SUPREME COURT OF FLORIDA

MARYLAND CASUALTY COMPANY,
B.A.T. PIPELINE, INC., and
SEAN FRANKLIN KINGMAN,

Petitioners, CASE NO. 65,873

-vs-

RELIANCE INSURANCE COMPANY
and BOB SALMON, INC.,

Respondents.
_____/

BRIEF OF RESPONDENTS, RELIANCE INSURANCE COMPANY and BOB SALMON, INC., IN OPPOSITION TO CERTIORARI JURISDICTION

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STATEMENT OF CASE AND FACTS

Introduction

This case is before the Court pursuant to a notice attempting to invoke discretionary certiorari jurisdiction. The Petitioners, MARYLAND CASUALTY COMPANY, B.A.T. PIPELINE, INC., and SEAN FRANKLIN KINGMAN, were defendants, cross-plaintiffs, and cross-defendants in the trial court, appellees in the district court of appeal, and will be referred to herein by name. The Respondents, RELIANCE INSURANCE COMPANY and BOB SALMON, INC., were defendants, cross-plaintiffs, and cross-defendants in the trial court, appellants in the district court of appeal, and will also be referred to by name in this brief.

The following symbol will be utilized herein:

"A" -- Appendix filed simultaneously with this brief.

All emphasis is supplied by counsel unless otherwise indicated.

Case and Facts

A motor vehicle accident occurred on October 23, 1979, involving a leased motor vehicle and generated this insurance

coverage and indemnification dispute. SALMON owned the motor vehicle involved in the incident and such vehicle was afforded insurance coverage under a policy issued to SALMON by RELIANCE. (A. 1). SALMON leased the motor vehicle to B.A.T., who in turn entrusted it to its employee, KINGMAN. The B.A.T. employee, KINGMAN, while operating the motor vehicle during the course and scope of his employment was involved in an accident causing personal injuries. The injured person filed an action against all of the parties involved in this proceeding and such parties filed cross-claims against one another. (A. 1). SALMON and RELIANCE sought both declaratory relief and indemnification from MARYLAND CASUALTY, B.A.T., and KINGMAN, as the parties involved in the direct operation of the motor vehicle at the time of the incident complained of. (A. 1).

The trial court litigation resulted in the entry of a final summary judgment in favor of MARYLAND CASUALTY, B.A.T., and KINGMAN, against RELIANCE and SALMON in which the Trial Court held that RELIANCE provided primary liability insurance coverage to the limits of the insurance policy and that MARYLAND CASUALTY provided only excess liability insurance. (A. 4). Further, the Trial Court determined that neither RELIANCE nor SALMON was entitled to indemnification from MARYLAND CASUALTY, B.A.T., or KINGMAN. (A. 5).

RELIANCE and SALMON sought review of the summary final judgment in the District Court of Appeal, Fourth District, and the only question presented to the appellate court concerned the proper interpretation of Florida Statutes section 627. 7263. (A. 2). It was the position of RELIANCE and SALMON that

a lessor of a motor vehicle is required to provide primary insurance coverage to the extent of $10,000, according to Florida Statutes section 627.7263, which refers to the Florida financial responsibility legislation. (A. 2). It was the position of MARYLAND CASUALTY, B.A.T., and KINGMAN that the lessor was required to provide primary insurance coverage to the full extent of any applicable policy limits, notwithstanding the words utilized in Florida Statutes section 627.7263. (A. 3).

The District Court of Appeal, Fourth District, interpretated Florida Statutes section 627.7263 and held that a lessor of a motor vehicle is required to provide primary liability insurance coverage limited to $10,000 in accordance with the Florida Financial Responsibility Law and, accordingly, reversed the final summary judgment which held to the contrary. (A. 3).

Thereafter, MARYLAND CASUALTY, B.A.T., and KINGMAN sought to invoke this Court's discretionary certiorari jurisdiction.

POINT INVOLVED ON APPEAL

WHETHER THE DECISION SOUGHT TO BE REVIEWED EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THE FLORIDA SUPREME COURT ON THE SAME QUESTION OF LAW?

ARGUMENT

THE DECISION SOUGHT TO BE REVIEWED DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THE FLORIDA SUPREME COURT ON THE SAME QUESTION OF LAW.

