

IN THE SUPREME COURT OF FLORIDA

Case No.: 69,286

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

Petitioner/Appellee,

v.

WHEELS UNLIMITED, INC.,

Respondent/Appellant.

FILED
SID. WHITE
SEP 18 1986
CLERK, SUPREME COURT
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ON DISCRETIONARY REVIEW FROM THE
FIFTH DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA

RESPONDENT'S BRIEF ON JURISDICTION

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<p>THE PRESENT DECISION IS NOT IN EXPRESS AND DIRECT CONFLICT WITH THOSE CASES HOLDING THAT A LIENHOLDER MUST PERFECT HIS/HER LIEN BEFORE PROTECTION CAN BE CLAIMED UNDER FLORIDA STATUTE, §932.703(2); AND FURTHER, IT IS NOT IN EXPRESS AND DIRECT CONFLICT WITH THE CASE HOLDING THAT AN AIRCRAFT TITLE MUST BE RECORDED WITH THE FEDERAL AVIATION ADMINISTRATOR OF THE UNITED STATES BEFORE THE TITLE HOLDER CAN CLAIM PROTECTION UNDER FLORIDA STATUTE, §932.703(2). THEREFORE, THE SUPREME COURT HAS NO JURISDICTION TO HEAR THIS MATTER UNDER THE DISCRETIONARY JURISDICTION PROVISIONS IN RULE 9.030(a)(2)(A)(iv), FLORIDA RULES OF APPELLATE PROCEDURE.</p>	
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ARGUMENT

The Supreme Court of Florida does not have jurisdiction to hear this matter, pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), as there is no conflict between the Fifth District Court of Appeal and the decisions cited by Petitioner in his Brief on Jurisdiction. Of the three cases Petitioner cites, two deal with a lienholder's interest and the third deals with instruments affecting title to aircrafts under §329.01, Florida Statutes (1985).

The Fifth District Court of Appeal's opinion in the case sub judice dealt with the ownership of the subject automobile. It held that failure of the vehicle title owner to record a certificate of title nevertheless gives him/her an equitable title interest. This conclusion was reached after the District Court traced the ownership of the subject automobile and found that four of the owners had not recorded their certificates of title.

Petitioner in an attempt to show a conflict with other district courts cites three cases. The first case is In re: Forfeiture of One 1979 Chevrolet C10 Van, VIN CGU1590137222, Fla. Tag BXF922, and One 1980 Buick Century, VIN 4H69AAG156802, Fla. Tag BDTG700, 490 So.2d 240 (2nd DCA 1986), which is a Second District Court of Appeal case dealing with the issue of perfecting a lien before such lienholder may claim the protections of §932.703, Florida Statute (1985). The second case is In re: Forfeiture of One 1946 Lockheed L-18 Loadstar, Right 1820-A105A Engines,

Visible ID #N43WT, 11 FLW 1537 (2nd DCA, July 18, 1986), which is a Second District Court of Appeal case dealing with the provisions of §329.01, Florida Statute (1985), which requires an instrument affecting title to an aircraft to be recorded in the Office of the Federal Aviation Administrator of the United States before it is valid. The third case Petitioner cites is Smith v. City of Miami Beach, 440 So.2d 611 (3rd DCA 1983), which is a Third District Court of Appeal case dealing with a lienholder's interest. Petitioner therefore asks this Court to find a direct conflict between the case sub judice which deals with an ownership interest in an automobile and two cases dealing with a lienholder's interest. It also asks this Court to find a direct conflict between the case sub judice and a case dealing with aircraft and the requirements of §329.01, Florida Statutes (1985).


Since the Fifth District Court of Appeal in the case before the Court based its ruling on the issue of ownership and §319.22, Florida Statute (1985), there is no conflict with the decisions dealing with a lienholder's interest and with the decision dealing with aircrafts and their registration under §329.01, Florida Statute (1985).

CONCLUSION

The Fifth District Court of Appeal's ruling in the case before the Court dealing with the ownership of the subject vehicle does not conflict with the holdings of other district courts of appeal dealing with the separate issue of a lienholder's interest, nor does it conflict with the Second District Court of Appeal's holding involving aircraft registration.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to J. EDWIN MILLS, ESQ., Assistant General Counsel, Sheriff of Orange County, P. O. Box 1440, Orlando, Florida 32801 this 17 day of September, 1986, by U.S. MAIL.



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