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IN THE SUPREME COURT OF FLORIDA

Case No. 69,286

LAWSON L. LAMAR, SHERIFF
OF ORANGE COUNTY, FLORIDA,

Petitioner,

v.

WHEELS UNLIMITED, INC.,

Respondent.

FILED
FBI
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By

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FOR THE FIFTH DISTRICT
OF THE STATE OF FLORIDA

INITIAL BRIEF FOR PETITIONER

WILLIAM C. VOSE
General Counsel

J. EDWIN MILLS
Assistant General Counsel
Sheriff of Orange County
One North Court Avenue
Post Office Box 1440
Orlando, Florida 32801
(305)648-3707
Attorneys for Petitioner

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SUMMARY OF ARGUMENT

Florida Statute 319.27(1) states in part that:

Each lien, mortgage, or encumbrance on a motor vehicle or mobile home titled in this state shall (emphasis added) be noted upon the face of the Florida certificate of title...

Florida Statute 319.27(2) further provides in part that:

No lien for purchase money or as security for a debt in the form of a security agreement, retain title contract, conditional bill of sale, chattel mortgage, or other similiar instrument upon a motor vehicle or mobile home upon which a Florida certificate of title has been issued shall (emphasis added) be enforceable in any of the courts of this state against creditors or subsequent purchasers for a valuable consideration and without notice, unless a sworn notice of such lien has been filed in the department and such lien has been noted upon the certificate of title of the motor vehicle...

Accordingly, the Florida legislature has specifically set forth the procedure for establishing a lien interest in a motor vehicle. The legislature has mandated that the courts of this state not recognize a lien interest claimed in a manner inconsistent with Florida Statute 319.27(1) supra.

The Florida legislature has also set forth the procedure for establishing a claim of ownership in a motor vehicle. Florida Statute 319.21(2) provides in part that:

No person shall sell or otherwise dispose of a motor vehicle or mobile home without delivering to the purchaser or transferee thereof a certificate of title with such assignment thereon as may be necessary to show title in the purchaser...However, any licensed dealer may, in lieu of having a certificate of title issued in his name, reassign any existing certificate of title issued in this state.

Again, the legislature has mandated that the courts strictly apply the procedures set forth in Chapter 119, Florida Statutes. Florida Statute 319.22(1), in part, states that:

...Except as otherwise provided herein, no court shall recognize the right, title, claim, or interest of any person in or to any motor vehicle or mobile home sold, disposed of, mortgaged, or encumbered, unless evidenced by a certificate of title duly issued to that person, in accordance with the provisions of this chapter.

The Fifth District Court of Appeal, in its opinion (R. 8-11), is willing to recognize an equitable lien or ownership claim in a motor vehicle not perfected or evidenced in accordance with Chapter 119, Florida Statutes. As such, the Fifth District Court of Appeal by its opinion has created a judicially authorized exception to a procedure specifically mandated by the Florida legislature and, therefore, should be reversed.

STATEMENT OF FACTS AND CASE

On or about May 21, 1984, William Thomas Godby drove the res of this forfeiture action (a Mercedes automobile) to a location in Orange County, Florida, in order to sell approximately one and one-half ounces of cocaine to an undercover law enforcement officer (R. 1-4). Upon arrest of Godby and seizure of the Mercedes from his possession, investigators conducted an intensive investigation into the title history of the Mercedes to ascertain the owner(s) of the vehicle to fulfill the Sheriff's obligation to use due diligence pursuant to Florida Statute 932.704. Depositions were taken due to the difficulty in establishing ownership of the Mercedes.

Ownership documents received from the Florida Department of Highway Safety and Motor Vehicles, hereinafter DHSMV, established that Epicure International, Inc., and Val Ward Porsche-Audi, Inc., were previous owners of the Mercedes (R. 10-13). Sworn statements were obtained from Epicure International, Inc., (R. 6) and Val Ward Porsche-Audi, Inc., (R. 14) disclaiming any interest in the automobile. Sworn testimony was taken from V.L. Ward, Jr., Vice President of Val Ward Porsche-Audi, Inc., stating that the Mercedes was sold to Vehicles Unlimited, Inc., owned by Bo Clark, on April 14, 1983 (R. 14). Although Vehicles Unlimited, Inc., had not filed with the DHSMV, it had complied with Florida Statute 319.22 by Val Ward Porsche-Audi, Inc., executing a "reassignment by licensed

dealer" (R. 45). Further investigation revealed that Bo Clark, apparently as owner of Vehicles Unlimited, Inc., reassigned the automobile to a R and S Auto Sales on May 11, 1983. Subsequent investigation revealed that R and S Auto Sales was owned by one Sheldon Polakoff. Polakoff testified under oath that he (Polakoff) had never purchased the Mercedes.

