OA 10-1-90

IN THE SUPREME COURT OF FLORIDA

ROBERT THOMAS KRAEMER, JR., Etc., Et Al., Petitioners, vs. GENERAL MOTORS ACCEPTANCE CORPORATION, Respondent.	CASE NO. 75,580 DISTRICT COURT OF APPEAL, 2ND DISTRICT - NO. 88-02372

PETITIONERS' BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

On May 15, 1986, Michael Anthony Green entered into a contract with GMAC to lease a 1987 Nissan Maxima from GMAC. The term of the written "Lease Agreement" was 48 months. (A 1-3). The lease, with GMAC as the lessor, and Michael A. Green and William A. Green as the lessees, included the following provisions:

> "17. USE. You will allow only licensed drivers to operate the vehicle. You will keep the vehicle free of all fines, liens and encumbrances. You agree to pay any such fines or remove any such liens and encumbrances immediately. If you do not, Lessor may do so and any amounts paid by Lessor shall be an additional amount owed by you under this lease. You will not use the vehicle illegally, improperly or for hire. You will not use the vehicle to pull trailers. You will not remove the vehicle from the United States or Canada. You will not alter, mark or install equipment in the vehicle without Lessor's written consent.
>
> 19. RETURN OF VEHICLE AT SCHEDULED LEASE TERMINATION. At the end of the lease, if you do not purchase the vehicle, you will return the vehicle to Lessor at point of delivery in good condition without damage or excessive wear and use and pay any amounts you may owe under this lease.
>
> 23. DEFAULT. If you are in default [see Paragraph 12(b)] Lessor will have the rights and remedies provided by law. Lessor will have the right to sue you for damages and/or recovery of the vehicle.
>
> Lessor may take the vehicle from you without demand. To take it, Lessor may enter your premises or the premises where the vehicle is stored, so long as it is done peacefully. If there is any personal property in the vehicle when Lessor takes it from you, Lessor can take it and store it for you.

The taking of the vehicle by Lessor shall be considered an Early Termination and you will not be released from any obligation under this lease. You will be charged the reasonable expenses of taking and storing the vehicle. You will also be charged reasonable attorney's fees and legal expenses incurred by Lessor, to the extent permitted by law. The amount you will owe will be determined by Paragraphs **12(c)(i)** and **12(c)(ii).**

24. OWNERSHIP. This is a lease only and Lessor remains the owner of the vehicle. You will not transfer, sublease, rent, or do anything to interfere with Lessor's ownership of the vehicle. You and Lessor agree that this lease will be treated as a true lease for Federal Income Tax purposes and elect to have Lessor receive the benefits of ownership (IRC sec. 168(1)(8).

28. ASSIGNMENT. You agree that this lease or any rentals may be assigned by Lessor. *You* have no right to assign this lease."

In addition to the above stated lease terms, the Greens were to insure the vehicle with $100,000 per person and $300,000 per accident in liability coverage and make monthly payments. (A 1). Approximately one month following delivery, the liability insurance coverage on the automobile was cancelled because Michael Green's check was returned for non-sufficient funds. (R 98). Further, GMAC received the last monthly payment on January 5, 1987. (R 269). There is no information in the record which demonstrates GMAC took any action in response to these defaults.

On May 6, 1987 (approximately eleven months after the vehicle was last insured and five months since GMAC received the last monthly payment), Calvin Gary, an acquaintance of Michael **A.** Green, borrowed the automobile. While using the car, Gary was

involved in an automobile accident on May 7, 1987, killing petitioners' decedent, Marguerite Voorhees Kraemer.

GMAC filed a Complaint for declaratory judgment seeking a declaration that GMAC was not liable for Marguerite Voorhees Kraemer's death because GMAC did not have beneficial ownership of the car. (R 1-11). Petitioners filed an Answer, Defenses and a Counterclaim against GMAC, the Greens, and Gary, seeking money damages from GMAC for Gary's negligence on the basis of GMAC's vicarious liability as the owner and lessor. (R 17-19).

