0.A.10-90

IN THE SUPREME COURT OF FLORIDA

ROBERT THOMAS KRAEMER, JR., as Personal Representative of the Estate of Marguerite Voorhees Kraemer, Deceased, and ROBERT THOMAS KRAEMER, JR., individually,	)	
Petitioner,	)	CASE NO. **75,583**
vs.	)	
GENERAL MOTORS ACCEPTANCE CORPORATION,	)	
Respondent.	)	

ANSWER BRIEF OF RESPONDENT GENERAL MOTORS ACCEPTANCE CORPORATION

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STATEMENT OF THE CASE AND FACTS

On October 2, 1987 Respondent, GENERAL MOTORS ACCEPTANCE CORPORATION (hereinafter "GMAC"), filed a Complaint for declaratory relief as well as for reformation of a policy of insurance issued by Nationwide Insurance Company[1] (R.1-11). The portion of the Complaint relating to Nationwide Insurance Company does not bear upon the instant appeal, and consequently will not be referred to further.

With regard to Petitioner, ROBERT THOMAS KRAEMER, JR., as Personal Representative of the Estate of MARGUERITE VOORHEES KRAEMER, deceased, and ROBERT THOMAS KRAEMER, JR., individually (hereinafter "KRAEMER"), the Complaint essentially alleged that on or about May 7, 1987 Marguerite Kraemer was killed in an automobile accident when her motor vehicle collided with a motor vehicle operated by an individual named Calvin Gary. At the time of the accident, Gary was operating a 1987 Nissan Maxima which had previously been leased by GMAC to Michael A. Green for a period of 48 months, with an option to purchase the vehicle at the expiration of the lease term. The Complaint further alleged that KRAEMER sought to hold GMAC liable for the death of Marguerite Voorhees Kraemer due to GMAC's ownership of the automobile leased by Michael A. Green and operated by Calvin Gary. GMAC sought a declaration by the Court to the effect

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[1] References to the record on appeal will be by the letter "R" followed by the appropriate page number or numbers in the record.

that GMAC was not legally responsible for the death of Marguerite Kraemer **(R.1-11).**

On October 15, **1987** counsel for KRAEMER filed an Answer, Defenses and Counterclaim. That pleading, inter alia, sought money damages from GMAC as a result of its alleged responsibility for the negligence of Calvin Gary, as noted above. In response, GMAC filed its Answer and Defenses to the Counterclaim, in which it denied beneficial ownership of the vehicle leased by Michael Green, and operated by Calvin Gary **(R.17-19).**

On March 2, **1988,** GMAC filed a Motion For Summary Judgment based upon the proposition that GMAC was not the beneficial owner of the long-term lease vehicle involved in the death of Marguerite Kraemer, and consequently could not be liable to Kraemer under the dangerous instrumentality doctrine **(R.87).** In support of that Motion, the Affidavit of Wayne Boyd, an administrative representative for GMAC, was filed with the Court. Mr. Boyd's Affidavit attested to the following facts:

> 1. No employees of GMAC ever saw the **1987** Nissan Maxima leased to Michael A. Green, ever modified the vehicle leased to Michael A. Green or in any other way handled that vehicle prior to Michael A. Green having taken possession of it.
>
> 2. The purchase of the automobile in question by GMAC was arranged by Jake Sutherlin Oldsmobile, Cadillac, etc., and the lease to Michael A. Green was actually arranged by United Leasing of Tampa.
>
> 3. At no time did any employees of GMAC control the operation of the **1987** Nissan Maxima, nor did any employees have the ability to control or the opportunity to control the use of that vehicle.

4. GMAC essentially financed the purchase and lease of the vehicle referred to above, and its role in the ownership and operation of the vehicle was confined to matters of finance, and not to the beneficial ownership or control of the vehicle.

