IN THE
SUPREME COURT
OF FLORIDA

NO. 68,124

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant/Petitioner,

vs.

LOUIS G. PRIDGEN, CANDY PRIDGEN,
ANTHONY SUMNER, and EARLE SUMNER,

Plaintiffs/Respondents.
_____/

PETITIONER'S JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE

This case is before the Supreme Court for review of a decision of the District Court of Appeal, First District, reversing a Summary Judgment in favor of the Petitioners. (A-1). After the issuance of the District Court's Initial Opinion, the Petitioners filed a Motion for Rehearing which was denied by the District Court. (A-4). The Petitioners now respectfully request this Court to review the decision of the District Court because of direct and express conflict between that decision and a prior decision of the Third District Court of Appeal, State of Florida.

STATEMENT OF THE FACTS

State Farm Mutual Automobile Insurance Company (State Farm) issued automobile insurance policies to Respondent, Anthony Sumner, and Respondent, Louis G. Pridgen. These policies contain "Coverage D" providing comprehensive coverage which includes loss caused by theft or larceny. The policies, however, also contain an exclusionary clause stating:

> There is no coverage for
>
> 3. Loss to any vehicle due to
>
> d. Conversion, embezzlement or secretion by any person who has the vehicle due to any lien, rental or sales agreement."

Respondents voluntarily transferred automobiles to one Billy Royal for resale. Royal entered into an oral Purchase

and Sale Agreement with the Appellants and Appellants thereafter voluntarily transferred title to Mr. Royal of these automobiles. Title to these two vehicles was transferred at the time of the transaction. Mr. Royal explained that he would sell these vehicles to raise money towards down payment on a new vehicle intended to be purchased by Respondent Pridgen. Mr. Royal was subsequently convicted of Grand Theft. Royal never performed his part of the agreements and eventually sold the Respondents' automobiles using the proceeds to pay his own debts.

Pridgen and Sumner made demands on their insurer, State Farm, which refused to pay the claims citing exemptions to the risk in the exclusionary clause. State Farm filed a Motion for Summary Judgment asserting that the policies in question exclude coverage when an automobile is voluntarily transferred under a sales agreement and a conversion occurs. Summary Judgment was entered in favor of State Farm. The trial court found that Appellants voluntarily delivered their vehicle to Mr. Royal for resale who thereafter sold same and coverted the money to his own use. Since the losses were due to a "conversion", the trial judge concluded that State Farm's policies excluded coverage for the losses.

The First District Court of Appeal reversed the Summary Judgment granted by the trial court and remanded for further proceedings.

SUMMARY OF ARGUMENT

The District Court of Appeal decision herein "expressly and directly conflicts" with the decision of the Third District Court of Appeal in Paris vs. State Farm Mutual Automobile Insurance Company, 365 So.2d 439, (Fla. 3d DCA 1978), cert den. 373 So.2d 460 (Florida 1979). That conflict was acknowledged by the First District in its opinion. (A-3).

ARGUMENT

In the case below, the First District Court of Appeal held that State Farm's conversion exclusionary clause was ambiguous in that it was not clear whether the exclusion applied to situations where the person obtaining the vehicle did so through deceit and therefore did not obtain "lawful possession." Stated otherwise, the First District interpreted State Farm's exclusionary clause to be applicable only when the person obtaining the vehicle takes "lawful possession" and subsequently forms the intent to wrongfully convert same. Of course, State Farm's position is that the exclusion is not ambiguous in that it is stated to be applicable to "any person who has" the vehicle and is not limited to a person who obtains it lawfully.

The opinion of the First District, however, specifically conflicts with the Third Districts' decision in Paris vs. State Farm Mutual Automobile Insurance Company, 365 So.2d 439, (Fla. 3d DCA 1978), cert den. 373 So.2d 460 (Florida 1979). Paris is identical to the present case in that (1) both cases involve a State Farm automobile policy, (2) the policies in each case contain exclusionary clauses which are identical insofar as it is material to the issues raised, and (3) the facts giving rise to the two cases are not distinguishable.

In Paris, the Appellant entered into an agreement with a car salesman to sell his car because he was preparing to leave the country. The Plaintiff delivered possession of his

automobile to the salesman along with the keys and Certificate of Title executed in blank for the purpose of permitting the salesman to sell the car. The salesman was to deposit the proceeds of the sale into the Plaintiff's checking account. Subsequently, the salesman sold the car and deposited the salesman's personal check for the proceeds into the plaintiff's checking account. The salesman's check was returned for insufficient funds. Subsequently, the Plaintiff was unable to locate the salesman.

