

**FILED**

SID J. WHITE

SEP 19 1990

CLERK, SUPREME COURT

By \_\_\_\_\_

Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,495  
DCA CASE NO. 89-2122

JEFFREY D. STUPAK,  
Plaintiff/Petitioner,

vs.

WINTER PARK LEASING, INC.,  
Defendant/Respondent.

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

RESPONDENT'S BRIEF OF JURISDICTION

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JURISDICTIONAL  
STATEMENT OF THE CASE AND FACTS

Respondent respectfully submits that the per curiam decision of the Fifth District Court of Appeal in its favor in this matter does not expressly and directly conflict with the decision of another District Court of Appeal or of this Honorable Court on the same question of law. Therefore, Respondent's disagreement with certain aspects of Petitioner's Statement of the Case and Facts is irrelevant and inconsequential to whether this Honorable Court should accept jurisdiction.

The Trial Court entered Final Summary Judgment on Respondent's behalf. Respondent argued that it was entitled to Summary Judgment because it was not the beneficial owner of the vehicle at the time of the accident, nor was the use permissive. Respondent had leased the vehicle to Major Rent-A-Car, which in turn had leased it to the driver who operated the vehicle at the time Petitioner was injured as a passenger. Not only did that fact break any chain of responsibility back to Respondent, but also the driver had failed to return the vehicle by the time the lease expired. In conspicuous caption the agreement clearly stated that cars not returned by the due date were considered stolen by conversion.

SUMMARY OF RESPONDENT'S ARGUMENT AGAINST JURISDICTION

The 1980 Amendment to Article V, Section 3(b)(3) of the Florida Constitution required that for this Honorable Court to exercise its discretionary jurisdiction over a decision of a District Court of Appeal such as the one herein, such decision must "expressly and directly conflict with a decision of another District Court of Appeal or of the Supreme Court on the same question of law." The decision by the 5th DCA herein does not. It neither expressly nor directly conflicts with such other decisions, let alone "expressly and directly" conflicts.

Respondent has previously filed a Motion to Dismiss this appeal for its failure to properly invoke the discretionary jurisdiction of this Honorable Court. Respondent respectfully submits said Motion should be GRANTED.

### ARGUMENT

THE FIFTH DISTRICT COURT OF APPEAL PER CURIAM DECISION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR THIS HONORABLE COURT ON THE SAME QUESTION OF LAW.

The decision of the Fifth District Court of Appeal herein is a per curiam affirmance of the Final Summary Judgment entered in Respondent's favor below. (See Appendix of Petitioner, A-1). It cites Kraemer v. General Motors Acceptance Corporation, 556 So. 2d 431 (Fla. 2nd DCA 1989). It says nothing else, let alone expressly and directly conflicting with a decision of any other District Court of Appeal or of this Honorable Court on the same question of law.

Subsequent to the Opinion's entry on June 14, 1990, Petitioner filed a Motion for Certification (Appendix of Petitioner, A-2). That Motion specifically sought to have the 5th DCA assert or admit that its decision conflicted with a decision of another District Court of Appeal, or of this Honorable Court. It sought certification that the issue was of great public importance. The 5th DCA summarily denied that Motion. (See Appendix of Petitioner, A-3).

Referring to the 1979-1980 process of amending the Florida Constitution and enacting F.R.A.P. 9.030(a)(2)(A), this Court noted that the adoption of the Amendment would:

". . . eliminate the jurisdiction of the Supreme Court to review for conflict purposes per curiam decisions of the District Courts of Appeal rendered without opinion . . ." Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980).

At the same time, referring to per curiam opinions of a DCA which also include a case citation, this Court noted:

"We reject the assertion that we should examine a case cited in a per curiam decision to determine if the contents of that cited case now conflict with other appellate decisions." Dodi Publishing Co. v. Editorial American S.A., 385 So. 2d 1369 (Fla. 1980).

This Court further noted that neither a dissenting opinion nor even a concurring opinion may provide a sufficient basis for conflict review jurisdiction. Jenkins, at 1359.

It matters not that the per curiam affirmance opinion at issue here includes a citation to Kraemer, supra. There simply is no express and direct conflict, as confirmed by the 5th DCA's denial of Petitioner's Motion for Certification for review to the Supreme Court. (A-3). There certainly has been no subsequent reversal of the Kraemer holding, but even more importantly no showing by the Petitioner of conflict between the pertinent decision herein, or Kraemer, and any other decision of a District Court of Appeal or this Honorable Court.

The clear intent of the 1980 Amendment to the Florida Constitution and amendment to the Florida Rules of Appellate Procedure on this issue was to make the District Courts of Appeal the Courts of "last resort" for such civil litigation issues. Only when the decision clearly, or "expressly and directly", conflicts with that of another District Court of Appeal or this Honorable Court should this Court step into these matters. Here,

we have only a unanimous per curiam affirmance, with citation to a case that itself is not in conflict either.

This Honorable Court has remained consistent to the intent of the 1980 amendments in practice. There is no showing here by Petitioner of any disruptive effect of the lower Court's decision, or any reversal by its wordless opinion of any prior case law.

This Court has consistently refused to examine an opinion that doesn't have conflict expressed in the body of the lower court's decision. There is no reason to change that practice here. The District Court has neither expressed conflict nor certified the question as being of great public importance. It has not even posed the question for public record or analysis.

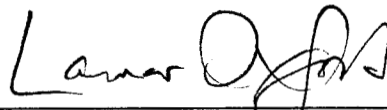
In that context, Respondent respectfully submits Petitioner has failed to demonstrate the requirements necessary for this Honorable Court's exercise of its discretionary jurisdiction. Respondent's Motion to Dismiss this Appeal should thus be granted and Petitioner's Notice to Invoke the Discretionary Jurisdiction of this Honorable Court should be DENIED.



CONCLUSION

Respondent respectfully submits Petitioner has failed to demonstrate the requirements necessary for this Honorable Court's exercise of its discretionary jurisdiction. Respondent's Motion to Dismiss this Appeal should thus be granted, and Petitioner's Notice to Invoke the Discretionary Jurisdiction of this Honorable Court should be DENIED.

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 & Glatt, 523 West Colonial Drive, Orlando, FL 32804 and David A. Sims, Esq., 500 East Altamonte Drive, Suite 200, Altamonte Springs, FL 32701, this 17th day of September, 1990.



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