5. At the expiration of the four-year lease signed by Michael A. Green, Green had the opportunity to simply keep the vehicle by paying the fair market value of the vehicle at that time, or to return the vehicle and discontinue payments. **(R.132-133).**

Michael A. Green, the long-term lessee, was deposed on January **20, 1988,** and his deposition forms a part of the record on appeal **(R.181-251).** Green testified, inter alia, that he had arranged for the lease of the automobile through United Leasing of Tampa and the car was actually delivered to him by a representative of Jake Sutherlin Oldsmobile, Cadillac, Nissan, Inc. **(R.187-188).** Moreover, Green testified that he never went to GMAC's offices, and prior to taking possession of the automobile he never spoke to anyone at GMAC **(R.188-189).** As a matter of fact, prior to Jake Sutherlin Oldsmobile, etc. turning possession of the vehicle over to Green, he had no contact whatsoever with GMAC **(R.189).** Green also testified that the tag and registration to the Nissan Maxima were actually paid for by Green's father, not by GMAC, and that no one from GMAC ever told Green what to do with the automobile, or what not to do with the automobile **(R.209,** 211). Subsequent to the accident giving rise to this appeal, Green purchased another automobile pursuant to a conditional sales contract. According to Green, there was no difference between his

day-to-day use of the long-term lease vehicle and his day-to-day use of the vehicle purchased pursuant to the conditional sales agreement **(R.238).**

The lease agreement itself was for **48** months, with an option to purchase at the expiration of that period of time **(R.9).** In addition, pursuant to the lease agreement the long-term lessee was responsible for all maintenance on the automobile, was responsible for obtaining the license plate and registration, was responsible for paying all applicable taxes and was the beneficiary of the manufacturer's original warranty. All maintenance on the automobile was to be obtained by the lessee, as were any required state inspections **(R.lO).** In addition, the lessee was responsible for obtaining liability insurance on the automobile, and was free to use the automobile at will as long as it was not removed from the United States or Canada **(R.9-10).**

On May **6, 1987** an acquaintance of Green, Calvin Gary, asked to borrow Green's leased vehicle for the purpose of going to a local store. Gary never brought the automobile back to Green, and Green ultimately reported it stolen **(R.214-215, 240-241).** Of course, Gary was involved in the accident giving rise to the underlying lawsuit while using Green's automobile.

A hearing was held on GMAC's Motion For Summary Judgment on May **19, 1988,** before the Honorable Morton J. Hanlon, Circuit Judge. As a result of that hearing, Judge Hanlon ruled that there were no disputed issues of material

fact, and GMAC was entitled to judgment in its favor as a matter of law: final summary judgment in favor of GMAC was entered accordingly (R.276-277). KRAEMER subsequently filed a Motion For Rehearing, which was denied by Order dated August 15, 1988 (R.286). KRAEMER then took a timely appeal to the Second District Court of Appeal.

In its Decision dated December 27, 1989, the Second District Court of Appeal affirmed the summary judgment previously entered in favor of GMAC, holding that as a matter of law GMAC was not the beneficial owner of the vehicle operated by Calvin Gary. Consequently, the Court ruled that GMAC could not be liable for the death of KRAEMER under the dangerous instrumentality doctrine. Kraemer v. GMAC, 556 So.2d 431 (Fla. 2d DCA 1989). It is from that Decision Petitioner now appeals.

ISSUE ON APPEAL

Respondent would respectfully restate the issue on appeal as follows:

> **WHETHER THE SECOND DISTRICT COURT OF APPEAL CORRECTLY RULED THAT A LONG-TERM LESSOR WHICH RELINQUISHES BENEFICIAL OWNERSHIP OF A VEHICLE TO A LONG-TERM LESSEE IS NOT SUBJECT TO LIABILITY UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE.**

SUMMARY OF ARGUMENT

It is crystal clear that under Florida law the beneficial owner of a motor vehicle, rather than the naked legal title holder, is liable in tort pursuant to the dangerous instrumentality doctrine. Beneficial ownership vests in one who has day-to-day control over the use of the vehicle and is, for all practical purposes, the owner of that vehicle. In the instant case, GMAC never had meaningful control over the use of the automobile leased to Michael Green, pursuant to the long-term lease agreement. Green had exclusive possession and control of the vehicle for a minimum of 48 months, with an option to purchase at the expiration of that term. Green had sole responsibility for obtaining insurance on the automobile, renewing the registration, obtaining license plates, and for doing all maintenance on the vehicle. In addition, Green, not GMAC, was the beneficiary of the manufacturer's warranty on the vehicle. Green was also responsible for paying all taxes on the vehicle, and was free to operate it in any manner he chose so long as he did nothing to damage the vehicle in the event he elected not to purchase it at the expiration of the lease period. Consequently, GMAC was simply not the beneficial owner of the vehicle, and could not be held liable under the dangerous instrumentality doctrine.