GMAC filed a Motion for Summary Judgment on the grounds that it was not the beneficial owner and, therefore, could not be liable under the Dangerous Intrumentality Doctrine. (R 87). GMAC admitted in their Memorandum of Law in support of the Motion for Summary Judgment that there were no Florida appellate decisions dealing with the applicability of the Dangerous Instrumentality Doctrine to a long-term lessor, but argued that GMAC should have no vicarious liability pursuant to the Florida appellate cases holding conditional vendors or financial institutions have no vicarious liability when a vendor or institution retains naked legal title as security for payment. (R 255-263).

The petitioners, in opposition to GMAC's Motion for Summary Judgment, argued that the term of the lease was irrelevant and that the owner of a vehicle who rents or leases it to another is liable for the injuries caused by its operation subject to certain exceptions, pursuant to Florida appellate decisions dealing with the Dangerous Instrumentality Doctrine. The petitioners also filed a Motion for Partial Summary Judgment asking the court to declare GMAC

vicariously liable pursuant to the Dangerous Instrumentality Doctrine. (R 95). The trial court never ruled on the petitioners' Motion for Partial Summary Judgment.

The trial court entered final Summary Judgment in favor of GMAC, finding that there were no disputed issues of material fact and that GMAC was not the beneficial owner of the vehicle as a matter of law. Further, the trial court determined GMAC had no vicarious liability for the negligent use of the motor vehicle pursuant to the Dangerous Instrumentality Doctrine. (R 276, 77).

Petitioners presented the same arguments on appeal to the Second District Court of Appeal, but the final Summary Judgment entered by the trial court was affirmed. Kraemer v. General Motors Acceptance Corp., 556 So.2d 431 (Fla. 2d DCA 1989). (A 4-9). The district court later entered its decision adverse to the petitioners' Motion for Rehearing, Clarification and/or Certification. (A 10). The petitioners then sought discretionary jurisdiction with this Court arguing the Second District's opinion expressly and directly conflicts with prior decisions of this Court and of at least two district courts of appeal. This Court accepted jurisdiction and has scheduled oral argument.

ISSUE PRESENTED ON REVIEW

WHETHER A MOTOR VEHICLE OWNER WHO LEASES A VEHICLE UNDER A LONG-TERM LEASE HAS VICARIOUS LIABILITY FOR THE NEGLIGENT OPERATION OF THE VEHICLE UNDER FLORIDA'S "DANGEROUS INSTRUMENTALITY DOCTRINE" IF THE LESSEE FAILS TO MAINTAIN THE LIABILITY INSURANCE DESCRIBED IN §324.021(9)(b), Fla. Stat. (1986 Supp.),

SUMMARY OF ARGUMENT

Over seventy years ago this Court published its first opinion applying the "Dangerous Instrumentality Doctrine'' to hold an automobile owner vicariously liable for the negligence of a permissive user. The Dangerous Instrumentality Doctrine sprang from the common law principle that a bailor of a dangerous instrumentality has vicarious liability to third parties for injuries or damages caused by a negligent bailee's use of the dangerous instrumentality. Throughout the years, Florida courts applied the Dangerous Instrumentality Doctrine to hold motor vehicle lessors responsible for the negligence of lessees without regard to the term of the lease.

Two exceptions to the Dangerous Instrumentality Doctrine have been created by this Court: first, this Court held the seller of an automobile is not vicariously liable as the owner if there is a transfer of "beneficial ownership'' to the buyer and the seller "holds mere naked legal title as security for payment of the purchase price." Palmer v. R.S. Evans, Jacksonville, Inc,, 81 So.2d 635, 636, 37 (Fla. 1955); and, second, this Court held an owner is not vicariously liable for damages caused while a vehicle is being repaired. Castillo v. Bickley, 363 So.2d 792 (Fla. 1978). A third

exception to the Dangerous Instrumentality Doctrine was created by Statute when **§324.021(9)(b),** Fla. Stat. (1986 Supp.) [1] became effective July 1, 1986. The Statute probably provides a long-term lessor with immunity from liability under the Dangerous Instrumentality Doctrine if the long-term lessee maintains a certain high level of insurance on a vehicle leased for more than one year.

The accident giving rise to this lawsuit occurred May 7, 1987, approximately ten months after §324.021(9)(b) became effective. As GMAC's lessee had failed to maintain insurance coverage on the vehicle subject to the long-term lease, GMAC admitted no entitlement to the statutory long-term lease exception set forth in §324.021(9)(b). However, the Second District accepted GMAC's argument that long-term lessors are entitled to the benefits of the "Palmer Exception"[2] as long-term lessors retain naked legal title and transfer beneficial ownership to long-term lessees. Kraemer v. GMAC, 556 So.2d 431, 434 (Fla. 2d DCA 1989).

