FILED
SID J. WHITE
AUG 24 1990
CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

Jeffrey D. Stupak,

Plaintiff/Petitioner,

vs.

Case Number 76,495
DCA Case Number 89-2122

Winter Park Leasing, Inc.,

Defendant/Respondent.

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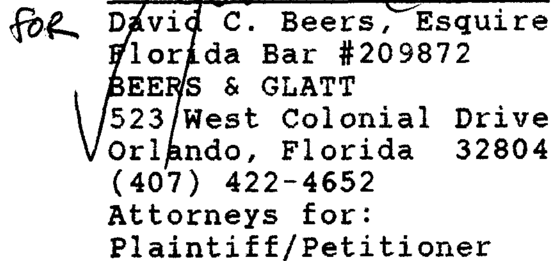
On Appeal from the District Court of Appeal
Fifth District of Florida

JURISDICTIONAL BRIEF OF THE PETITIONERS



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STATEMENT OF THE CASE AND OF THE FACTS

On October 8, 1986, Winter Park Leasing, Inc., and Major Rent-A-Car, Inc., executed a Lease Agreement constituting a master lease by which a number of vehicles were leased for various time periods, all less than seven (7) months, for use by Major Rent-A-Car, Inc., in operating a car rental company located in Orlando, Florida. The Lease, with Winter Park Leasing, Inc., as the lessor, and Major Rent-A-Car, Inc., as the lessee, included the following provisions:

> 1. LEASED VEHICLES, RENTAL PAYMENT AND TERM. This agreement is one of leasing only and the Lessee shall not have, or acquire any right, title or interest in or to the vehicle except the right to use or operate it as provided herein.
>
> 3. INSURANCE. Insurance shall be procured for each vehicle and shall be maintained during the term of the lease as provided in Lessee's Order with companies approved by Lessor. Proof of insurance, as required by Lessor, shall be provided by Lessee prior to delivery of any vehicle. Such insurance shall be endorsed to provide that the Insurer will notify Lessor immediately in the event of the insurance should be materially altered or cancelled.
>
> Lessee and Lessor, their agents or employees, shall comply with all the terms and conditions of said insurance policy, including the immediate reporting of all accidents to Insurer, and do all things necessary or proper to protect or preserve the other party's rights as a named insured in said insurance policies.
>
> All insurance policies covering the vehicles shall be endorsed to protect, as their interest may appear, Lessee, Lessor, and any other person having an interest in the vehicles. Lessor will be named as an additional insured and Chrysler Credit Corporation as loss payee on all such policies.
>
> Insurance shall be provided by the Lessee for the benefit of the Lessor and the Lessee during the lease term, with limits as follows: Automobile liability insurance of $250,000.00 combined single limit for bodily injury and property damage.

6. DELIVERY AND RETURN OF VEHICLES. Delivery and return of the vehicle shall be at Lessor's place of business or as specified in Lessee's Order. The lessee agrees to return the vehicle at the end of the lease term, or any extension thereof, or upon earlier termination of the lease, in good operating condition and working order, free from any collision or other physical damage.

8. USE OF VEHICLES. Lessee shall permit only, safe, careful, licensed and authorized drivers to operate the vehicles. Lessee agrees upon written complaint from Lessor, specifying any excessive collision claims or an indication of any other incompetence by or of any driver, that Lessee will immediately take such actions as necessary to correct these conditions.

11. DEFAULT. Time is of the essence of this Agreement and in the event that Lessee fails to pay in full on the date due any rental payment due hereunder, <u>or defaults in the performance of any of the other terms, conditions and covenants encumbered in any way or if at any time, in the exclusive judgment of Lessor, his rights in the leased vehicles in any way shall be prejudiced or rendered insecure, Lessor shall have the right to take immediate possession of the vehicle wherever found</u>... **EMPHASIS SUPPLIED.**

On November 2, 1987, approximately a year after this Lease was executed, David Warren Flory, rented a vehicle from Major Rent-A-Car, Inc., that was covered under the Lease Agreement. While using the vehicle, Flory was involved in an automobile accident, injuring the Plaintiff, Jeffrey D. Stupak.

Jeffrey D. Stupak, filed a Complaint for compensatory damages against Winter Park Leasing, Inc. A Judgment has been entered as to the issue of liability as to the Defendant, Major Rent-A-Car, Inc., in that action.

Winter Park Leasing filed a Motion for Summary Judgment and won. On appeal to the Fifth District Court of Appeal, that Court affirmed the Summary Judgment by the trial court citing

Kraemer vs. General Motor Acceptance Corporation, 556 So.2d 431 (Fla. 2DCA 1989). In Kraemer, the Second District Court of Appeal ruled that since GMAC was not the beneficial owner of the vehicle, GMAC had no vicarious liability for the negligent use of the motor vehicle pursuant to the Dangerous Instrumentality Doctrine.