The relevant portions of the Appellant's policy in the Paris case provided as follows:

> Coverage D - Comprehensive.
>
> (1) The owned motor vehicle. To pay for loss to the owned motor vehicle except losses caused by collision.
>
> Exclusions-Section 3. (e) Coverages D and R to loss due to conversion, embezzlement or secretion by any person in possession of the owned motor vehicle under a bailment, lease, conditional sale, purchase agreement, mortgage or other encumbrance.

Accordingly, in the present case and in Paris, the insured voluntarily declivered possession and title to the automobile to a person who subsequently converted same. In both cases, the policy contains an exclusion for conversion by any person "in possession" or "who has" the vehicle. Despite these identical factual situations, the Third District in Paris

held that the exclusion prohibited coverage as a matter of law while the First District in the present case held that the exclusion was ambiguous and would not be applicable if the person obtaining the vehicle did not accomplish same through "lawful possession." These decisions are directly in conflict and cannot be reconciled.

The court below acknowledged that the rule announced in Paris "is in conflict with the results reached by us here." (A-2,3). The First District recognized that its interpretation of State Farm's exclusion conflicted with that of the Third District in Paris. Specifically, the First District requires that the insured not be deceived when voluntarily transferring possession to his vehicle and that "lawful possession" be obtained by the converter. To the contrary, the Third District holds that the exclusionary clause is applicable when the vehicle is voluntarily transferred, regardless of the intent of the person obtaining the vehicle at that moment. The First District summarizes this conflict in the opinions as follows:

> We understand Paris to say that regardless of whether the insured was deceived as to the true nature of the transaction, he was not deceived about the fact of title immediately passing to the intended purchaser, therefore, the clause of exclusion operates to bar coverage. We cannot agree with this reasoning.
>
> (A-3).

As noted by the First District in its opinion, this issue has been the subject of extensive litigation in other jurisdictions. Essentially, it appears that many Courts have been troubled with resolving the seeming contradiction of a policy which provides coverage for theft, yet excludes coverage for conversion. It is apparent that the First District in the present case and the Third District in Paris have reached different conclusions as to this issue under identical fact situations. State Farm strongly asserts that its policy is clear and unambiguous in that it generally provides coverage for theft, but specifically excludes conversion under certain circumstances. The exclusion is intended to preclude coverage when the insured takes voluntary action to increase the risk by entering into a "lien, rental or sales agreement."

Thus, this Court, pursuant to its conflict jurisdiction, should resolve the issue as to whether the exclusionary language contained in standard automobile insurance policies excludes coverage for conversion, embezzlement or secretion of automobiles under the circumstances contained in the instant case and in the Paris case. Resolution of this issue is important to the developing case law of Florida in that this exclusionary clause, or one very similar to it, is contained in virtually all policies of automobile insurance issued in this state. This issue presently remains unsettled under Florida law. The Florida

Supreme Court should properly settle this question in order to resolve this unsettled question of law affecting the Florida automobile insurance industry and Florida automobile insurance policyholders.

Based upon the foregoing, it is clear that the decision of the Third District Court of Appeal "expressly and directly conflicts" with the decision of the First District Court of Appeal below. This conflict was recognized by the Court itself in its opinion. (A-3). As a result, this Court has jurisdiction for discretionary review pursuant to Article 5, Section 2 of the Florida Constitution and Rule 9.030(a)(2)(IV), Fla. R. App. P. The question of law is significant both in the context of this case and more broadly as effecting the law of the State of Florida as a whole in that the decision of this Court will effect the coverage and exclusions contained in virtually all Florida insurance automobile policies. Accordingly, this Court should exercise its discretionary jurisdiction and review the decisions below.

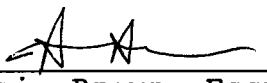
CONCLUSION

Based upon the foregoing, it is clear that the decision of the First District Court of Appeal "expressly and directly conflicts" with a prior decision of the Third District Court of Appeal. As a result, this court has jurisdiction for discretionary review pursuant to Article V, Section 3 of the Florida Constitution and Rule 9.030 of the Florida Rules of Appellate Procedure. The question of law is significant as effecting the

insurance industry and automobile insurance policyholders in Florida. Accordingly, this court should exercise its discretionary jurisdifcion and review the decision below.

Respectfully submitted,

MATHEWS, OSBORNE, McNATT, GOBELMAN & COBB



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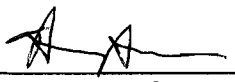
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail to Joseph P. Ripley, Jr., Esquire, 401 Florida Theatre Building, Jacksonville, Florida 32202, this 17th day of January, 1986.



Attorney