Contrary to the Second District's opinion, the Palmer Exception does not apply to long-term lessors as:

1. Florida case law makes no distinction between the

1

All reference to **§324.021(9)(b)** will be to the version of the Statute in effect on the date of the accident, **§324.021(9)(b),** Fla. Stat. (1986 Supp.). The Legislature amended 5324.021 (9)(b) during the 1988 Regular Session removing the sentence, "further, this paragraph shall be applicable so long as the insurance required under such lease remains in effect" from the middle of **§324.021(9)(b)** and placing the sentence at the end.

2

As did the Second District in its opinion, throughout this Brief the exception to the Dangerous Instrumentality Doctrine applying to conditional sales agreements recognized in Palmer will be referred to as the "Palmer Exception." Kraemer at 434.

vicarious liability of long-term and short-term lessors of automobiles and no distinction should be made:

2. The Palmer Exception does not apply to long-term leases, as long-term lessors do not transfer beneficial ownership to buyers and hold mere naked legal title as security for payment of the purchase price;

3. The Palmer Exception does not apply to GMAC in this particular case as GMAC did not transfer beneficial ownership to the Greens and retained more than naked legal title to secure payment pursuant to the terms of the Lease Agreement (A 1-3);

4. As the Greens did not have even a right to possession of the leased vehicle after their default, the Greens could not have been beneficial ownership of the vehicle at the time of the accident.

For the above-stated reasons, this Court should determine GMAC was not entitled to claim the Palmer Exception to the Dangerous Instrumentality Doctrine as a matter of law. In the alternative, this Court should rule the application of the Palmer Exception to this case is an issue of fact which requires trial.

ARGUMENT

A MOTOR VEHICLE OWNER LEASING A VEHICLE UNDER A LONG-TERM LEASE HAS VICARIOUS LIABILITY FOR THE NEGLIGENT OPERATION OF THE VEHICLE UNDER FLORIDA'S "DANGEROUS INSTRUMENTALITY DOCTRINE" IF THE LESSEE FAILS TO MAINTAIN THE LIABILITY INSURANCE DESCRIBED IN §324.021(9)(b), Fla. Stat. (1986 Supp.).

What has become known as Florida's "Dangerous Instrumentality Doctrine" was originally applied to automobiles in Anderson v. Southern Cotton Oil Co., 73 Fla. 432, 74 So. 975 (Fla. 1917) and Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629 (1920). This Court held an owner/employer vicariously liable for the injuries arising from the negligent misuse of an automobile by an operator/employee. However, in reaching the holding, this Court used language which made it uncertain whether the Doctrine was to be applied only to employees using employers' motor vehicles pursuant to the principle of respondeat superior or whether the Doctrine extended to all owners who allowed others to operate their vehicles.

This issue was resolved some eleven years later in Herr v. Butler, 101 Fla. 1125, 132 So. 815 (Fla. 1931) when this Court affirmed a judgment against a father who had allowed his son to operate the father's car. The Court relied upon the Southern Cotton Oil Co. opinion quoting the following language: "...an automobile operated upon the public highways being a dangerous machine, its owner is responsible for the manner in which it is used, and his liability extends to its use by anyone with his knowledge or consent." Id. at 1127, 132 So. at 816.

Thus, this Court clearly held the Dangerous Instrumentality Doctrine was to be applied in Florida to hold a bailor liable for the negligence of his bailee independent of respondeat superior. Although not specifically recognized by this Court in Herr, the holding was an application to automobiles of the common law rule that a bailor who transfers possession of a dangerous instrumentality to a bailee may be held vicariously liable to third parties for the negligent use of the dangerous instrumentality. 8 C.J.S, Bailments §97; and 5 Fla. Jur. 2d Bailments §16.

In Lynch v. Walker, 31 So.2d 268 (Fla. 1947), this Court first ruled a motor vehicle lessor was responsible for injuries inflicted by the negligence of the lessee. The Court held: "When an owner authorizes and permits his automobile to be used by another he is liable in damages for injuries to third persons caused by the negligent operation so authorized by the owner." Id. at 271. This Court did not suggest in Lynch that vicarious liability attached only to owners who leased vehicles for short periods.