Numerous cases in Florida deal with the dichotomy between beneficial ownership and legal ownership, primarily under conditional sales contracts. However, there is no material distinction between a conditional sale and a long-term lease with option to purchase as they relate to the issue of beneficial ownership and the applicability of the dangerous instrumentality doctrine. A long-term lessor, like a conditional vendor, has no authority or control over the day-to-day use of the vehicle. Both the vendee and lessee are responsible for maintaining the vehicle, securing all required insurance, licenses and tags, and paying all taxes. The conditional vendee and lessee both have exclusive beneficial ownership of the vehicles they possess. In fact, the Florida Legislature has classified long-term lessors with conditional vendors, and has provided that neither is the "owner" of a motor vehicle for purposes of financial responsibility or the application of the uniform traffic laws.[2]

The dangerous instrumentality doctrine has never been absolute in its application, and has never been expressly

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[2] Petitioner's Brief argues that Respondent's liability is in some way affected by § 324.021(9)(b), Fla. Stat. (1986). Petitioner's argument is the subject of a Motion to Strike previously filed by Respondent. The Motion to Strike is based upon the fact that if the statutory provision in question relates to this case at all, that issue was specifically waived by Respondent at the Trial Court level, and again in the Second District Court of Appeal. Consequently, Respondent's Brief will not address that non-issue.

applied by any Court of this state to hold a long-term lessor such as GMAC liable. Respondent submits that the doctrine should not now be expanded to hold the title holder, rather than the beneficial owner, liable in this case. In an extremely well-reasoned and thoughtful decision, the Second District Court of Appeal found that GMAC's ability to control the use of the leased vehicle was not significantly different from that of a bank which lends money for the purchase of a car. The Court declined to judicially expand the dangerous instrumentality doctrine under the facts of this case, and its decision should be affirmed.

ARGUMENT

THE SECOND DISTRICT COURT OF APPEAL CORRECTLY RULED THAT WHERE GMAC HAD RELINQUISHED BENEFICIAL OWNERSHIP OF A VEHICLE TO A LONG-TERM LESSEE, IT WAS NOT SUBJECT TO LIABILITY UNDER THE DANGEROUS INTRUMENTALITY DOCTRINE.

The facts of the instant case are not in dispute.[3] Rather, based upon those facts, Petitioner argues that GMAC as **"owner"** of the long-term lease vehicle is responsible for the negligence of Calvin Gary in the operation of that vehicle. The undisputed facts, however, clearly show that GMAC had relinquished beneficial ownership of the automobile to Michael Green, the long-term lessee, and consequently was not the "owner" of the vehicle within the meaning of those cases imposing liability predicated upon the dangerous instrumentality doctrine.

This Court first applied the dangerous instrumentality doctrine to motor vehicles in the landmark case of Anderson v. Southern Cotton Oil Co., **74** So. **975** (Fla. **1917).** In that case the Defendant, Southern Cotton Oil Company, owned an

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In its Brief, Petitioner argues, inter alia, that at a minimum the summary judgment entered in favor of GMAC should be reversed for a trial on the issue of whether GMAC in fact had beneficial ownership of the vehicle in question. Petitioner's Brief fails, however, to point out any disputed issues of material fact regarding beneficial ownership, and Respondent submits that the omission was due to the fact that none exist. Moreover, a review of the record on appeal will disclose that at no time did Petitioner ever take the position that disputed facts of a material nature exist, and the issue has therefore been waived in any event.

automobile which it had permitted its employees to use for the purpose of driving to and from Pensacola to eat their meals. In April **1914** one of Southern Cotton Oil Company's employees, utilizing Southern's automobile with its permission, struck a motorcycle operated by Anderson. Suit by Anderson followed, and the Trial Court directed a verdict in favor of Southern Cotton Oil Company finding that there was no legal basis for imposing liability on that company. **74** So. at **976**. On appeal, this Court reversed. In its Decision, this Court initially discussed the fact that although automobiles may not be classified as **per se** dangerous instrumentalities, because of their speed and weight they may become extremely dangerous by negligent or inefficient use. Id. at **978**. The Court went on to note:

