IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,495

5TH DCA NO. 89-2122

JEFFREY D. STUPAK

Plaintiff/Petitioner,

vs.

WINTER PARK LEASING, INC.

Defendant/Respondent.

ANSWER BRIEF ON THE MERITS OF

RESPONDENT WINTER PARK LEASING

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PRELIMINARY STATEMENT

In this Answer Brief on the Merits by Appellee Winter Park Leasing, Inc., Defendant at the Trial Court below, Appellee shall be referred to by name. Appellant/Petitioner Jeffrey Stupak, Plaintiff below, shall also be referred to by name.

Reference to Stupak's Initial Brief on the Mertis shall be made by (IB-). Reference to the Appendix attached hereto shall be made by (A-).

STATEMENT OF THE FACTS

On November 2, 1987, Stupak was injured while a passenger in a vehicle driven by David Flory. Flory had rented the vehicle from Major Rent-A-Car, which had itself leased the vehicle on a long-term basis from Winter Park Leasing. (See, Master Lease Agreement in Appedix 2 of the Initial Brief).

Stupak sued Flory, Major Rent-A-Car, and Winter Park Leasing. In its Answer, Winter Park Leasing denied Flory had permission to drive the vehicle at the time of the accident. (A-2). In May 1989, Winter Park Leasing filed its Motion for Final Summary Judgment and supporting memorandum. The Lease between Major and Flory was attached as Exhibit A to Winter Park's Motion for Summary Judgment. It specifies that the vehicle must be returned by November 1, 1987, and in large captioned letters on the face of the Agreement states,

> "CARS NOT RETURNED BY DUE DATE ARE CONSIDERED THEFT BY CONVERSION." (A-3).

Winter Park's Motion and supporting memorandum argued that any vicarious liability from Flory through Major Rent-A-Car back to Winter Park was obviated by the theft and conversion of the car by Defendant Flory. (A-3). After oral argument on these issues, Trial Judge Brown granted Final Summary Judgment in favor of Winter Park Leasing. (A-4).

Stupak appealed to the Fifth District Court of Appeal. By Opinion filed June 14, 1990, that Honorable Court affirmed the Final Judgment in favor of Winter Park Leasing. The Fifth DCA's

Opinion is a per curium affirmance, also citing the Second DCA Opinion in Kraemer v. GMAC, 556 So. 2d 431 (Fla. 2nd DCA 1989).

The Fifth DCA then denied Stupak's Motion for Rehearing and alternative Motion for Certification to the Florida Supreme Court. Stupak then filed an Appeal to this Honorable Court, which granted jurisdiction by Order dated December 8, 1990.

POINT ON APPEAL

THE FIFTH DISTRICT COURT OF APPEAL PROPERLY AFFIRMED THE FINAL JUDGMENT ENTERED BY THE TRIAL COURT IN FAVOR OF WINTER PARK LEASING, INC.

SUMMARY OF ARGUMENT

Appellee Winter Park Leasing respectfully submits the Trial Court properly entered Final Judgment in its behalf in the action below, and that Judgment was properly affirmed by the Fifth District Court of Appeal. (A-4,5). The fact the additional authority cited in the Fifth DCA's per curiam affirmance was subsequently reversed by this Honorable Court is not dispositive of this appeal and does not require reversal. Kraemer v. GMAC, 572 So. 2d 1363 (Fla. 1990).

The Kraemer Opinion deals with the continued indicia of ownership maintained by the vehicle owner after lease, and thus the applicability of the dangerous insturmentality doctrine. Id. Here, Final Judgment was entered by the Trial Judge on the sole basis upon which it was sought by Appellee: that the vehicle operator had stolen or converted the vehicle to his own use by failing to return the vehicle to Winter Park's lessee Major Rent-A-Car by its due date. (A-3). Co-Defendant Flory, the actual tortfeasor here, undisputedly violated the capitalized and bold-faced type warning on the face of his Rental Agreement with Major Rent-A-Car, that:

> "CARS NOT RETURNED BY DUE DATE ARE CONSIDERED THEFT BY CONVERSION."

A breach of custody of a rental vehicle amounting to conversion or theft will relieve the owner of responsibility for its use or misuse. Susco Car Rental Systems v. Leonard, 112 So. 2d 832 (Fla. 1959). That is the basis upon which Final Judgment was entered here and affirmed by the Fifth DCA, and the basis

upon which the appeal herein should be affirmed. See also, Commercial Carrier Corp. v. SJG Corp., 4409 So. 2d 50 (Fla. 2nd DCA 1981), pet. for rev. den. 417 So. 2d 328 (Fla. 1982).