Seven years later this Court again held an owner/lessor liable for the negligent operation of a leased vehicle in Fleming v. Alter, 69 So.2d 185, 186 (Fla. 1954). Thus, this Court recognized that owners who lease motor vehicles for profit should not avoid liability for damages incurred by individuals injured through the negligent use of the vehicles. Again, this Court in Fleming did not indicate the length of the lease was a relevant consideration.

In Susco Car Rental Systems of FL v. Leonard, 112 So.2d 832 (Fla. 1959), this Court once again determined a lessor of a vehicle to be vicariously responsible for the negligent use of the vehicle stating "...an owner cannot deliver a vehicle into the hands of another without assuming or continuing, his full responsibility to the public." Id. at 837, Again, the Court did not limit liability dependent upon the duration of the lease.

As the Dangerous Instrumentality Doctrine developed, a number of Florida cases expressly held long-term lessors liable for the negligent operation of their motor vehicles. In Racecon, Inc. v. Mead, 388 So.2d 266 (Fla. 5th DCA 1980), the Fifth District Court of Appeal held a lessor, who had leased a vehicle to a lessee for one year, to be vicariously liable for its negligent operation. The district court stated, "Independent of any insurance requirement, and by virtue of the dangerous instrumentality doctrine, there is a common law obligation of owners of motor vehicles which makes them responsible for injuries caused by such vehicle in the course of its intended use." Id. at 268.

In Allstate v. Executive Car and Truck Leasing, Inc., 494 So.2d 487 (Fla. 1986), this Court primarily dealt with issues regarding layers of motor vehicle insurance coverage. Executive Car Leasing owned the vehicle involved in the accident, and was insured by Industrial Indemnity. In reaching its decision, this Court held "Industrial insured a vicariously liable party." Id. at 489. It is clear from the decision that vicarious liability was based upon the Dangerous Instrumentality Doctrine. Although the Allstate opinion does not mention the term of the lease, petitioners filed a

certified copy of the 36-month lease obtained from the Allstate record with the Second District Court of Appeal along with a Notice of Supplemental Authority and Motion for Judicial Notice. The lease also appears in the Appendix to this Brief. (A 11-14). The decision of the Second District in this case expressly and directly conflicts with the holding in Allstate that the long-term lessor was vicariously liable for the negligent use of the leased vehicle.

In Tribbitt v. Crown Contractors, Inc., 513 So.2d 1084 (Fla. 1st DCA 1987), the First District Court of Appeal reversed a summary judgment entered by the trial court in favor of a long-term owner/lessor. The plaintiff sued the owner/lessor Crown: the lessee, Ensco; and the driver, Brasher. The trial court entered summary judgment for Crown stating that the owner/lessor was not vicariously liable for the negligent use of the vehicle as the owner had no consent to use the vehicle. In reversing the summary judgment, the First District held the issue of vicarious liability was for a jury as there was a factual issue as to the owner/lessor's knowledge of, and consent to, the use of the vehicle. Of course, this holding clearly assumes Florida law places vicarious liability on the owner/long-term lessor if knowledge and consent were found by a jury. A certified copy of the 36-month lease was filed with the Second District Court of Appeal along with a Notice of Supplemental Authority and Motion for Judicial Notice as the body of the case did not clearly indicate the length of the lease. The lease also appears in the Appendix of the Brief. (A 15-23).

Three exceptions to the Dangerous Instrumentality Doctrine have been recognized by this Court or created by Statute.

In Palmer v. R.S. Evans, Jacksonville, Inc., 81 So.2d 635 (Fla. 1955), this Court recognized the first exception to the Dangerous Instrumentality Doctrine by holding a seller who retains mere naked legal title as security for payment of the purchase price is not vicariously liable for the negligent use of a motor vehicle as the beneficial ownership passes to the buyer upon the seller's surrender of possession. Id. at 636. As stated earlier, the Second District in the instant case referred to this rule as the Palmer Exception to the Dangerous Instrumentality Doctrine. Kraemer v. GMAC, 556 So.2d 431, 434 (Fla. 2d DCA 1989). Further, the Second District found the outcome of this case was controlled by the Palmer Exception.