> The lawmaking power of the state, in recognition of the many and great dangers incident to their use, has enacted special regulations for the running of automobiles or motor vehicles on the public roads and highways of the state. . . . These regulations relate primarily to duties that are imposed upon the owners of such vehicles. While these regulations do not expressly enlarge the common law liabilities of employers for the negligence of the employees, the statute does impose upon the owners of automobiles and motor vehicles duties and obligations not put upon the owners of other vehicles that are not so peculiarly dangerous in their operation, and specifically requires licenses, numbering, etc., for purposes of identifying the owner, and enacts that automobiles shall not be so operated on a public highway "as to endanger the life or limb of any person." It is also enacted that in the case of accident the name and address of the owner shall be given on request. The owners of automobiles in this state are bound to observe statutory regulations for their use and assume liability commensurate with the dangers to which the owners or their agents subject others in the using of the automobiles on the public high-

> ways. The principles of the common law do not permit the owner of an instrumentality that is not dangerous per se, but is peculiarly dangerous in its operation to authorize another to use such instrumentality on the public highways without imposing upon such owner liability for negligent use. . . . In view of the dangers incident to the operation of automobiles and the duties and obligations of the owners of motor vehicles under the statutes of the state, it could not be said that on the facts of this case no question was made for the jury to decide. Id. at 978 (emphasis added, citations omitted).

Clearly, this Court imposed liability without fault upon the owner of the motor vehicle based, in large part, upon the traffic statutes placing various duties upon automobile owners, and the obvious legislative intent behind those traffic statutes. Moreover, there was absolutely no question that Southern Cotton Oil Company had loaned its own automobile, which it had total control over, to one of its employees who then caused injury to the Plaintiff.[4]

This Court again addressed the issue of liability under the dangerous instrumentality doctrine in Palmer v. R. S. Evans, Jacksonville. Inc., 81 So.2d 635 (Fla. 1955), but dealt with facts differing substantially from those in Anderson, supra. In Palmer an individual named Hughes was purchasing an automobile from R. S. Evans, and about 20 minutes after taking the car from Evans' lot, Hughes

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struck a motorcycle on which Palmer was riding. 81 So.2d at 635. The contract for sale of the vehicle by Evans to Hughes was not executed until the day after the accident occurred. The issue of whether R. S. Evans was liable to Plaintiff was presented to the jury, and the jury returned a verdict in favor of Evans. Id. at 636. In affirming the verdict in favor of Evans, this Court noted that before Hughes drove the automobile out of Evans' lot, "the definite intention existed on the part of Hughes and the Evans representative to make immediate transfer of the beneficial ownership of the vehicle to Hughes. . . ." Id. at 636. Of particular significance, the Court noted:

> Thus legal title to the automobile remained in the seller, R. S. Evans, at the time the accident occurred. But the rationale of our cases which imposed tort liability upon the owner of an automobile operated by another . . . would not be served by extending the doctrine to one who holds mere naked legal title as security for payment of the purchase price. In such a title holder, the authority over the use of the vehicle which reposes in the beneficial owner is absent. Probably because of this fact, the term "owner" is defined in Fla. Stat. §317.74(20), F.S.A., to mean only the conditional vendee, in the case of a vehicle which is the subject of an ordinary agreement for conditional sale. Moreover, in jurisdictions having statutes making the owner liable for the negligence of another driving his car with his consent, the term "owner" has been universally construed to eliminate those who hold nothing more than naked legal title. . . . It is therefore apparent that it was necessary for appellee in the case before us to prove only that the beneficial ownership had passed to Hughes before the accident occurred and, as we have indicated above, the proof was adequate upon this point. Id. at 637 (emphasis added, citations omitted).

Clearly, the determinative factor in Palmer, supra, was the fact that Hughes had beneficial ownership of the

automobile in question, notwithstanding the fact that R. S. Evans held legal title. It should be noted that once again this Court referred to the fact that the Florida Traffic Statutes (at that time Chapter 317, presently Chapter 316), imposed certain obligations upon the "owners" of motor vehicles, but specifically provided that a conditional vendor was not the "owner"; rather, the conditional vendee was statutorily defined as the owner of the vehicle. See also, Hicks v. Land, 117 So.2d 11 (Fla. 1st DCA 1960); Williams v. Davidson, 179 So.2d 387 (Fla. 1st DCA 1965); McCall v. Garland, 371 So.2d 1080 (Fla. 4th DCA 1979); Harrell v. Sellars, 424 So.2d 881 (Fla. 1st DCA 1982); Wummer v. Lowary, 441 So.2d 1151 (Fla. 4th DCA 1983).