The threshold issue in this case is whether the decision rendered below creates the necessary jurisdictional "express and direct conflict" concept in connection with an identical

question of law set forth in Sunshine Dodge, Inc. v. Ketchem, 445 So.2d 395 (Fla. 5th DCA 1984). It is submitted that although the lower appellate court utilized the word "conflict" in a footnote, a proper analysis of the express and direct conflict concept and the factual situation involved in Sunshine Dodge demonstrate that the decision sought to be reviewed does not create conflict with regard to an identical principle of law. The historical development of conflict jurisdiction as set forth in Ansin v. Thurston, 101 So.2d 808 (Fla. 1958), and briefly referred to in Jenkins v. State, 385 So.2d 1356 (Fla. 1980), suggests that jurisdictional conflict does not exist unless the decision sought to be reviewed would have the effect of overruling some other decision if both decisions were rendered by the same court or, in other words, the alleged conflicting decisions must involve practically the same facts but announce antagonistic conclusions. This criteria simply does not exist in connection with the decision sought to be reviewed in this case.

The very real and important factual difference presented in Sunshine Dodge, Inc. v. Ketchem, 445 So.2d 395 (Fla. 5th DCA 1984), was that the lessor had specifically agreed to provide liability insurance coverage for the lessee. The lessee specifically sought to force the lessor to defend and indemnify the lessee "up to the limits of the policy referred to in the lease agreement". id. at 396. An agreement by the lessor to provide liability insurance coverage for the lessee is totally absent in the present case and alters the legal issue involved. The obligations of the parties with regard to insurance related

matters in this case are controlled by Florida Statutes section 627.7263, which specifically states that a lessor provides primary insurance coverage only to the limits of $10,000, which is the requirement of the Florida Financial Responsibility Law and the statutes referred to in such provision. Florida Statutes section 627.7263 became part of the transaction between the parties in this case and such was not modified or changed by any other agreement.

Additionally, Insurance Co. of No. America v. Avis Rent-A-Car System, Inc., 348 So.2d 1149 (Fla. 1977), Racecon Inc. v. Mead, 388 So.2d 266 (Fla. 5th DCA 1980), and Ray v. Earl, 277 So.2d 73 (Fla. 2d DCA 1973), do not in any way address Florida Statutes section 627.7263 as it presently exists and applies. Further, the Avis and Racecon decisions address issues which pertain to contractual arrangements in a lease situaion which are nonexistent in the present case. Additionally, State Farm Mut. Auto. Ins. Co. v. Universal Underwriters Ins. Co., 365 So.2d 778 (Fla. 1st DCA 1979), falls into the same category because the incident which formed the basis of the litigation occurred in 1974, which was prior to the enactment of legislation pertaining to an apportionment of liability insurance coverage in lease situations.

Finally, the decision sought to be reviewed is in full conformity with Patton v. Lindo's Rent-A-Car, Inc., 415 So.2d 43 (Fla. 2d DCA 1982), in which the court held that Florida Statutes section 627.7263 provides that a lessor is primarily liable up to the financial responsibility requirements as set forth in such statute.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 8th day of October, 1984, to: Scott N. Richardson, Esq., MAGILL, REID, LEWIS & RICCA, P.A., Attorneys for Defendants, RELIANCE/SALMON, P.O. Drawer 2926, West Palm Beach, FL 33402; Rosemary Cooney, Esq., PAXTON, CROW, BRAGG & AUSTIN, P.A., Attorneys for MARYLAND CAS. CO./B.A.T./KINGMAN, P.O. Drawer 1189, West Palm Beach, FL 33402; and to Richard J. Meehan, Esq., MEEHAN AND FOLEY, Attorneys for Plaintiffs, Suite 503, 4440 PGA Boulevard, Palm Beach Gardens, FL 33410.

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It is submitted that the decision sought to be reviewed does not conflict with the questions of law involved in the decisions set forth by MARYLAND CASUALTY. In each of the cases either Florida Statutes section 627.7263 was not involved or the cases considered a contractual shifting of liability insurance requirements beyond statutory requirements. With such different factual circumstances presented the decision sought to be reviewed does not deal with an identical principle of law as suggested by MARYLAND CASUALTY.

CONCLUSION

It is submitted that the decision sought to be reviewed does not expressly and directly conflict with other decisions on the same principle of law. Therefore, this Court should decline to accept discretionary jurisdiction in this case.

Respectfully submitted,

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