

Alcala v Vazmar Corporation

10/17

Evidence; Impeachment; Admissibility of website material; Party admission

Andrew Alcala was killed after losing control of his PT Cruiser in the rain. His parents sued the tire center which serviced the car two weeks before the accident. They alleged negligent repair and maintenance. On June 17, 2002, Vic Minassian's company sold the Alcalas four new wheels and tires. Minassian testified that when the new wheels and tires were installed he noticed the two front tires had exposed steel due to wear. He testified he told Richard Alcala, Andrew's father, of the problem and recommended a front end alignment. Richard declined the alignment. Minassian failed to document this recommendation in his work order or invoice. Richard testified he requested an alignment and assumed the car had been aligned.

Mr. Alcala returned the car to Minassian's shop on November 16, 2002, because he "didn't like the way it was driving" and asked for a tire check. Minassian said he would rotate them and do a front end alignment. Richard later testified Minassian did not inform him the tires were extremely worn, did not recommend new tires, and did not warn him it was dangerous to drive with the tires left on.

Minassian described the same transaction differently. He observed the tread worn down almost to the "steel." He rotated the front, worn tires to the back, despite his belief the tires posed a danger to the occupants of the vehicle. Minassian told the owners they needed to replace the tires but they did not do so at that time. Minassian admitted he did not explain the tires were bald, nor did he explain they would be dangerous for driving. Again, Minassian made no such notations in the invoice or work order.

Plaintiff's tire expert testified to a growing consensus among tire professionals that new tires should be installed on the back. He also identified obvious signs of wear on the Alcala tires making them dangerous and testified Minassian should have warned the Alcalas to avoid driving on the tires if they refused to replace them. He should also have documented his warnings.

Plaintiff's accident reconstruction expert confirmed the tires lost traction on a wet road causing the vehicle to fishtail and spin. He further indicated that by moving the worn tires to the rear, Minassian had decreased the safety of the vehicle, and increased the likelihood of inadequate traction or a blowout. The defense expert blamed the Alcala's son for causing the accident by driving at an excessive speed. Still the defense expert agreed the tires were worn and should have been replaced.

The jury ruled in favor of the defendant in a unanimous verdict. The Alcalas cited numerous errors and moved for new trial. The motion was denied and this appeal followed. The Second District Court of Appeal rejected the argument there was insufficient evidence to support the jury verdict and also rejected the argument some of the jury instructions were improper. Instead, the Justices focused on the **contention** by

the Alcalas **the trial court committed prejudicial error** when it refused to admit a printout from defendant's website containing the statement, "new tires go on the rear."

In trial, Minassian stated on a front wheel drive car like the Alcala PT Cruiser, it was safer to install new tires on the front axle and worn tires on the rear axle. Later, plaintiff's counsel attempted to **impeach** that testimony with a **printout** from the defendant's website noted above. The trial court barred use of the document on the basis it was **irrelevant**. Because Minassian's nephew set up the website and he "didn't really know what was in it," the statement was excluded.

On cross-examination, Minassian had been asked about the statement and testified he was "100 percent" sure the website did not contain such information. Minassian indicated he supplied the information for the website, looked at the final product, did not make any changes, and approved of the site and its contents. He later backtracked and testified he had not looked at every page of the site. The appellate court found it was an **abuse of discretion** for the trial court not to admit a printout of the website for impeachment purposes.

Printouts from internet websites are admissible to show the existence of a party's statement on the website itself. (*Ampex Corp. v Cargle* (2005) 128 Cal.App.4th 1569) Additionally, the printouts from the defendant's website constituted a **party admission**. (Evidence Code section 1220) Thus, the trial court should have admitted the printout on this additional ground, as well.

The Second DCA went on to conclude the trial court's error was prejudicial. The plaintiff's key theory at trial was that Minassian acted negligently by rotating the front worn tires to the rear. Their expert supported the theory, noting the consensus among tire experts. The expert's testimony was consistent with the statement on the website. **Had the jury been able to hear evidence Minassian did not follow his own recommendation on the website, it is reasonably probable the jury would have disbelieved Minassian's testimony and concluded he acted negligently by placing the worn tires on the rear.**

The judgment is reversed and a new trial is ordered. Plaintiffs are awarded their costs.