As has already been pointed out, this Court relied in part upon the applicable traffic statutes in rendering its decisions in Anderson v. Southern Cotton Oil Co., supra, and Palmer v. R. S. Evans, Jacksonville, Inc., supra. Presently, the State Uniform Traffic Control Statutes are contained within Chapter 316, Fla. Stat. In part, § 316.002, Fla. Stat. (1985), provides that "it is the legislative intent in the adoption of this chapter to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities." As with the conditional vendor in Palmer, supra, § 316.003(27), Fla. Stat. (1985), defines "owner" within the meaning of the State Uniform Traffic Control Act:

> OWNER - A person who holds the legal title of a vehicle, or, in the event a vehicle is the subject of an asreement for the conditional sale or lease thereof with the risht of purchase upon performance of the conditions stated in the asreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee, or lessee, or mortgagor shall be deemed the owner, for purposes of this chapter. (emphasis added).

Clearly, the State Uniform Traffic Control Act does not apply to Respondent, GMAC, pursuant to the Legislature's definition of "owner."

In addition, Chapter 324, dealing with financial responsibility, provides in part under § 324.011, Fla. Stat. (1985):

> It is the intent of this chapter to recognize the existing privilege to own or operate a motor vehicle on the public streets and highways of this state when such vehicles are used with due consideration for others and their property, and to promote safety and provide financial security requirements for such owners or operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle.

Section 324.021(9), Fla. Stat. (1985) then goes on to define "owner" within the meaning of the financial responsibility statute: that definition is verbatim the same as the definition contained within § 316.003(27), Fla. Stat. quoted supra. Once again, the Legislature saw fit to provide that where a vehicle is subject to a conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee or

lessee, it is the vendee or lessee that is the "owner" of the vehicle.

In summary, unlike in Anderson, supra, the Legislature has **not** imposed upon GMAC the obligation to properly operate the vehicle in question on the roads of this state, nor has it imposed upon GMAC the financial responsibility requirements of Chapter 324. On the contrary, as in Palmer, supra, the Legislature has found fit to specifically provide that the long-term lessee, in this case Mr. Green, is the **"owner"** of the motor vehicle in question. The Legislature obviously recognized that responsibility for the use of the vehicle in a long-term lease situation should be vested in the beneficial owner -- the long-term lessee. In that regard, the Legislature has done little more than codify this Court's Decision in Palmer, supra.

Prior to the Court of Appeal's Decision sought to be reviewed in the instant case, the issue of whether a long-term lessor can be responsible under the dangerous instrumentality doctrine had not been squarely addressed by any Courts of this state. That precise issue was, however, addressed by the U.S. District Court for the District of Columbia in Lee v. Ford Motor Company, 595 F. Supp. 1114 (D. D.C. 1984). In Lee an individual named Fullwood was an employee of the U.S. Government, and he struck the Plaintiff while operating a government vehicle leased from Ford Motor Company pursuant to a long-term lease agreement. The District of Columbia had previously adopted the dangerous

instrumentality doctrine by statute, entitled the Motor Vehicle Safety Responsibility Act, D.C. Code § 40-408. Id. at 1114. Of course, suit was filed by Lee against Ford Motor Company, seeking to hold Ford liable under the codified version of the dangerous instrumentality doctrine.

Ford moved for summary judgment contending that it was not the "owner" of the long-term lease vehicle within the meaning of the Motor Vehicle Safety Responsibility Act. In discussing the issue, the District Court initially noted that prior to a definition of "owner" being specifically included within the act itself, the holding of title, with no immediate right of control, was not sufficient to impose liability. Id. at 1115. Rather:

> The judicially developed law under the 1929 Act had substituted a practical test of ability to control a vehicle's use for the more rigid definition of "owner." Id. at 1115.