Initially, Bo Clark and William Thomas Godby (R. 57-63) denied having any interest in the automobile. An employee of Bob Clark, however, testified that Clark sold the vehicle to Godby, although Godby had denied owning the Mercedes individually or through any corporate interest (R. 57-63).

Since Vehicles Unlimited, Inc., was the last owner whom the Sheriff could trace title to and Godby was in possession of the automobile at the time of seizure, Vehicles Unlimited, Inc., and Godby were provided with Notice of Forfeiture Proceedings (R. 5) and same was published pursuant to Florida Statute 932.704 (R. 9).

(The investigation into the ownership of the Mercedes was conducted by way of the vehicle identification number, as surveillance of Godby revealed that each time Godby used the Mercedes, a different dealer tag was used. Dealer tags, by their very nature, are easily rotated among vehicles as they are not assigned to any specific vehicle.)

An Order for Rule to Show Cause (R. 7) was issued by the trial court February 6, 1985, giving any claimant twenty days in

which to file responsive pleadings. William Thomas Godby filed an Answer, as an individual, on March 1, 1985 (R. 15). Vehicles Unlimited, Inc., filed an Answer to the Sheriff's Complaint on March 6, 1985 (R. 16-17). In its Answer, Vehicles Unlimited, Inc., admitted that Vehicles Unlimited, Inc., and William Thomas Godby claimed an interest in the Mercedes (R. 16-17). On March 13, 1985, Wheels Unlimited, Inc., filed an Amended Answer to the Sheriff's Complaint (R. 18-19). In its Amended Answer, Wheels Unlimited, Inc., sought to substitute itself for Vehicles Unlimited, Inc., and admitted that Vehicles Unlimited, Inc., and William Thomas Godby claimed an interest in the automobile (R. 18-19). Wheels Unlimited, Inc.'s, Answer failed to state a claim of interest in the Mercedes (R. 18-19).

On April 1, 1985, the trial court heard the Sheriff's Motion to Strike Wheels Unlimited, Inc.'s, Answer (R. 20-21). The Sheriff argued two main points. First, the Sheriff moved to strike Wheels Unlimited, Inc.'s, Answer on the grounds said Answer was untimely (R. 20-21). Second, the Sheriff urged the trial court to strike the Answer on the grounds that Vehicles Unlimited, Inc., and Wheels Unlimited, Inc., are separate and independent corporations and Wheels Unlimited, Inc., failed to plead that its interest in the Mercedes was derived from Vehicles Unlimited, Inc. At the conclusion of the hearing, the trial court entered its Order striking Wheels Unlimited, Inc.'s, Answer (R. 22).

On April 30, 1985, the trial court heard argument on Wheels Unlimited, Inc.'s, Motion for Intervention (R. 23-24) and the Sheriff's Motion to Strike the Motion for Intervention (R. 27-28). At the conclusion of the hearing, the trial court granted the Sheriff's Motion to Strike and denied Wheels Unlimited, Inc.'s, Motion for Intervention (R. 29).

Upon hearing Wheels Unlimited, Inc.'s, Motion for Rehearing on its Motion to Intervene (R. 31-32), the trial court and the Sheriff became aware that William Thomas Godby, an adverse claimant to Wheels Unlimited, Inc., is a co-owner of Wheels Unlimited, Inc., and, in fact, signed the Interrogatories on behalf of Wheels Unlimited, Inc. (R. 41-43).

Based upon William Thomas Godby's and Wheels Unlimited, Inc.'s, Response to Interrogatories (R. 41-43), the Sheriff moved for Summary Judgment as to William Thomas Godby (R. 53-56) and Wheels Unlimited, Inc. (R. 46-49).

The trial court, after hearing argument of counsel, granted the Sheriff's Motion for Summary Judgment against Godby (R. 64) and Wheels Unlimited, Inc. (R. 65).