Petitioner argued to the Fifth District Court Appeal that Winter Park Leasing, Inc., had sufficient indicia of beneficial ownership to allow liability to be attached for the negligent use of the leased motor vehicle pursuant to the dangerous instrumentality doctrine.

The Fifth District Court of Appeal entered its decision adverse to the Petitioner on June 14, 1990, (A-1) followed by an adverse decision as to the Petitioner's Motion for Rehearing and/or Alternative Motion for Certification to Supreme Court (A-2) on July 18, 1990. (A-3) A Notice to Invoke Discretionary Jurisdiction of this Court was timely filed on August 14, 1990.

SUMMARY OF PETITIONER'S ARGUMENT

In Anderson vs. Southern Cotton Oil Co., 74 So. 975 (Fla. 1917), this court recognized the common law principle, known as the Dangerous Instrumentality Doctrine, that an owner of a motor vehicle is liable for its negligent use. In Palmer vs. R.S. Evans, Jacksonville, Inc., 81 So.2d 635 (Fla. 1955), this court created an exception to the Dangerous Instrumentality Doctrine by holding that a seller who retains mere naked legal title as a security for

payment of the purchase price is not vicariously liable for the negligence of the buyer as the "beneficial ownership of the vehicle passed to the buyer prior to the accident". Palmer, 80 So.2d at 636. In this case, the Fifth District Court of Appeal found the so called "Palmer exception to the Dangerous Instrumentality Doctrine" was applicable because Winter Park Leasing, Inc., maintained none of the indicia of beneficial ownership. This is a finding by implication of the holding of the Fifth District Court of Appeal's opinion citing Kraemer vs. General Motors Acceptance Corporation, 556 So.2d 431 (Fla. 2DCA 1989).

The Fifth District Court of Appeal's decision cannot be reconciled with a previous decision of this Court in Susco Car Rental Systems of Florida vs. Leonard, 112 So.2d 832 (Fla. 1959), the decision of the District Court itself in Racecon, Inc. vs. Mead, 388 So.2d 266 (Fla. 5th DCA 1980), the decision of this Court in Allstate vs. Executive Car Leasing, 494 So.2d 487 (Fla. 1986), and with the decision of Tribbitt vs. Crown Contractors, 513 So.2d 1084 (Fla. 1st DCA 1987).

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a District Court of Appeal that expressly or directly conflicts with a decision of the Supreme Court or another District Court of Appeal on the same point of law. Article 5, Section 3(b)(3) Florida Constitution (1980); Florida Rules of Appellate Procedure 9.030(a)(2)(A)(i).

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL DIRECTLY AND EXPRESSLY CONFLICTS WITH SUSCO CAR RENTAL SYSTEM OF FLORIDA vs. LEONARD, 112 So.2d 832 (Fla. 1959), RACECON, INC. vs. MEAD, 388 So.2d 266 (Fla. 5th DCA 1980), ALLSTATE vs. EXECUTIVE CAR LEASING, 494 So.2d 487 (Fla. 1986) AND TRIBBITT vs. CROWN CONTRACTORS, INC., 513 So.2d 1084 (Fla. 1st DCA 1987).

This Court held in Anderson vs. Southern Cotton Oil Co., 74 So. 975 (Fla. 1917) , that the common law Dangerous Instrumentality Doctrine applied to automobile owners, holding them liable for injuries arising from the negligent operation of their automobiles by permissive users. Anderson dealt with the liability of a corporate automobile owner which allowed an employee to use the vehicle to travel to and from work.

In Palmer vs. R.S. Evans, Jacksonville, Inc., 81 So.2d 635 (Fla. 1955), this court created an 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 the motor vehicle because the beneficial ownership passes to the buyer upon the seller's surrender of possession. Id. at 636. In this case the Fifth District Court of Appeal held the Palmer exception to the Dangerous Instrumentality Doctrine was applicable. By implication, the holding is the master lease, providing for rental vehicles from the lessor, Winter Park Leasing, for a term of less than seven months duration, relinquished beneficial ownership of the motor vehicle to Major Rent-A-Car, Inc., the Lessee. The Fifth District Court of Appeal's opinion is contrary to the decision of the

Florida Supreme Court, its own decision in Racecon, Inc. vs. Mead, and the First District Court of Appeal in Tribbitt.

The Susco case dealt with the liability of a corporate owner of a vehicle which leased the vehicle for a period of days. This court applied the Dangerous Instrumentality Doctrine to the owner without regard to, or comment about, the term or duration of the lease. Therefore, the Susco case specifically applies the Dangerous Instrumentality Doctrine to a renter of an automobile and that decision does not limit the owner's liability based upon the duration of the lease. The Fifth District Court of Appeal's holding in this case expressly and directly conflicts with the court's ruling in Susco, that a lessor has vicarious liability for the negligent use of a leased motor vehicle.