The second exception applies in limited situations when an owner surrenders a motor vehicle for repair or service. Castillo v. Bickley, 363 So.2d 792 (Fla. 1978) and Michalek v. Shumate, 524 So.2d 426 (Fla. 1988). Of course, this repair exception is not applicable to the facts of the instant case. Further, the social policies and practical reasons identified by this Court as cause for creating the repair exception, do not exist in this case. Castillo, 363 So.2d at 793.

The third exception is statutory and became effective July 1, 1986. **§324.021(9)(b).** The Statute may provide long-term lessors with immunity for liability pursuant to the Dangerous Instrumentality Doctrine if the lessee maintains liability insurance of $100,000/$300,000 for bodily injury and $50,000 for property

damage. We say "may" provide immunity as the existence and the constitutionality of a statutory long-term lease exception has been the subject of much litigation since §324.021(9)(b) became effective. Perry v. GMAC Leasing Corp., 549 So.2d 680 (Fla. 2d DCA 1989); Folmar v. Young, 560 So.2d 798 (Fla. 4th DCA 1990); and Tsiknakis v. Volvo Finance of North America, Inc., 15 F.L.W. D992 (Fla. Apr. 17, 1990). The Tsiknakis decision has been certified to this Court as one containing an issue of great public importance and the Fourth District's decision in Folmar is being reviewed en banc. (A 26). Whether the Statute is eventually determined to be constitutional or not, the fact remains that the Greens did not maintain the insurance required by **§324.021(9)(b)** in order for GMAC to obtain the benefit of limited liability under S324.021 (9)(b). As a result, GMAC has never claimed the exception to the Dangerous Instrumentality Doctrine set forth in **§324.021(9)(b)** applied in this case.

The petitioners respectfully submit the Second District clearly erred in applying the Palmer Exception of the Dangerous Instrumentality Doctrine to the facts of the instant case. In determining the cause of this error, we must examine both the Kraemer opinion and the Perry opinion which the Second District published five months prior to Kraemer.

In Perry, a long-term lessor obtained a Summary Judgment in the trial court on the basis of the exception for long-term leases set forth in §324.021(9)(b). Although the opinion does not give the date of the accident giving rise to the litigation, the accident must have occurred after July 1, 1986, the effective date

of §324.021(9)(b) or the statut ry ex eption could not have bee applied. The Appellant contended on appeal the Summary Judgment was improper as §324.021(9)(b) infringed upon his right of access to the courts as guaranteed by the Florida Constitution. In affirming the Summary Judgment the Second District stated:

> Accordingly and contrary to plaintiff's argument, it may be concluded that he was not deprived of a right established under Florida law to sue a lessor in these circumstances because it does not appear that such a right had been established. That is, it appears that the parameters of the common law right of action against the owner of a motor vehicle under the dangerous instrumentality doctrine had not been fully established in Florida in this regard prior to the enactment of section 324.021(9)(b), and that that section established those parameters for the first time.

Perry, 549 So.2d at 682.

In reaching its conclusion, the Perry court cited Palmer and noted the "similarities between conditional vendors and lessors." Id. at 682. Further, the Second District held the long-term lessor in Perry retained "no control over the operation of the motor vehicle'' and retained "essentially no more than naked legal title." Id. at 682.

In the instant case, the Second District clearly held "...the record title holder as lessor under a long term lease is not liable for the negligence of the lessee under the Dangerous Instrumentality Doctrine." Kraemer, 556 So.2d at 434. The Second District, as in the Perry opinion, cited Palmer for the proposition that an owner who transfers beneficial ownership to another while retaining naked legal title has no vicarious liability pursuant to

the Dangerous Instrumentality Doctrine. The court held "GMAC maintained none of the indicia of beneficial ownership" and therefore had no liability under the Dangerous Instrumentality Doctrine. Kraemer, 556 So.2d at 434.

In summary, the Second District suggested in Perry and later in Kraemer clearly held a long-term lessor has no vicarious liability for the negligent use of the lessor's automobile pursuant to the Dangerous Instrumentality Doctrine. The decisions read together leave no doubt the exclusion from liability for long-term lessors is independent of any exception to the Dangerous Instrumentality Doctrine created by §324.021(9)(b).