On November 27, 1985, Wheels Unlimited, Inc., filed a Notice of Appeal (R. 1). On November 29, 1985, the Sheriff filed a Notice of Cross-Appeal. R. 3).

On August 7, 1986, the Fifth District Court of Appeal issued its opinion holding that Florida Statute 319.22 does not bar the

assertion of a title or lien interest not based on a recorded certificate duly issued (R. 8-11).

On September 2, 1986, the Sheriff filed a timely Notice to Invoke this Honorable Court's Discretionary Jurisdiction (R. 13) and on December 12, 1986, this Honorable Court accepted jurisdiction (R. 14).

QUESTION PRESENTED

DID THE FIFTH DISTRICT COURT OF APPEAL ERR IN HOLDING THAT, IN A FORFEITURE PROCEEDING BROUGHT PURSUANT TO FLORIDA STATUTES 932.701-704, EQUITABLE PRINCIPLES MUST BE APPLIED INDEPENDENT OF FLORIDA STATUTE 319.22(1) AND FLORIDA STATUTE 319.27?

ARGUMENT

The Fifth District Court of Appeal erred in holding that, in a forfeiture proceeding brought pursuant to Florida Statutes 932.701-704, equitable principles must be applied independent of Florida Statute 319.22(1) and Florida Statute 319.27.

Florida Statute 932.703(2), in part, states:

No property shall be forfeited under the provisions of §932.701-932.704 if the owner of such property establishes that he neither knew, or should have known after a reasonable inquiry, that such property was being employed or was likely to be employed in criminal activity.

Florida Statute 932.703(3) aids in interpreting the word "owner" used in Section 932.703(2), in that it prohibits the forfeiture of an innocent bona fide lienholder's interest. In Lauderdale Investments, Inc., v. Miller, 456 So.2d 539 (Fla. 5th DCA 1984), the court found that claimant lacked standing to challenge the forfeiture as the claimant had acquired its ownership interest after the date of seizure. In reaching its conclusion, the court analogized to the provisions in Florida Statute 932.703(3) that protect a bona fide lienholder's interest and reasoned that only owners who acquire their ownership interest pre-forfeiture may retain their interest. Lauderdale Investments, Inc., supra, at 539.

In In re: Forfeiture of One 1946 Lockheed L-18 Loadstar, Right 1820-A105A Engines, Visible ID #N43WT, 11 F.L.W. 1537 (2d

DCA, July 18, 1986), the Second District Court of Appeal refused to recognize the claimant as the owner of the aircraft within the meaning of the forfeiture statute, and, therefore, claimant was not entitled to the "innocent owner" protection of Florida Statute 932.703(2). In Lockheed, claimant alleged that he was a bona fide purchaser for value and record title holder of the aircraft. The trial court, apparently refusing to recognize any equitable ownership interest, strictly applied the provisions of Florida Statute 329.01 that provide that no instrument which affects title to an aircraft is valid until such instrument is recorded in the Office of the Federal Aviation Administrator.

Several courts have strictly applied the legislative mandate dealing with perfection of lien interests in motor vehicles. In Smith v. City of Miami Beach, 440 So.2d 611 (3d DCA 1983), the court held that the statutory requirements of Florida Statute 319.27(1) must be complied with before a lienholder's interest rises to a bona fide lien interest and, therefore, subject to the protection of Florida Statute 932.703(3). In In re: Forfeiture of the Following Described Property: One 1979 Chevrolet C-10 Van, VIN CGU1590137222, Florida Tag #BXF922; and One 1980 Buick Century, VIN 4H69AAG156802, Florida Tag #BDT700. 490 So.2d 240 (Fla. 2d DCA 1986), the court ruled that a lienholders's interest in a motor vehicle subject to forfeiture under the Florida Contraband Forfeiture Act is entitled to protection only under certain circumstances. The court, in

considering the language of Florida Statute 932.703(3) that requires: "...that the lien had been perfected in the manner prescribed by law prior to such seizure," looked to the requirements of Florida Statute 319.27(1). Florida Statute 319.27(1) states in part that:

Each lien, mortgage, or encumbrance on a motor vehicle or mobile home titled in this state shall (emphasis added) be noted upon the face of the Florida certificate of title or on a duplicate or corrected copy thereof, as provided by law...

