

71,001

IN THE SUPREME COURT IN AND FOR THE STATE OF FLORIDA

FILED
SID J. WHITE

AUG 24 1987

CLERK, SUPREME COURT

GERALD G. MICHALEK,
Plaintiff/Appellant

)
)
)

SECOND DISTRICT COURT BY OF
APPEAL CASE NO. 86-2085 Deputy Clerk

-vs-

)

LEE COUNTY CASE 85-5976CA-EOF

DAVID E. SHUMATE and JUNE
SHUMATE

)
)

Defendant/Appellees

)
)

PLAINTIFF/PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF FACTS AND CASE

GERALD G. MICHALEK brought a personal injury action against DAVID and JUNE SHUMATE. (A-2) MR. MICHALEK was injured in a motor vehicle accident caused by an employee of Ralph's Car Cleaning. (A-2) JUNE SHUMATE had called Ralph's Car Cleaning for an appointment to have her car cleaned. (A-2) Ralph's Car Cleaning sent an employee to MRS. SHUMATE'S place of employment to pick up her car. (A-2) The collision occurred as the employee was leaving MRS. SHUMATE'S place of employment. (A-2)

MR. MICHALEK brought his action against the SHUMATE'S under the dangerous instrumentality theory. (A-1-2) The trial court granted Summary Judgment in favor of MR. AND MRS. SHUMATE. (A-1) The Second District Court of Appeal affirmed this decision. (A-10) In doing so, the Second District admitted that its decision conflicts with Jack Lee Buick, Inc., v Bolton, 377 So.2d 226 (Fla. 1st DCA 1979) (A-2-3) Notice in accordance with Fla. R. App. P. 9.120 was timely filed.

POINT ON APPEAL

THE SUPREME COURT HAS DISCRETIONARY JURISDICTION TO REVIEW THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN THE INSTANT CASE PURSUANT TO FLORIDA RULE OF APPELLATE PROCEDURE 9.030(a)(2)(A)(iv).

ARGUMENT

THE SUPREME COURT HAS DISCRETIONARY JURISDICTION TO REVIEW THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN THE INSTANT CASE PURSUANT TO FLORIDA RULE OF APPELLATE PROCEDURE 9.030(a)(2)(A)(iv).

The Supreme Court has discretionary jurisdiction to review decisions of one District Court of Appeal which expressly and directly conflict with a decision of another District Court of Appeal on the same question of law. The Second District Court of Appeal states that its decision in the instant case conflicts with Jack Lee Buick, Inc., v. Bolton, 377 So.2d 226 (Fla. 1st DCA 1979). The issue involved in both cases arises out of a common factual situation. That issue is the extent of an automobile owner's liability to an injured person when the owner has entrusted his automobile to an automobile serviceman solely for the convenience of the owner.

There is now no uniformity in Florida on this issue. Both an owner's responsibility and a victim's rights differ depending upon which District Court of Appeal they live in. Accordingly, GERALD MICHALEK respectfully requests that This Court accept its discretionary jurisdiction and resolve the extant conflict.

Respectfully submitted,

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BY:



BRUCE D. FRANKEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by United States Mail to JEFFREY D. TROY, ESQUIRE, Post Office Drawer D, Fort Myers, Florida 33902, MICHAEL B. McIVER, ESQUIRE, Post Office Box 535, Cape Coral, Florida 33910 and GEORGE A. VAKA, ESQUIRE, Post Office Box 1438, Tampa, Florida 33601, this 21st day of AUGUST, 1987

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