to help protect the confidentiality of customer's financial information.²⁴⁸ Further, used car dealers who sell cars through retail installment contracts are required to provide consumer credit disclosures, setting forth the finance charge, the annual percentage rate, the amount financed, the total payments, and the total sale price, to protect customers from unfair lending.²⁴⁹ Finally, the Mississippi Sales Tax Instructions for Form 72-010 provide that used car dealers must, "record all

²⁴² C.P. 1:103-111; R.E. 39-47.

²⁴³ C.P. 3:365; R.E. 62.

²⁴⁴ C.P. 3:368; R.E. 62.

²⁴⁵ C.P. 1:103-111; R.E. 39-47.

²⁴⁶ 16 C.F.R. § 455.2 (2008).

²⁴⁷ 16 C.F.R. § 455.3(b) (2008).

²⁴⁸ 16 C.F.R. § 313.4 (2008).

²⁴⁹ 15 U.S.C. § 1638 (2005). See also Miss. Code Ann. § 63-19-31 (Rev. 2004).

sales not subject to Mississippi Sales Tax on the line that most closely describes the type of sale.”²⁵⁰

In this case, Chuck Parks has not produced a buyer’s guide, privacy notice, consumer credit disclosure, or sales tax forms.²⁵¹ Chuck Parks has produced a bill of sale; however, the bill of sale does not include information such as the finance charge, the annual percentage rate, and the amount financed. Chuck Parks cannot testify that he made a valid sale to T. C. Poplar when he has not produced any documents incident to a valid car sale. Therefore, the trial court erred in granting Chuck Parks’s and Dillingham Motors’s motion for summary judgment because there is a genuine issue as to whether Chuck Parks sold the vehicle to T. C. Poplar when he has not produced a buyer’s guide, which is part of the contact, and has not produced other important documents such as a privacy notice, consumer credit disclosure, and sales tax form.

D. There is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar.

Negligence has been defined as duty, breach, causation, and damages.²⁵² The general negligence duty is to do what a reasonable and prudent person would do under the same circumstances.²⁵³ A person who is a professional or has special skills is required to possess and exercise the knowledge and skill of a member of that profession.²⁵⁴ Statutes may establish duties, the breach of which is negligence per se,

²⁵⁰ C.P. 3:427-430.

²⁵¹ C.P. 1:102-111; R.E. 39-47.

²⁵² *Rolison v. City of Meridian*, 691 So. 2d 440, 444 (Miss. 1997).

²⁵³ *Donald v. Amoco Production Co.*, 735 So. 2d 161, 175 (Miss 1999); Restatement (Second) Torts § 283 (1965).

²⁵⁴ *Donald*, 735 So. 2d at 175.

if the plaintiff was in the class of persons that the statute was designed to protect and the injury the plaintiff sustained was the kind of injury the statute was designed to prevent.²⁵⁵ For negligent entrustment,

One who supplies directly or through a third person a chattel for use of another who the supplier knows or has reason to know to be likely because of his youth, inexperience or otherwise to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or to be endangered by its use is subject to liability for physical harm resulting to them.²⁵⁶

Significantly, the doctrine of negligent entrustment applies to "sellers."²⁵⁷

It is negligent to permit a third person to use a thing or to engage in an activity which is under the control of the actor if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.²⁵⁸

There are two types of causation: actual causation and proximate causation.

Negligence is the actual cause of an injury when the injury would not have occurred but for the negligence. Negligence is the proximate cause of an injury when the injury is foreseeable.²⁵⁹ For foreseeability, if a particular harmful result was at all foreseeable from a person's negligence, the unusual manner in which the injury occurred or the unusual timing of the cause and effect is irrelevant to the person's liability.²⁶⁰ Causation is generally a question for the jury.²⁶¹

²⁵⁵ *Byrd v. McGill*, 478 So. 2d 302, 305 (Miss. 1985).

²⁵⁶ *Laurel Yamaha, Inc. v. Freeman*, 956 So. 2d 897, 902 (Miss. 2007) (citing Restatement (Second) Torts § 390 (1977)).

²⁵⁷ Comment a to Restatement (Second) Torts § 390 (1977).

²⁵⁸ Restatement (Second) Torts § 308 (1965).

²⁵⁹ *Mauney v. Gulf Refining Co.*, 9 So. 2d 780, 781 (Miss. 1942).

