

**LESSOR VICARIOUS LIABILITY AND PARKING TICKETS.
*Is It Coming To Your Neck Of The Woods?***

As vehicle leasing companies are painfully aware, lessor vicarious liability (LVL) is wreaking havoc in the vehicle leasing industry. Large judgments and skyrocketing insurance costs are forcing some of the big players, as well as smaller companies, to reexamine the leasing business in vicarious liability states. Some leasing companies have even threatened to pull out of LVL states altogether. However, while the leasing industry wages a war to change legislation in LVL states, a court in Michigan has held Ford Motor Credit Company (Ford Motor Credit) vicariously liable to the City of Detroit for the unpaid parking violations of its lessees.

The Court of Appeals of the State of Michigan in Ford Motor Credit Company v. City of Detroit, No. 232848, Wayne Circuit Court, upheld a trial court's decision holding Ford Motor Credit vicariously liable to the City of Detroit for more than 22,000 parking violation tickets with fines totaling in excess of \$861,000 incurred by lessees of Ford Motor Credit.

At the time that the parking tickets were issued to Ford Motor Credit's lessee, the law governing this issue, MCL 257.675(c), stated, in relevant part:

(1) If a vehicle is stopped, standing, or parked in violation of sections 672, 674, 674a, 675, 676 or other state statute, or a local ordinance prohibiting or restricting the stopping, standing or parking of a vehicle and the violation is a civil infraction, the person in whose name that vehicle is registered in this state or another state at the time of the violation is prima facie responsible for that violation and subject to section 907.

In its decision, the Court explained that because there are significant enforcement problems related to parking violations, given that most tickets are issued while the driver is not present, instead of requiring the local government unit issuing the ticket to identify and pursue the particular driver who violated the parking law, the Legislature has created a rebuttable prima facie case based upon the vehicle registration. The Court did acknowledge that the application of this principle can, potentially, result in the imposition of vicarious liability on one person for the acts of another. However, the Court rationalized that issue by stating that it is within the Legislature's constitutional authority to create vicarious liability.

The Court went on to say that according to the Black's Law Dictionary, Prima facie, a legal term of art, means at first sight, on first appearance but subject to further evidence or information and that subsection 675c(1) creates a rebuttable prima facie case that the person in whose name an illegally parked vehicle is registered is, on first appearance, responsible for the violation. In its decision, the Court concluded that the term registered owner refers to a person holding legal title of a vehicle, whose possession of legal title has been listed in an official recording of names and that the plaintiff in this case, Ford Motor Credit, falls within this definition.

The Court elaborated on the issue by saying that a person's Prima facie responsibility can be rebutted with evidence that someone else is responsible for the violation. The Court noted that subsection 675c(2) of the MCL does afford an owner of a vehicle cited for a parking violation an Affirmative defense that the vehicle in question, at the time of the violation, was in the possession of a person whom the owner had not knowingly permitted to operate the vehicle.

The Court went on to state that the Michigan Legislature does provide An avenue for a person actually found responsible pursuant to subsection 675c(1) [vicarious liability] to recover from the individual who actually illegally parked the vehicle. The Court apparently justifies the vicarious nature of the statute by stating that in the event of a long-term lessor like plaintiff [Ford Motor Credit] sustains damages as a result of liability incurred under subsection 675c(1) for the parking violations of someone else, the lessor is authorized by subsection 675c(3) to recover in a civil action damages from that other person, or to indemnify itself in a written agreement (e.g., a lease) for the damages incurred. Although vicarious liability works for the municipality, in practice it will be very difficult for the leasing companies to collect on any parking violations. Ultimately, lessors will be forced to utilize contractual provisions, and charge security deposits, when available, for these unpaid assessments.

CONCLUSION

It is clear that both the Michigan Legislature and the courts within that state want municipalities to be able to seek the deep pockets of the leasing companies along with the ease of recovery from them. The real concern is whether other states' legislatures and courts will follow Michigan in this type of decision. Given the cash strapped economies of the states and other municipalities, it is without doubt that vicarious liability with regard to parking tickets will be coming to your neck of the woods.

Moritt Hock Hamroff & Horowitz LLP is a broad based corporate law firm with more than 25 lawyers and a staff of paralegals. The firm has extensive experience in litigation; creditors' rights and bankruptcy; real estate law; tax & trusts and estates; direct marketing; advertising & new media; intellectual property & unfair competition; general corporate, financial services, secured lending & leasing.

This Alert was written by Michael Cardello III. Mr. Cardello practices in commercial litigation and bankruptcy, representing a number of clients in the vehicle leasing industry. Any questions concerning the matters raised in this Alert should be addressed to Mr. Cardello at (516) 873-2000 or by e-mail at mcardello@mhhlaw.com.