In that regard, the judicially developed law was quite the same as that developed in Florida. Moreover, as in Florida, Congress had, in 1956, modified the Motor Vehicle Safety Responsibility Act to include a definition of "owner," which is in fact identical to the definitions contained within §§ 316.003(27) and 324.021(9), Fla. Stat. (1985). After discussing the pre-existing case law, and the 1956 modification to the Act itself, the Court stated:

> In the present case, it is undisputed that Ford lacked "dominion and control" over the vehicle in question. The car had been provided to FCA by Ford while one of the vehicles under a long term lease between the parties was being repaired. . . . Under the lease, title remained in Ford but authority to control and operate the vehicle was given to

> the lessee, FCA. Ford had no immediate right to control the use of the vehicle at the time of the accident. While Ford did indeed "consent" to the operation of its cars by FCA employees, such blanket consent, which is the essence of a contract to lease, does not put Ford in the "position . . . to allow or prevent the use of the vehicle . . ." in any given case. . . . It is this immediate right of control, as an incident of ownership, that is the focus of the act in question. Id. at 1116 (emphasis added, citations omitted).

In summary, when dealing with precisely the same issue as is involved in the instant case, and precisely the same statutory definition of "owner," the Federal District Court in **Lee** ruled that liability attached to the beneficial owner, the long-term lessee, rather than to the long-term lessor which held title to the vehicle in question. **See also**, Moore v. Ford Motor Credit Co., 420 N.W.2d 577 (Mich. App. 1988); Siverson v. Martori, 581 P.2d 285 (Ariz. App. 1978); Riggs v. Gardikas, 427 P.2d 890 (N.M. 1967).

It is also worth noting that in another context, dealing with real property, this Court has repeatedly held that a lessee's interest is essentially equivalent to ownership:

> During the life of the lease herein, Martin holds an outstanding leasehold estate in Rogers' premises which for all practical purposes is equivalent to absolute ownership. Rogers' estate is limited to his reversionary interest which ripens into perfect title at the expiration of the lease. Rosers v. Martin, 99 So. 551, 552 (Fla. 1924).

Again, in Baker v. Clifford-Mathew Inv. Co., 128 So. 827, 829 (Fla. 1930), this Court stated: "This instrument conveyed to the lessee a leasehold estate in said premises during the life of the lease which for all 'practical purposes' is equivalent to absolute ownership." See also,

West's Drus Stores, Inc. v. Allen Inv. Co., 170 So. 447, 449 (Fla. 1936) ("A lessee from a landlord is an assignee of the estate for the term of the lease."); Gray v. Callahan, 197 So. 396, 398 (Fla. 1940) ("We have held that during the life of a lease the lessee holds an outstanding leasehold estate in the premises, which for all practical purposes is equivalent to absolute ownership.") In that regard, the dissenting opinion of Chief Justice Boyd in Storer Cable T.V. of Florida. Inc. v. Summerwinds Apartments, 493 So.2d 417 (Fla. 1986) warrants quoting at some length:

> Moreover, I do not see section 83.66 as providing for the intrusion or occupation of the property of the landlord as perceived by the majority. During the life of a lease of real property, the tenant has the exclusive right of possession of the demised premises. By statute or agreement such possessory right is subject to a right of access as needed for the landlord to perform maintenance functions as required by statute or by the lease. But in all other respects, the tenant's possessory right is the equivalent, during the term of the lease, to ownership of the fee simple title. . . . During the term of the lease, the landlord's ownership is what the law calls a reversionary interest, because absolute ownership will revert back to the landlord upon the termination of the lease at some time in the future.
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> . . .
>
> When a residential dwelling unit is leased to the tenant, the tenant has the paramount lesal, possessory, ownership interest in the use, benefit, and enjoyment of the property as the above authorities show. Thus, during the term of the lease, the interior walls of the unit are the tenant's property.
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> . . .
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> Because during the term of a residential lease of an apartment or a house the tenant owns the house or apartment and the curtilage surrounding it, no property of the landlord is taken or even

> touched if the tenant contracts for and obtains the use of a cable for purposes of receiving a television signal. 493 So.2d at 421, 422 (emphasis added).

Clearly, the concept of a lessee having beneficial ownership of property is not new to Florida law.