²⁶⁰ *Mauney*, 9 So. 2d at 781.

²⁶¹ *Burnham v. Tubb*, 508 So. 2d 1072, 1077 (Miss. 1987).

1. Chuck Parks did not remove the old Illinois license plates.

Section 27-19-141 of the Mississippi Code provides, "The seller or transferor shall remove the license plate from the vehicle and retain same."²⁶² Although Section 27-19-141 of the Mississippi Code deals with sales or transfers by persons other than dealers, AAA Cooper Transportation submits that a dealer is held to a standard of care at least as high as that of a non-dealer. Therefore, if a non-dealer must remove old license plates from a vehicle when it is sold, then certainly a dealer must remove old license plates from a vehicle when it is sold. In this case, it is undisputed that Chuck Parks did not remove the old Illinois license plates from the car before turning it over to T. C. Poplar.²⁶³ Chuck Parks does not have an explanation for why he did not remove the old license plates, "I just didn't [do it]."²⁶⁴ One explanation for why Chuck Parks did not remove the old Illinois license plates is that, on the day of the alleged sale, is that Chuck Parks did not give T. C. Poplar documents regarding title, which are necessary to obtain new license plates for a vehicle. Therefore, the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment because there is a genuine issue as to the material fact of whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not remove the old Illinois license plates and Section 27-19-141 of the Mississippi Code requires the removal of old license plates.

Even if Section 27-19-141 of the Mississippi Code does not apply to Chuck Parks, Chuck Parks, who is presumably an expert in the field of used car sales, states

²⁶² Miss. Code Ann. § 27-19-141 (Rev. 2006).

²⁶³ C.P. 3:374; R.E. 64.

²⁶⁴ C.P. 3:374; R.E. 64.

that, depending on the case, he sometimes leaves old license plates on when he sells a vehicle and that he sometimes takes old license plates off when he sells a vehicle.²⁶⁵ As mentioned above, in this case, it is undisputed that Chuck Parks did not remove the old Illinois license plates from the car before turning it over to T. C. Poplar.²⁶⁶ Chuck Parks does not have an explanation for why he did not remove the old license plates, "I just didn't [do it]."²⁶⁷ One explanation for why Chuck Parks did not remove the old Illinois license plates is that, on the day of the alleged sale, is that Chuck Parks did not give T. C. Poplar documents regarding title, which are necessary to obtain new license plates for a vehicle. Therefore, the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment because there is a genuine issue as to the material fact of whether Check Parks used reasonable car in providing a vehicle to T. C. Poplar when Chuck Parks himself sometimes leaves old license plates on and sometimes takes old license plates off depending on the case but left the old license plates on in this case for no apparent reason.

2. Chuck Parks did not provide a temporary tag.

Section 27-19-40(2) of the Mississippi Code requires that used car dealers in the State of Mississippi provide temporary tags when they sell cars to nonresidents of the State of Mississippi. According to the Section 27-19-40(2):

A motor vehicle dealer or automobile auction may apply for a temporary tag or plate to be used when a motor vehicle in this state is sold by the motor vehicle dealer or automobile auction to a nonresident of the State of Mississippi or when a motor vehicle is sold by a motor vehicle dealer or automobile auction to a Mississippi resident who may temporarily exist this

²⁶⁵ C.P. 3:375; R.E. 64.

²⁶⁶ C.P. 3:374; R.E. 64.

²⁶⁷ C.P. 3:374; R.E. 64.

state before obtaining a Mississippi tag or plate. Such tag or plate when properly displayed shall authorize the purchaser of such motor vehicle to operate the motor vehicle upon the highways of this state. The temporary tag or plate shall be valid for a period of seven (7) full working days, exclusive of the date of purchase, after the date the motor vehicle is purchased; however, if the temporary tag or plate is issued to a nonresident of the State of Mississippi, the temporary tag or plate shall be valid for the number of days within which the nonresident is required to obtain a permanent motor vehicle license tag or plate by the laws of the nonresident's state of residence.²⁶⁸

In this case, Chuck Parks states that T. C. Poplar told him that he was a resident of the State of Tennessee when the vehicle was sold.²⁶⁹ In other words, Chuck Parks states that T. C. Poplar told him that was nonresident of the State of Mississippi when the car was sold.²⁷⁰ Therefore, the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment because there is a genuine issue as to the material fact of whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when Chuck Parks did not provide a temporary tag to T. C. Poplar who was allegedly a non-resident and Section 27-19-40(2) requires providing a temporary tags when selling cars to non-residents.

