

O/A 4-1-87

IN THE SUPREME COURT OF FLORIDA

Case No. 69,286

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

Petitioner,

v.

WHEELS UNLIMITED, INC.,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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ARGUMENT

Respondent raises two points in his Answer Brief. First, Respondent argues that the Fifth District Court of Appeal's opinion did not address a lienholder interest. Second, Respondent takes the position that the Florida Contraband Forfeiture Act, §932.701-704, Florida Statutes (1985), does not preclude an equitable or beneficial owner from contesting a forfeiture of his or her property.

Petitioner takes exception to Respondent's first point. The Fifth District Court of Appeal's opinion stated:

We do not hold that the factual issues should be resolved in favor of Wheels Unlimited, Inc., but merely that in forfeiture proceedings, Section 319.22(1), Florida Statutes, does not bar the assertion of a title or lien interest (emphasis added) not based on a recorded certificate of title duly issued...Wheels Unlimited, Inc., v. Lawson L. Lamar, 492 So.2d 785 (5th DCA 1986) at 788.

Clearly, the opinion addresses lienholder interests.

Petitioner also takes exception to Respondent's second point that the Florida Contraband Forfeiture Act, §932.701-704, Florida Statutes (1985), does not preclude an equitable or beneficial owner from contesting a forfeiture of his or her own property.

Respondent relies on Nash Miami Motors v. Bandel, 47 So.2d 701 (Fla. 1950) for the proposition that the failure to comply with Florida Statute 319.03 should not lead to an implied forfeiture of a motor vehicle. Respondent's reliance is

misplaced in that Florida Statute 319.03 requires the purchaser of a motor vehicle to present the assigned certificate of title to the State Motor Vehicle Commission within ten (10) days of the purchase. This Court correctly pointed out that Florida Statute 319.03 does not expressly provide that the purchaser of an automobile forfeits his ownership by failing to comply with Florida Statute 319.03.

Petitioner suggests that Nash, supra, is distinguished from the case sub judice. While Florida Statute 319.03 does not preclude the assertion of an ownership interest when a purchaser fails to comply with said section, Florida Statute 319.22, by its very language, does preclude assertion of such an interest for failure to comply with §319.22, Florida Statutes.

Respondent further relies on Palmer v. R.S. Evans, Jacksonville, Inc., 81 So.2d 635 (Fla. 1955), by alleging that this Honorable Court reasoned that the common law of sales coexisted with Florida Statute 319.22(2) in holding that the holder of a mere naked legal title to a vehicle did not render said holder civilly liable for a tort where the beneficial owner was the tortfeasor. Respondent failed to point out that the basis of the Court's reasoning was found in Florida Statute 319.22(2) which provides in part that:

An owner or coowner who has made a bona fide sale or transfer of a motor vehicle or mobile home and has delivered possession thereof to a purchaser shall not, by reason of any of the provisions of this chapter, be deemed the owner or coowner of such vehicle or mobile home so as to be subject to civil liability for the

operation of such vehicle or mobile home thereafter by another...

Respondent relies upon Motor Credit Corporation v. Woolverton, 99 So.2d 286 (Fla. 1957); Greyhound Rent-A-Car, Inc., v. Austin, 298 So.2d 345 (Fla. 1974), Correria v. Orlando Bank & Trust Company, 235 So.2d 20 (4th DCA 1970); and Florida Department of Corrections v. Blount Pontiac-GMC, Inc., 411 So.2d 930 (1st DCA 1982) in his argument that Florida Statute 319.22(1) addresses only marketable title.

Woolverton, Greyhound, Correria, and Florida Department of Corrections, all involved the sale of a motor vehicle by a dealer, in the ordinary course of business to a bona fide purchaser for value without notice of prior claims to the automobile. In Woolverton, Greyhound, and Correria, the Courts were willing to allow the purchaser to take the vehicle free of the prior claims due to improper conduct on the part of the selling dealer or the titled owner. In Florida Department of Corrections, the Court permitted the purchaser to take the vehicle free of prior claims due to the Courts finding that Appellant was a good faith purchaser for value under the Uniform Commercial Code. Florida Department of Corrections, supra, at 932.

While this Honorable Court has recognized the passing of equitable title to a good faith purchaser of an automobile for value from an automobile dealer in the ordinary course of business, it is illogical to extend the reasoning and

application of Woolverton, Greyhound, Correria, and Florida Department of Corrections to cases brought pursuant to Florida Statute 932.701-704. Clearly, the circumstances and facts of Woolverton, Greyhound, Correria, and Florida Department of Corrections are distinguishable from the facts and circumstances of the case sub judice.

CONCLUSION

Respondent erroneously argues that the Fifth District Court of Appeal's opinion below does not address lienholders' interests.

Further, Respondent has failed to cite any persuasive authority to support his argument that the Florida Contraband Forfeiture Act, §932.701-704, Florida Statutes (1985), does not preclude an equitable or beneficial owner from contesting a forfeiture of his or her property.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail, postage prepaid, this 11th day of March, 1987, to Marc L. Lubet, Esquire, 209 E. Ridgewood Street, Orlando, Florida 32801 and to David K. Miller, Chief Counsel, Economic Crime Litigation Division, Attorney General's Office, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399-1050.



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