This Honorable Court is compelled to affirm if the Fifth DCA's conclusion was correct, whether or not its grounds or reasons given were correct. State Plant Board v. Smith, 110 So. 2d 401 (Fla. 1959), et al. This reviewing Court should affirm for any reason appearing in the Record, even if not relied upon by the intermediate appellate court. Stone v. Rosen, 348 So. 2d 387 (Fla. 3rd DCA 1977).

Thus, Appellee Winter Park Leasing respectfully submits the subsequent reversal of the Second DCA's Opinion in Kraemer v. GMAC, supra, does not compel reversal here. Rather, it simply required this Honorable Court to understand the separate and undisputed basis upon which Final Judgment was rendered below, and thus AFFIRM.

ARGUMENT

THE FIFTH DISTRICT COURT OF APPEAL PROPERLY AFFIRMED THE FINAL JUDGMENT ENTERED BY THE TRIAL COURT IN FAVOR OF WINTER PARK LEASING, INC.

In support of his plea for reversal of the Final Judgment entered by the Trial Judge in favor of Winter Park Leasing and affirmed by the Fifth DCA, Appellant Stupak relies solely on this Honorable Court's reversal of the Second DCA's Opinion in Kraemer v. GMAC, 572 So.2d 1363 (Fla. 1990). Winter Park Leasing respectfully submits that the Final Judgment it received at the Trial Court level arrives at this Honorable Court clothed in a presumption of correctness, and its affirmance by the Fifth DCA should be affirmed here unless it cannot stand under any theory of law or fact to be found in the Record. Cohen v. Mohawk, Inc., 137 So. 2d 222 (Fla. 1962).

Winter Park respectfully submits that the only grounds upon which it sought Final Judgment below was based upon Co-Defendant Flory's theft or conversion of the vehicle, in direct violation of his Rental Agreement with Major Rent-A-Car. (A-3). That is the sole basis upon which the Trial Judge entered Final Judgment in favor of Winter Park Leasing, (A-4), and the basis upon which this Honorable Court should now affirm. The fact that the Fifth DCA may or may not have incorrectly referred to the Second DCA's now-quashed opinion in Kraemer v. GMAC, supra, is irrelevant this Honorable Court's review. The Fifth DCA's Opinion was a per curium affirmance, and that too is clothed in

the presumption of correctness now, regardless of the subsequent reveral the Kraemer Opinion added to that affirmance.

Without dispute, Winter Park Leasing owned the vehicle but leased it to Major Rent-A-Car under a Master Lease and had nothing to do with Major's rental of a vehicle to Defendant Flory. Without dispute, Flory directly violated the bold-faced, large-caption requirements stated on the face of the Rental Agreement with Major, that:

> "CARS NOT RETURNED BY DUE DATE ARE CONSIDERED THEFT BY CONVERSION."

Without dispute, the accident involving Flory and Stupak occurred after the due date for return of the vehicle. (A-3). Without dispute, neither Winter Park Leasing nor Major Rent-A-Car had knowledge or gave consent to Flory keeping the car past the due date. Thus, without dispute, the Honorable Trial Court accepted the unambiguous contract language, and determined irrefutably that Defendant Flory stole the car by conversion when it was not returned pursuant to the contract term.

This Honorable Court recognized long ago that in breach of custody of a vehicle amounting to conversion or theft will relieve an order of responsibility for its use or misuse. Susco Car Rental Systems, v. Leonard, 112 So. 2d 832 (Fla. 1959). The Trial Judge recognized this exception to the dangerous instrumentality doctrine should apply even more so where an order, such as Winter Park Leasing here, is even further removed from the actual rental transaction with the ultimate user (here, between lessee Major Rent-A-Car and renter Flory).

This Honorable Court's ruling in Susco Car Rental Systems is still the rule of law in Florida. Id. It is upon that rule that Winter Park Leasing saw and obtained Final Judgment at the Trial Court level. (A-3,A-4). It is upon that rule of law in the context of these undisputed facts showing such conversion that this Honorable Court should now affirm.

This Court's opinion is Susco Car Rental Systems has been followed throughout the state. In Commercial Carrier Corp. v. SJG Corp., 409 So. 2d 50 (Fla. 2nd DCA 1981), pet. rev. den. 417 So. 2d 328 (Fla. 1982), that DCA and this Court dealt with a similar situation. SJG rented its vehicle to Kenny, left the keys in it and it was taken by Strickland. The Trial Judge awarded Judgment on the Pleadings to the owner SJG and the DCA affirmed, petition for review denied by this Court. The Courts found that the vehicle owner was not liable under the dangerous instrumentality doctrine where it gave either express or implied consent for the vehicle's use by Strickland. The Court held that a species of conversion or theft will relieve an owner of responsibility, reaffirming the exception the dangerous instrumentality doctrine carved out by this Honorable Court in Susco Car Rental Systems, supra.