The Second District erred in holding GMAC, as a long-term lessor, was not subject to the Dangerous Instrumentality Doctrine for the following reasons:

1. The Palmer Exception does not apply to this case as a matter of law.

No Florida court prior to the Perry decision suggested a long-term lease transferred beneficial ownership to a lessee. As explained earlier, all Florida appellate cases held the lessor vicariously responsible without regard to the duration of the lease. In the Perry and Kraemer decisions, the Second District Court of Appeal clearly erred in applying the Palmer Exception to long-term lessors while disregarding the Florida appellate decisions on leases. A long-term lease is not a conditional sales agreement.

In Palmer, a purchaser drove a car from a used car lot and struck a motorcyclist approximately 20 minutes later. The sales contract was not fully executed until the day after the accident.

This Court found the parties intended for the seller to transfer the "beneficial ownership" of the vehicle to the purchaser, and that this intention, coupled with the actual delivery of the car and acceptance of the down payment, left no doubt that the sale had been completed. Palmer, 81 So2d. at 636, 37. This Court stated: "The rationale of our cases which impose 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. Id at 637.

Long-term lessors do not transfer beneficial ownership and retain mere naked legal title. GMAC certainly did not in this case.

The Greens never received beneficial ownership as the purchaser of the motor vehicle did in Palmer. GMAC prohibited the operation of the vehicle by certain drivers, limited the geographic area in which the vehicle could be operated, prohibited certain uses of the vehicle, restricted the installation of equipment in the vehicle, and last (but most important) prohibited the Greens from transferring their interest in the car. The petitioners submit the Greens cannot be considered the beneficial owners of the vehicle when they had no right: to allow unlicensed drivers to operate the vehicle; to drive the car to Mexico; to use the vehicle to pull a trailer; to operate the vehicle for hire; to install another radio; or to sell or transfer their right to possess the vehicle.

In spite of the above prohibitions and limitations, the Second District improperly held "the long-term lessee was free to use the vehicle in any way he chose, consistent with protecting the long-term lessors financial interest should the lessee not elect to

exercise his option to purchase." Kraemer, 556 So.2d at 434. If the Greens had purchased the automobile with bank financing, the bank would not have maintained a financial interest similar to GMAC. A standard automobile financing form appears in the Appendix. (A 24 and 25). Please note the financial institution maintains none of the prohibitions and limitations on the debtor's use which appear in GMAC's lease, and further does not prohibit the debtor from selling or transferring the debtor's interest in the automobile.

As GMAC never transferred beneficial ownership to the Greens, GMAC retained something more than mere naked title. As presented in the Statement of the Facts, the lease between GMAC and the Greens provided:

> 24. OWNERSHIP. This is a lease only and Lessor remains the owner of the vehicle. You will not transfer, sublease, rent, or do anything to interfere with Lessor's ownership of the vehicle. You and Lessor agree that this lease will be treated as a true lease for Federal Income Tax purposes and elect to have Lessor receive the benefits of ownership (IRC sec. 168(1)(8). (A 3).

The Second District, in commenting on GMAC's retention of title, stated "title alone is not sufficient to impose liability under the Dangerous Instrumentality Doctrine." Kraemer, 556 So.2d at 434. This statement is a correct description of Florida Law if the title retained is the "mere naked legal title held as security for payment of the purchase price" as described in Palmer, 81 So.2d at 637. The lease in this case does not limit GMAC's title. In broad terms and clear language, the lease announces "this is a lease only" and GMAC remains the owner. GMAC then prohibits transfer of

the lessee's interest in the vehicle and provides GMAC will have the tax benefits of ownership. The right to sell the vehicle and the right to tax benefits from ownership are substantial benefits of ownership which GMAC retained and the Greens did not enjoy.

In the lower court's opinion, the Second District attempted to distinguish a long-term lease from a short-term lease by recognizing:

> 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 it may be removed from the state. The only similarity between a long-term lease and a short-term rental is the fact that in both situations title is held by someone other than the driver.

Kraemer, 556 So.2d at 434.