Florida Statute 319.27(2) further provides that:

No lien for purchase money or as security for a debt in the form of a security agreement, retain title contract, conditional bill of sale, chattel mortgage, or other similar instrument upon a motor vehicle or mobile home upon which a Florida certificate of title has been issued shall (emphasis added) be enforceable in any of the courts of this state against creditors or subsequent purchasers for a valuable consideration and without notice, unless a sworn notice of such lien has been filed in the department and such lien has been noted upon the certificate of title of the motor vehicle or mobile home. Such notice shall be effective as constructive notice when filed. The notice of lien shall provide the following information:

- (a) The date of the lien;
- (b) The name and address of the registered owner;
- (c) A description of the motor vehicle or mobile home, showing the make, type, and vehicle identification number, and;
- (d) The name and address of the lienholder.

The legislative intent behind Florida Statute 319.22(1), 319.27(1), and 319.27(2) is further expressed in Florida Statute 679.302(3) and Florida Statute 679.302(4). Florida Statute 679.302(3) states that:

The filing of a financial statement otherwise required by this Chapter is not necessary or effective to (emphasis added) perfect a security interest in property, subject to: ...the following statutes of this state: Chapters 319 and 328;...

Florida Statute 679.302(4) states that:

Compliance with a statute [CH 319] or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Chapter, and a security interest in property subject to the statute or treaty can be perfected only (emphasis added) by compliance therewith...

Florida Statute 319.20, in part, provides that:

The provisions of this chapter apply exclusively, except as otherwise specifically provided, to motor vehicles and mobile homes required to be registered and licensed under the laws of this state...

Accordingly, the legislature has mandated that the procedures set forth in Chapter 319 apply exclusively to motor vehicles required to be registered in Florida.

Florida Statute 319.21(2) provides, in part, that:

No person shall sell or otherwise dispose of a motor vehicle or mobile home without delivering to the purchaser or transferee thereof a certificate of title with such assignment thereon as may be necessary to show title in the purchaser...However, any licensed dealer may, in lieu of having a certificate of title issued in his name, reassign any existing certificate of title issued in this state.

It is clear from Florida Statute 319.21(2) that a licensed dealer can establish ownership of an automobile by producing a certificate of title issued by DHSMV and the dealer reassignments showing a chain of title to the claiming dealer.

The legislative intent behind Florida Statute 319.27, supra, and Florida Statute 319.21, supra, is expressed in Florida Statute 319.22. Florida Statute 319.22(1), in part, states that:

...Except as otherwise provided herein, no court shall recognize the right, title, claim, or interest of any person in or to any motor vehicle or mobile home sold, disposed of, mortgaged, or encumbered, unless evidenced by a certificate of title duly issued to that person, in accordance with the provisions of this chapter.

Clearly, Wheels Unlimited, Inc., is precluded by legislative mandate from asserting any claim, legal or equitable, to the Mercedes.

The legislature allows licensed automobile dealers the privilege of transferring the ownership of motor vehicles without the necessity and delay of applying for a certificate of title in the name of the transferee. The legislature has placed an affirmative burden on everyone, casual sale transactions as well as transfers between licensed dealers, to comply with legislative directives concerning perfecting liens and transfer of ownership. See Florida Statute 319.22(1), supra.

The Fifth District Court of Appeal is willing to recognize an equitable lien or claim of ownership in proceedings brought pursuant to Florida Statutes 932.701-932.704 (R. 8-11). The District Court reasoned that:

...The long chain of titleholders without recorded certificates of title (equitable titleholders) listed above (Val Ward Porsche-Audi, Inc.; Vehicles Unlimited, Inc.; Tropical Wheels; and Wheels Unlimited, Inc.) appear to be licensed dealers who are permitted by Section 319.21(2), Florida Statutes, to reassign an existing certificate of title in lieu of obtaining a new certificate of title.

The District Court's finding that Val Ward Porsche-Audi, Inc., and Vehicles Unlimited, Inc., are equitable owners is

erroneous. Ownership documents show that Epicure International, Inc., properly executed, pursuant to Florida Statute 319.21(2), a reassignment to Val Ward Porsche-Audi, Inc. (R. 10-13). Documents obtained through discovery demonstrate that Val Ward Porsche-Audi, Inc., executed, pursuant to Florida Statute 319.21(2), a reassignment by licensed dealer to Vehicles Unlimited, Inc. (R. 45). Val Ward Porsche-Audi, Inc., and Vehicles Unlimited, Inc., during the time each owned the Mercedes, did not have equitable ownership in the automobile, but rather, each had an ownership claim of law due to their compliance with Florida Statute 319.21(2).