In addition, it is worth noting that this Court has recognized another exception to the dangerous instrumentality doctrine where the owner of a motor vehicle entrusts that vehicle to a repairman or serviceman, so long as the owner does not exercise control over the injury causing operation of the vehicle during the servicing, service-related testing or transport of the vehicle, and is not otherwise negligent. Castillo v. Bickley, 363 So.2d 792 (Fla. 1978). The Court, once again, recognized that the party with beneficial ownership, i.e., dominion and control over the vehicle's use at the time of the accident, should bear responsibility for that vehicle's use. The limited exception was created as a matter "of both social policy and pragmatism." Id. at 793. Of significance, the Court recognized that injured parties would not be left without recourse:

> They can and in logic should look to the perpetrator of the injury, who frequently is better able to use due care and to insure against the financial risks of injury. Id. at 793.

In the instant case, GMAC maintained none of the indicia of beneficial ownership. The long-term lessee was free to use the vehicle in any way he chose, consistent with

protecting the long-term lessor's financial interest in the vehicle should the lessee elect not to exercise his option to purchase. The lessee was responsible for obtaining the vehicle's registration, for obtaining license plates, for doing all required maintenance and for obtaining insurance. The lessee was required to pay all applicable taxes, and was the beneficiary of the manufacturer's new car warranty. The long-term lessor, GMAC, was in reality nothing more than an organization which provided financing for a vehicle it never had physical possession of, and never in fact even saw.[5]

Petitioner argues, inter alia, that the Court of Appeal's decision must be reversed because it is in conflict with this Court's prior decision in Susco Car Rental System of Florida v. Leonard, 112 So.2d 832 (Fla. 1959). Petitioner is wrong.

In Susco, of course, this Court dealt with a situation in which an individual rented a car from a company in the business of short-term rentals of automobiles to the public. The rental contract prohibited the person renting the automobile from allowing anyone else to drive it without the express written consent of Susco; nevertheless, the renter allowed another person to drive, and that individual was

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[5] Petitioner argues that Green could not sell his leased vehicle, and this is a major distinction from a conditional sale situation. Respondent questions how even a conditional vendee could sell an automobile to which someone else holds title.

involved in an accident. The sole issue presented to this Court was:

> Whether or not the owner company is relieved of responsibility for damages resulting from the operation of the vehicle by someone other than the person to whom it was rented, when such operation is contrary to the expressed terms of the printed contract, and the oral instruction . . . at the time of rental. Id. at 834.

The issue of beneficial ownership, and who exactly was the "owner" of the vehicle, was not involved in that case. In any event, in ruling that the contract language did not relieve Susco of liability, this Court quoted from the decision sought to be reviewed:

> When this defendant turns over an automobile to another for a price, he in actuality intrusts that automobile to the renter for all ordinary purposes for which an automobile is rented. The fact that the owner had a private contract or secret agreement with the renter cannot make such restrictions a bar to the rights of the public. The restrictions agreed upon do not change the fact that the automobile was being used with the owner's consent. . . . Id. at 835.

It should be noted that unlike the fact situation in Susco, not only does the instant case involve a long-term lease with option to purchase, but in fact GMAC never "turned over" the automobile to the lessee: rather, GMAC purchased the automobile from the dealer who arranged for Green to lease it rather than to finance it in a conventional way. In any event, as in Anderson, supra, and Palmer, supra, this Court again referred to the statutes in effect at the time:

> But just as was noted at the outset in this jurisdiction, it has been the legislative view that the public interest requires more than regulation of

> operation, and that safety regulations can never, in fact, eliminate the enormous risks involved. Responsibility under the law was accordingly attached to ownership of these instrumentalities, evinced first by registration laws and now by numerous provisions to assure financial responsibility of owners. It is plain that these provisions are based on the assumption that an owner cannot deliver a vehicle into the hands of another without assuming, or continuing, his full responsibility to the public. Such statutory provisions would, of course, be quite nugatory if ultimate liability could be escaped by contract of the owner. 112 So.2d at **837**.

Hopefully, by this time it is clear that the statutory provisions referred to by this Court in Susco do in fact apply to rental car companies, but do not apply to long-term lessors of motor vehicles which provide an option to purchase. The underpinnings of the Court's decision in Susco simply have nothing whatsoever to do with the facts of the instant case.

Petitioner also argues that because the lessee in the instant case was in default under the lease agreement, he did not in fact have a right to purchase the vehicle -- and somehow that means, according to Petitioner, that GMAC had beneficial ownership. As stated by the Court below:

> Appellant confuses the right to repossess with the right to control. Every lending institution that finances an automobile has the right to repossess upon default. This hardly equates with beneficial ownership. Kraemer v. GMAC, **556** So.2d **431, 434** (Fla. 2d **DCA** 1989).