The Second District failed to note GMAC in its lease with the Greens did designate the location the vehicle was to be delivered and limited the geographic area of its use. The Second District reasoned that GMAC transferred beneficial ownership to the Greens in the long-term lease because the Greens, not GMAC, were obligated to insure, maintain and license the vehicle. The duties to provide and expenses of insurance, maintenance and registration are not rights of beneficial ownership. The Second District did not recognize this distinction.

As explained in the Statement of the Case and Facts, the Greens had not made a monthly payment on the lease for over five

months prior to Marguerite Voorhees Kraemer's death and failed to maintain insurance for some eleven months prior to the accident as well as on the date of the accident. As these defaults occurred prior to the accident, pursuant to the terms of the lease, the Greens did not have even the right to possess the leased vehicle at the time of the May 7, 1987 accident. Further, the Greens did not have a right to purchase the vehicle "at fair market value" as they were in default. If, contrary to the argument presented above, the Greens could be considered the beneficial owners prior to the defaults, they cannot be the beneficial owners after the defaults as they no longer maintained a right of possession or an option to purchase.

There exists another very sound reason for this Court to refuse to approve the application of the Palmer Exception to long-term leases: the legislative intent and purpose of the enactment of §324.021(9)(b) is totally defeated by such a ruling.

In Folmar v. Young, 560 So.2d 798 (Fla. 4th DCA 1990), the Fourth District concluded §324.021(9)(b) constituted an exception to the Dangerous Instrumentality Doctrine in the case of long-term lessors by reviewing the floor debate on §324.021(9)(b) in the Florida House of Representatives. Id. at 800, 01. Examination of this debate as reported in Folmar reveals: one, the Florida House believed the Dangerous Instrumentality Doctrine applied to long-term lessors prior to the enactment of §324.021(9)(b); and two, the Legislature enacted §324.021(9)(b) to "limit liability under the Dangerous Instrumentality Doctrine for long-term lessors." Id. at 801. §324.021(9)(b) requires that a lessee carry certain liability coverages in order for the long-term lessor to avoid liability under

the Dangerous Instrumentality Doctrine. There is no dispute that the Greens failed to maintain such insurance. The holding of the Second District in the instant case that a long-term lessor has no liability under the Dangerous Instrumentality Doctrine when the lessees fail to obtain the liability coverage described in **§324.021(9)(b),** renders the Statute worthless.

Further, if long-term lessors had no vicarious liability prior to the enactment of **§324.021(9)(b),** the Legislature did not need to create a Statute to negate liability. "It should never be presumed that the legislature intended to enact purposeless and therefore useless, legislation." Sharer v. Hotel Corp. of America, 144 So.2d 813, at 817 (Fla. 1962).

For the reasons stated above, petitioners are entitled to Partial Summary Judgment against GMAC determining the Greens were not the beneficial owners of the vehicle leased by GMAC, as requested in the Motion for Partial Summary Judgment against GMAC. **(R 95).**

2. Whether the Palmer Exception applies to this case is a factual determination which precluded entry of Summary Judgment.

If the situation giving rise to this case does not entitle the petitioners to Partial Summary Judgment on the issue whether the Palmer Exception applies, at the least, a factual issue remains which should have precluded the entry of Summary Judgment for GMAC.

The Palmer opinion of this Court appearing at 81 So.2d 635 was the second time this Court dealt with the Palmer case. In Palmer v. R.S. Evans, Jacksonville, Inc., 69 So.2d 342 at 342 (Fla. 1954), this Court held, "The question of ownership was directly an

issue ...and ...there was no reason why such question could not be submitted to and determined by a jury" after the titleholder/seller unsuccessfully sought a Summary Judgment in the trial court.

The second visit Palmer paid to this Court resulted in the decision at 81 So.2d 635. Of course, the second opinion gave rise to the Palmer Exception upon which GMAC relied in obtaining Summary Judgment. However, this Court merely affirmed the jury verdict for the titleholder/seller. This Court did not determine in either of the Palmer decisions that the titleholder/seller was entitled to a judgment as a matter of law.