The District Court further erred in reasoning that:

Clearly, whoever is entitled to the vehicle in question, be it the Sheriff or the intervenor, Wheels Unlimited, Inc., it is not the entity having record title, which appears to be Epicure International, Inc., neither the Sheriff nor Wheels Unlimited, Inc., relies upon a recorded certificate of title "duly issued"...

Epicure International, Inc., certainly does not have record title as it signed off the title to Val Ward Porsche-Audi, Inc., on April 13, 1983 (R. 10-13). On April 13, 1983, Val Ward Porsche-Audi, Inc., was the record title owner. On April 21, 1983, pursuant to Florida Statute 319.21(2), Val Ward Porsche-Audi, Inc., reassigned the duly issued title to Vehicles Unlimited, Inc. (R. 44). Wheels Unlimited, Inc., admitted that subsequent to the reassignment to Vehicles Unlimited, Inc., no

one applied for a certificate of title for the Mercedes nor did anyone execute a reassignment by licensed dealer (R. 51).

It is important to note that the Mercedes changed hands at least three times after Vehicles Unlimited, Inc., obtained the automobile (R. 50, 51, 52). Affidavits submitted by Wheels Unlimited, Inc., demonstrated that William Thomas Godby was, either as an individual or through some business arrangement, the recipient of the automobile in each of these transactions (R. 50, 51, 52). The affidavit of one Bud Lunsford shows that upon dissolution of Tropical Wheels, Inc., Godby took ownership of the automobile (R. 50). The record is void of any allegation that Godby was a licensed automobile dealer and, therefore, accorded the privilege of either obtaining title to the Mercedes by receiving an assignment by licensed dealer, or conveying title to Wheels Unlimited, Inc., by executing an assignment by licensed dealer. Godby, as an individual, certainly could not give Wheels Unlimited, Inc., an assignment by licensed dealer.

In Lamar v. Universal Supply Co., Inc., 452 So.2d 627 (5th DCA 1984), the Sheriff seized an automobile under the authority of Florida Statutes 932.701-704 and the owner filed a replevin action pursuant to Chapter 78, Florida Statutes. The trial court ordered the Sheriff to file a forfeiture action within five days or return the automobile on the fifth day. On appeal, the District Court conceded that the trial court's order of return of the automobile was not in accordance with Chapter 78,

Florida Statutes. The District Court, in upholding the noncompliance with the legislatively mandated procedure set forth in Chapter 78, Florida Statutes, reasoned that the statute did not contemplate the situation where the Sheriff is a party defendant. In Lamar v. Universal Supply Co., Inc., 479 So.2d (Fla. 1985), this Honorable Court recognized that the legislature had set forth the procedure for issuance of a writ of replevin and the procedure must be followed regardless of whether the Sheriff is a party defendant.

Wheels Unlimited, Inc., is asking the court to recognize its equitable interest in the Mercedes (R. 51, 52). Wheels Unlimited, Inc., is asking the court to overlook William Thomas Godby's failure to comply, on at least three occasions, with the legislatively mandated procedure for transferring ownership of the automobile. See Florida Statute 319.21(2), *supra*.

Wheels Unlimited, Inc., has failed to demonstrate, or even allege, that it does not have an adequate legal remedy and therefore is entitled to invoke equity jurisdiction. Wheels Unlimited, Inc., must establish the inadequacy of existing legal remedy before it is entitled to equitable relief. See Carney v. Hadley, 14 So. 4 (Fla. 1893). Certainly Wheels Unlimited, Inc., can recover money damages at law from William Thomas Godby for Godby's failure to follow the statutory requirements dealing with transfer of ownership of motor vehicles.

The plain language and legislative intent of Chapter 319, Florida Statutes, requires that this Honorable Court not recognize a claimant's "equitable interest" in a motor vehicle. The Fifth District Court of Appeal has, as it did in Lamar v. Universal Supply Co., Inc., supra, created a judicially authorized exception to a procedure specifically mandated by the Florida legislature.

CONCLUSION

For the reasons set forth in Petitioner's Argument, this Honorable Court should reverse the decision of the Fifth District Court of Appeal and remand with directions to reinstate the trial court's final summary judgment.