In Racecon, the Fifth District Court of Appeal held a lessor, who had leased the 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. Racecon, 388 So.2d at 268.

The Fifth District Court of Appeal's clear application of the Dangerous Instrumentality Doctrine to hold a lessor under a one-year lease vicariously liable demonstrates that the holding in Racecon is in express and direct conflict with the decision in Kraemer and with the decision of the Fifth District Court of Appeal in this case.

In Allstate, the Florida Supreme 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, the court held "Industrial insured a vicariously liable party", Executive Car Leasing. Allstate, 494 So.2d 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, a certified copy of a 36-month lease obtained from the Allstate record has been filed with the Second District Court of Appeal in the Kraemer vs. GMAC court file. The holding that the long-term lessor in Allstate was vicariously liable for the negligent use of the leased vehicle is expressly and directly in conflict with the decision of the Fifth District Court of Appeal in this case.

In Tribbitt, 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, Brashner. 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. The holding in Tribbitt expressly and directly conflicts with the decision of the Fifth District Court of Appeal in this case.

STATEMENT IN SUPPORT OF SUPREME COURT'S EXERCISE OF ITS DISCRETIONARY JURISDICTION

The Fifth District Court of Appeal's application of the "beneficial ownership" exception to the Dangerous Instrumentality Doctrine to negate the vicarious liability of long-term lessor is contrary to the fundamental public policy of the Dangerous Instrumentality Doctrine. This Doctrine is based upon the assumption that an owner cannot deliver a vehicle into the hands of another without assuming or continuing his full responsibility to the public. In direct conflict with this policy, the Fifth District Court of Appeal has held a lessor, under a master lease, is entitled to be treated as a conditional vendor that simply retains bare legal title as security for the payment. The terms of the lease cited earlier clearly demonstrate that Winter Park Leasing, Inc., retained ownership; substantially limited the lessee's use of the vehicle; and provided for a definite surrender of possession of the vehicle. "Beneficial ownership" did not pass to the lessee contrary to the opinion of the Fifth District Court of Appeal. This arrangement is not that unusual in the rental car industry.

This Court should entertain jurisdiction because of the prevalence of rental cars in the State of Florida. The uncertainty created by the conflicting decisions of the District Courts of Appeal raise more questions that require answers.

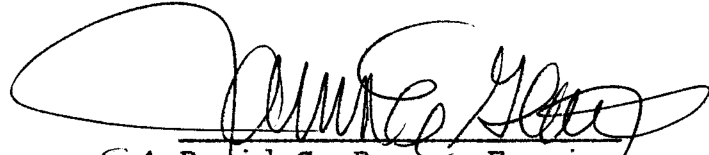
Why should a car dealer, in the business of bailing dangerous instrumentalities to lessees, escape the application of the Dangerous Instrumentality Doctrine? Can a short-term lease be distinguished from a long-term lease when applying the Dangerous Instrumentality Doctrine, solely on the duration of the lease? Does the Dangerous Instrumentality Doctrine apply to a lease for a period of weeks, months, a year, or some other period of time. The Fifth District Court of Appeal made no distinction between short-term and long-term leases, and there is no reasonable basis to determine the liability of owners of vehicles to protect citizens.

Finally, the Court accepted jurisdiction in the Kraemer vs. GMAC case on Friday, June 22, 1990, in case number 75,580. Oral argument is scheduled for October 1, 1990. As the same legal issues are raised in this Petition, it is respectfully requested that the Court also accept jurisdiction of this case.

CONCLUSION

The decision of the Fifth District Court of Appeal, holding that a short-term master lessor is not vicariously liable under the Dangerous Instrumentality Doctrine despite ownership, creates a conflict on the same question of law with the Florida Supreme Court and District Courts of Appeal as to a point of law commonly encountered in Florida civil cases. Accordingly, this Court should exercise its discretion and accept the case for review.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to **William E. Lawton, Esquire**, Post Office Box 2928, Orlando, Florida 32802, **David A. Sims, Esquire**, 500 East Altamonte Drive, Suite 200, Altamonte Springs, Florida 32701, this **23rd day of August, 1990.**

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APPENDIX

(A-1) Fifth District Court of Appeal's Adverse Decision as to Petitioner dated June 14, 1990

(A-2) Motion for Rehearing and/or Alternative Motion for Certification to Supreme Court

(A-3) Fifth District Court of Appeal's Adverse Decision on Petitioner's Motion for Rehearing and/or Alternative Motion for Certification to Supreme Court dated July 18, 1990