In Register v. Redding, 126 So.2d 289 (Fla. 1st DCA 1989), the defendant who held legal title to a motor vehicle obtained Summary Judgment on the basis of the Palmer Exception. The First District reversed the Summary Judgment in spite of the evidence being uncontroverted as:

> Whether in the case we now review the defendant and Leilich both entertained an intent to transfer beneficial ownership of the vehicle to Leilich prior to the date of the accident must be determined from their overt acts which occurred at the time of agreement to purchase and sell and at all material times thereafter. The mere fact that the evidence concerning the intent of the parties is uncontroverted does not necessarily mean that there is no genuine issue as to this material fact, if the uncontradicted evidence is lawfully susceptible to two or more conflicting inferences. A court which draws its own inference from among the lawful inferences, and enters a summary judgment based thereon, deprives the parties of their right to a trial by jury contrary to the purpose and intent of the rule governing summary judgments.

> From our review of the record it clearly appears that the evidence with respect to the intention of defendant and his purchaser as to the time when beneficial ownership of the vehicle should be transferred to the purchaser is reasonably susceptible of at least two contrary inferences.

Id. at 291.

As in Palmer and Register, the issue whether beneficial ownership was transferred from GMAC to the Greens in this case is at least an issue of fact.

Since 1967, this Court has approved the use of and has published Standard Jury Instructions. The Standard Jury Instructions in civil cases deal with many common issues which arise in civil litigation. One common issue identified is "whether (defendant) (owned) [or] [had the right to controll the vehicle driven by (driver)..."3.3(a) Fla. Std. Jury Inst. (Civil) 3.3(a). If petitioner is not entitled to Partial Summary Judgment on the application of the Palmer Exception to this case, the petitioners are entitled to a jury trial to determine the factual issue of ownership set forth in the Instruction cited above.

CONCLUSION

In Southern Cotton Oil Co., 86 So. at 633 this Court referred to the National Safety Council's analysis that "the automobile has become the most deadly machine in America..." The passage of seventy years has not resulted in a kinder, gentler machine. According to statistics cited in Southern Cotton Oil Co., 86 So. at 633, 7,525 people died in the United States from motor vehicle accidents in 1918. In Florida alone during 1987, 215,886 persons suffered nonfatal injuries and 2,891 individuals died in motor vehicle accidents. 1989 Florida Statistical Abstract, 23rd Ed., Bur. of Ec. and Bus. Research, Col. of Bus. Ad., University of Florida, p. 358.

We can locate no statistics regarding the number of motor vehicles on the highway being operated pursuant to long-term leases. Perhaps Amicus Curia in the Second District, the Florida Motor Vehicle Leasing Group, can provide this information if an appearance is made in this Court. In any event, with the growth in popularity of long-term leases over the past years, it is safe to assume motor vehicles owned by long-term lessors are involved in a significant number of accidents which result in injury and death.

Why should any long-term lessor avoid vicarious liability for the injuries and deaths caused through the negligent operation of leased vehicles unless the lessee maintains the liability insurance described in §324.021(9)(b)? GMAC in this case retained all beneficial rights of ownership other than the immediate possession of the automobile and created the danger of one more vehicle on the streets and highways of the State of Florida. The negligent operation of this one vehicle caused the death of

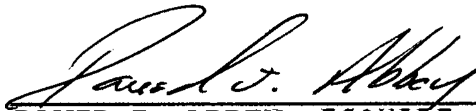
Marguerite Voorhees Kraemer. The Dangerous Instrumentality Doctrine should apply to GMAC. During **1954,** this Court stated that limiting the liability of an owner/lessor "...would be entirely beyond our conception of the responsibility one should assume where he is in the business of entrusting vehicles.. .to another for a price." Fleming, **69** So.2d at **186.** The logic **of** this statement has not been eroded by the passage of thirty-six years.

WHEREFORE, it is respectfully submitted the district court erred in determining GMAC was entitled to claim the benefit of the Palmer Exception to the Dangerous Instrumentality Doctrine and the district court's decision should be quashed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 17th day of July, 1990, by FEDERAL EXPRESS to LARRY I. GRAMAVOT, ESQUIRE, 101 Grand Avenue, Wausau, Wisconsin 54401; and by U.S. MAIL to STUART J. FREEMAN, ESQUIRE, P.O. Box 12349, St. Petersburg, FL 33733: J. EMORY WOOD, ESQUIRE, 600 North Florida Avenue, Suite 1430, Tampa, FL 33602; and CALVIN GARY, Inmate No. 060932, Cross City Correctional Institute, P.O. Box 1500, Cross City, FL 32628.

Respectfully submitted,



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