Of perhaps equal importance, it should be noted that Green could not have exercised his option to purchase at the time of the accident in any event, whether he was in default or not. The lease agreement itself actually stated: "provided

that you are not in default, you will have the option to purchase the vehicle at the scheduled termination of this lease. . . ." The option to purchase existed only after the 48-month lease had expired, and by that time Green may or may not have cured the default. Petitioner's argument, as noted by the Court below, really goes to mandatory repossession rather than to beneficial ownership.

Finally, Petitioner argues that there is no meaningful distinction between a a long-term lease, with option to purchase, and a short-term rental such as dealt with by this Court in Susco. Petitioner's failure to recognize the differences is astounding. First, the Legislature of this state specifically found fit to statutorily define the long-term lessee with an option to purchase as "owner" for purposes of the Traffic and Financial Responsibility Statutes: by contrast, there is no similar statutory provision exempting short-term rental companies from responsibility. In addition, in a short-term rental situation the rental car company agrees to allow its car to be utilized by the renter for a short period of time, with the rental car company purchasing the tag, obtaining the registration, doing all applicable maintenance and providing insurance. The rental car company also, generally, determines where the car must be dropped off, and whether in fact it can be taken out of the state in which it is rented. As noted by the Court below:

> The only similarity between a long-term lease and a short-term rental is the fact that in both situa-

> tions title is held by someone other than the driver. Title alone is not sufficient to impose liability under the dangerous instrumentality doctrine. 556 So.2d at 434.

It is also worth noting that subsequent to the Second District Court of Appeal's decision in this case, two other District Courts of Appeal had an opportunity to distance themselves from the 2nd DCA in their own decisions -- but elected not to do so. Rather, the Fourth District Court of Appeal in Folmar v. Young, 560 So.2d **798** (Fla. 4th DCA **1990)** cited the Second District Court of Appeal's decision in Kraemer with approval, and the Third District Court of Appeal in Ravnor V. DeLaNuez, 558 So.2d 141 (Fla. 3d DCA **1990)** affirmed a summary judgment in favor of a long-term lessor based upon the authority "and reasoning" of the Second District Court of Appeal in Kraemer. To date, no District Court of Appeal in the state of Florida has issued a contrary decision, or has issued a decision questioning the wisdom of the Court below.

In the final analysis, Judge Altenbernd, in his concurring opinion in the instant case, best stated the reason why the dangerous instrumentality doctrine should not be expanded to include GMAC:

> As a practical matter, the modern long-term automobile lease is little more than a method of creative financing. GMAC is technically the legal owner of this car, but its ability to control the use of the car is not significantly different from that of a bank which lends money for the purchase of a car. I completely agree with Chief Judge Campbell that the facts of this

> case do not warrant a judicial expansion of the dangerous instrumentality doctrine. 556 So.2d at 435.

Respondent respectfully submits that this Court should completely agree with Judge Campbell as well.

CONCLUSION

The undisputed facts in the record clearly show that GMAC did not maintain authority and control over the day-to-day use of the long-term lease vehicle. The Legislature of this state has specifically determined that GMAC shall not be deemed the "owner" of the leased vehicle within the meaning of Florida statutes, and the Courts of this state have uniformly held that only the beneficial owner of an automobile can be liable under the dangerous instrumentality doctrine. Because GMAC lacked beneficial ownership of the automobile driven by Calvin Gary, and leased by Michael Green, as a matter of law it cannot be liable to Petitioner in this case. Consequently, the decision rendered by the Second District Court of Appeal in favor of GMAC was eminently correct, and should be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail this 31st day of July, 1990, to David J. Abbey, Esquire, One Fourth Street North, Suite 1000, St. Petersburg, Florida 33701, Thomas P. Fox, Esquire, 401 East Kennedy Boulevard, Tampa, Florida 33602, Stuart J. Freeman, Esquire, P.O. Box 12349, St. Petersburg, Florida 33733-2349, J. Emory Wood, Esquire, 600 North Florida Avenue, Suite 1430, Tampa, Florida 33602 and Calvin Gary, Inmate No. 060932, Cross City Correctional Institute, P.O. Box 1500, Cross City, Florida 32628.

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