Here, where Flory converted the car here to his own use beyond the rental term, Winter Park Leasing was not vicariously responsible for his negligent operation of the vehicle after the theft. That was the sole basis upon which Winter Park received Final Judgment at the trial level, and clearly is sufficient and

undisputed basis upon which that Judgment was affirmed by the Fifth DCA. See also, Slitkin v. Avis Rent-A-Car System, Inc., 382 So. 2d 883 (Fla. 3rd DCA 1980) and Tribbitt v. Crown Contractors, Inc., 513 So. 2d 1084 (Fla. 1st DCA 1987).

The Rental Agreement between Major and Flory, clear on its face and devoid of ambiguity, was sufficient evidence of theft to obviate Winter Park Leasing's vicarious liability. The rental contract clearly shows the rental period ended on November 1. It is undisputed the accident involving Stupak occurred after that date. (A-1-2). In bold-face type on the face of the Rental Agreement, it states: 'CARS NOT RETURNED BY DUE DATE ARE CONSIDERED THEFT BY CONVERSION." (A-3).

There was no ambiguity in the contract, nor dispute in the facts. Vehicles such as the one rented by Stupak's driver Flory which was not returned by the due date are stolen by conversion. The Trial Court was correct in determining as a matter of law that Winter Park Leasing had not given its consent for the use of the car, and that the user had committed theft by conversion.

Winter Park Leasing thus was without vicarious liability as the owner of the vehicle. Final Judgment was properly entered in its favor at the Trial Court level and affirmed by the Fifth DCA. The fact that the additional authority upon which the Fifth DCA relied (Kraemer v. GMAC, supra), was subsequently reversed does not abrogate Winter Park

Leasing's entitlement to affirmance of that Final Judgment received below.

An Appeal on the Merits shuch as the one herein involves the correctness of the Orders, Judgments or Opinions on review from the lower courts, and not that court's judicial reasoning or comment. Congregation Temple DeHirsch v. Aronson, 128 So. 2d 585 (Fla. 1961); State Plant Board v. Smith, 110 So. 2d 401 (Fla. 1959).

Although it is always helpful for the Court below to give its reasons for its rulings, in reviewing a case on appeal the ultimate question before the Appellate Court is whether the Court below has arrived at a correct conclusion. The process of reasoning by which the Court below reached its conclusion is not the controlling factor in affirming or reversing. Siesta Properties Inc. v. Heart, 122 So. 2d 218 (Fla. 2nd DCA 1960).

The reviewing court's decision on appeal must be made not on the basis of whether the Court below traveled the proper route or laid its conclusion on proper grounds, but rahter on whether its conclusion was correct or incorrect. State Plant Board v. Smith, 110 So. 2d 401 (Fla. 1959). The Appellate Court should therefore affirm rather than reverse a Judgment or Opinion if the result is correct, even if the Trial Judge or Court below states erroneous reasons for reaching its decision. Stuart v. State, 360 So. 2d 406 (Fla. 1978); State v. Covington, 392 So. 2d 1321 (Fla. 1981).

There is literally a legion of case law that reiterates a reviewing court may affirm a Trial Court for any reason appearing on the Record, even if not relied upon by the Trial Judge, i.e., Stone v. Rosen 348 So. 2d 387 (Fla. 3rd DCA 1977). That rule should certainly apply to this Honorable Court's review of opinions from a DCA. It is abundantly clear in this Record the Fifth DCA was correct in affirming the Trial Judge's correct entry of Final Judgment for Winter Park Leasing, given the conversion here. Thus, the subsequent reversal by this Honorable Court of the Kraemer Opinion does not compel reversal here. Instead, it simply requires this Honorable Court to discover the proper and undisputed basis upon which Final Judgment was rendered below and therefore AFFIRMED.

CONCLUSION

Appellee Winter Park Leasing respectfully submits the Trial Court properly entered Final Judgment in its behalf in the action below, and said Judgment was properly affirmed by the Fifth District Court of Appeal. The fact that the additional authority cited in the Fifth DCA's per curiam affirmance here was subsequently reversed is not dispositive of this appeal, nor does it require reversal.

Instead, this Honorable Court will perceive from the Record and Argument herein the proper and undisputed basis upon which the Trial Court correctly rendered Final Judgment for Appellee. That basis being undisturbed, Appellee Winter Park Leasing respectfully submits this Honorable Court should AFFIRM.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to David C. Beers, Esq., Beers, Jack & Tudhope, 517 West Colonial Drive, Orlando, FL 32804 and David A. Sims, Esq., 500 East Altamonte Drive, Suite 200, Altamonte Springs, FL 32701, this 29th day of March, 1991.

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