3. Chuck Parks did not ask to see a driver's license.

Mississippi law requires that car dealers know whether or not a person has a driver's license before they transfer a vehicle. According to Section 63-21-15(1)(a) of the Mississippi Code, a Section dealing with transferring title,

(1) The application for the certificate of title of a vehicle . . . shall contain or be accompanied by the following, if applicable:

²⁶⁸ Miss. Code Ann. § 27-19-40(2) (Rev. 2006).

²⁶⁹ C.P. 3:371; R.E. 63.

²⁷⁰ C.P. 3:371; R.E. 63.

(a) The name, driver's license number, if the owner has been issued a driver's license, current residence and mailing address of the owner[.]²⁷¹

Also, as is more fully discussed below, federal law requires that car dealers who sell cars through retail installment contracts verify the identity of any person seeking to open an account to the extent reasonable and practicable, which would presumably include asking for a driver's license, perhaps depending on the dealer's general practice for verifying identities, before they finance the vehicle.²⁷² The Mississippi Supreme Court has seemed to indicate that a driver's license or lack thereof was a factor to consider in determining whether a used car dealer was liable for negligent entrustment: "[A]t the time of the purchase he possessed a valid driver's license."²⁷³ Further, Mississippi law prohibits a person who owns or controls a car from entrusting the car to a person who he knows is not licensed to drive the car. According to Section 63-1-63 of the Mississippi Code, a Section dealing with drivers' licenses, "No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized under the provisions of this article or in violation of any of the provisions of this article."²⁷⁴ Moreover, "Numerous courts have determined that entrusting a car to an unlicensed driver is tantamount to entrusting a car to an incompetent driver, and therefore an independent act of negligence."²⁷⁵

Finally,

If a claimant's evidence demonstrates that the person (private owner, renter, or seller of the vehicle) had actual knowledge or knowledge of facts from which that person should have known the purchaser or driver was

²⁷¹ Miss. Code Ann. § 63-21-15(1)(a) (Supp. 2008).

²⁷² See, e.g., 31 U.S.C. § 5318 (2006).

²⁷³ *Sligh v. First National Bank of Holmes County*, 735 So. 2d 963, 970 (Miss. 1999).

²⁷⁴ Miss. Code Ann. § 63-1-63 (Rev. 2004)

²⁷⁵ *Seward v. Griffin*, 116 Ill.App.3d 749, 754, 452 N.E.2d 558, 563 (1983) (citing *Kinney v. Smith*, 95 Idaho 328, 508 P.2d 1234 (1973), *Mundy v. Pirie Slaughter Motor Company*, 146 Tex. 314, 206 S.W.2d 587 (1947), *Hardwick v. Bublitz*, 254 Iowa 1253, 119 N.W.2d 886 (1963), and *Anthony v. Covington*, 187 Okl. 27, 100 P.2d 461 (1940)).

unlicensed, such knowledge is sufficient to place a duty of inquiry as to the competency of such person. . . . It is then for the trier of fact to determine whether under the circumstances the entrustor was negligent in placing the car into the hands of the driver.²⁷⁶

In this case, Chuck Parks did not know whether T. C. Poplar had a driver's license when he transferred the vehicle.²⁷⁷ Also, Chuck Parks did not know whether T. C. Poplar had a driver's license when he financed the vehicle.²⁷⁸ This is so even though Chuck Parks knew that T. C. Poplar was disabled when he came to the car lot.²⁷⁹ If Chuck Parks would have asked to see T. C. Poplar's driver's license, then he would have discovered that T. C. Poplar did not have a valid driver's license at the time of the transaction.²⁸⁰ And, it was obvious that T. C. Poplar did not have a valid driver's license because he was driven to Dillingham Used Cars by his daughter, Taucia Poplar, who was accompanied by her husband, Mackey, and Taucia Poplar drove the green 1996 Dodge Avenger off of the car lot, while her husband, Mackey, drove her vehicle off of the lot.²⁸¹ Further, as discussed above, there is a genuine issue as to whether Chuck Parks owned the vehicle given, among other things, the uncertainty as to the date and the amount of the alleged sale, the fact that important documents regarding the transaction, which are the best evidence of the deal, were never produced, and the fact that Chuck Parks did not properly transfer title to T. C. Poplar, if title was transferred at all. Therefore, the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment because there is a genuine issue as to the material fact of whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not ask to see a driver's license and it is up to the trier of fact to determine

²⁷⁶ *Dillion v. Suburban Motors, Inc.*, 166 Cal. App. 3d 233, 212 Cal. Rptr 360, 366 (1985).

