

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA
CASE NO. 67,142

FILED
SID J. WHITE
JUN 27 1985
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

BRIAN J. SHEEN,
Petitioner,

v.

ARCHIBALD LYON and
ROSE LYON,

Respondents.

BRIAN J. SHEEN,
Petitioner,

v.

NICHOLAS TATUSKO and
ANNA TATUSKO,

Respondents.

RESPONDENTS' BRIEF ON JURISDICTION

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PREFACE

The parties will be referred to plaintiffs and defendant.

STATEMENT OF THE FACTS

The facts are shown in the opinion of the Fourth District. Plaintiffs claimed that Merrill Lynch on its own behalf and Brian Sheen, its employee stockbroker individually and under the theory of respondeat superior, committed tortious improprieties in the handling of their account. Each plaintiff entered into a settlement agreement and a release with Merrill Lynch, which release did not name Brian Sheen and, according to plaintiffs' affidavit, there was no specific intent to release Sheen at the time of releasing Merrill Lynch.

Plaintiffs accept the remainder of petitioner's statement of facts as being correct.

ISSUE

DOES THE DECISION OF THE FOURTH DISTRICT CONFLICT WITH FORD v. COLEMAN, 462 SO.2D 834, (FLA. 5TH DCA 1984)?

Fla.R.App.P. 9.030(a)(2)(A) invokes the discretionary jurisdiction of this Court where decisions of District Courts of Appeal --

(iv) expressly and directly conflict with a decision of another District Court of Appeal or of the Supreme Court on the same question of law.

The answer to the issue posed by petitioner is "no". Ford v. Coleman, 462 So.2d 834, (Fla. 5th DCA 1984) does not "expressly and directly conflict" with the opinion of the Fourth District in this case, nor is it the same question of law. The situation in Ford v. Coleman involved an automobile negligence action joining both the owner and the owner's permissive user. The Fifth District, in effect, ruled that the "agency" relationship created at the time of the accident uniquely endures through the release of the owner "and its agents" (language from the release).

In that case the liability of the owner is derived solely through the negligence of the agent and, therefore, the release of the owner operates as a release of the agent.

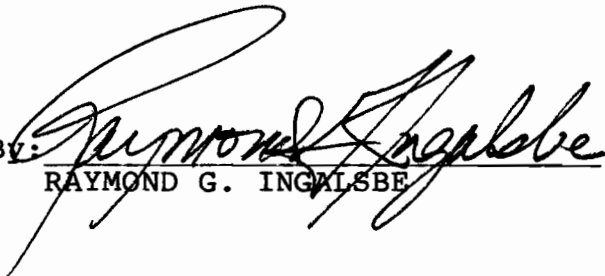
In the case sub judice, on the other hand, the liability of Merrill Lynch emanated from both its own acts and omissions and the respondeat superior relationship it had with petitioner at the time the actions arose. The release of Merrill Lynch served to release its own alleged liability unconnected to any agency relationship with petitioner. Since the release was executed at a time when Merrill Lynch no longer employed petitioner Sheen, there was no agency in fact or in law upon which petitioner can rely. Finally, the release specifically named Merrill Lynch and made no mention of petitioner Sheen.

CONCLUSION

There is no direct conflict and petitioner's application for discretionary jurisdiction should be denied.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been sent by mail to: Al LaSorte, Esquire, 1655 Palm Beach Lakes Boulevard, Forum III, Suite 800, West Palm Beach, Florida 33401; and LARRY KLEIN, Esquire, 501 S. Flagler Drive, Suite 503, West Palm Beach, Florida 33401; this 25 day of June, 1985.


RAYMOND G. INGALSBE