²⁷⁷ C.P. 3:373; R.E. 64.

²⁷⁸ C.P. 3:373; R.E. 64.

²⁷⁹ C.P. 3:353; R.E. 64.

²⁸⁰ C.P. 2:271.

²⁸¹ C.P. 2:262.

whether Chuck Parks was negligent in placing the vehicle in the hands of T. C. Poplar under these circumstances.

4. Chuck Parks did not ask to see any identifying information.

Under federal law, car dealers who sell cars through retail installment contracts are, "financial institutions."²⁸² Under federal law, financial institutions must, at a minimum:

- (a) verify the identity of any person seeking to open an account to the extent reasonable and practicable;
- (b) maintain records of the information used to verify a person's identity, including name, address, and other identifying information; and
- (c) consult lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.²⁸³

In this case, Chuck Parks financed T. C. Poplar's alleged car purchase.²⁸⁴ Also, in this case, Chuck Parks never asked to see any identification from T. C. Poplar before handing the automobile over to him.²⁸⁵ Further, in this case, Chuck Parks never produced documents regarding verifying T. C. Poplar's identity.²⁸⁶ Therefore, the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment because there is a genuine issue as to the material fact of whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when Chuck Parks financed T. C. Poplar's alleged car purchase and did not ask to see any identification from T. C. Poplar and did not produce any records regarding verifying T. C. Poplar's identity.

²⁸² 31 U.S.C. § 5312(a)(2)(T) (2006).

²⁸³ 31 U.S.C. § 5318(l) (2006).

²⁸⁴ C.P. 3:365-366; R.E. 62.

²⁸⁵ C.P. 3:373; R.E.64.

²⁸⁶ C.P. 1:102-111; R.E.39-47.

Conclusion

The summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed because the trial court abused its discretion when it denied AAA Cooper Transportation's motion for additional discovery before responding to Chuck Parks's and Dillingham Motors's motion for summary judgment. First, T. C. Poplar had not responded to written discovery despite an order granting a motion to compel and an order on a motion for sanctions. Also, Chuck Parks had not produced important documents, such as bills of sale, despite a motion to compel further responses to written discovery and a deposition revealing the existence of such documents. Finally, Taucia Poplar, a necessary party learned of a month and a half before the deadline to respond, through a deposition occasioned by an order on a motion for sanctions, had not been joined and discovery had not been taken from her, despite a motion to amend complaint.

Even if the trial court did not abuse its discretion when it denied AAA Cooper Transportation's motion for additional discovery, the summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed because the trial court erred in granting summary judgment to Chuck Parks and Dillingham Motors when there are genuine issues as to material facts. First, there is a genuine issue as to whether Chuck Parks employed T. C. Poplar when Parks and Poplar deny an employment relationship but another witness swears that Parks employed Poplar. Also, there is a genuine issue as to whether Chuck Parks sold the vehicle to T. C. Poplar when there is a genuine issue as to the date and amount of the alleged sale, there is a genuine issue as to

whether title was properly transferred, and important documents regarding the transaction, which are the best evidence of the deal, were never produced. Finally, there is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not remove the old Illinois license plates, did not provide a temporary tag, did not ask to see a driver's license, and did not ask to see any identifying information.

Respectfully submitted,

A handwritten signature in cursive script that reads "Asa Baker".

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Certificate of Service

I, Asa Baker, attorney for appellant, AAA Cooper Transportation, certify that I have this day served a copy of this Brief for Appellant by United States mail with postage prepaid on the following persons at these addresses:

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The Honorable Robert Elliott
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This the 28th day of October, 2008.



Asa Baker

Certificate of Filing

I, Asa Baker, attorney for appellant, AAA Cooper Transportation, certify that I have this day deposited in the United States mail first class with postage prepaid and addressed to the Clerk four copies of the Brief for Appellants.

This the 28th day of October, 2008.

A handwritten signature in cursive script that reads "Asa Baker".

Asa Baker