IN THE SUPREME COURT OF FLORIDA

CASE NUMBER : 77,251

(DISCRETIONARY REVIEW)

DCA-3, NO. : 90-176

PARVIN WRIGHT,

Petitioner,

vs.

GENERAL MOTORS ACCEPTANCE CORPORATION, a foreign corporation,

Respondent.

RESPONDENT'S ANSWER BRIEF ON MERIT

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STATEMENT OF THE CASE AND FACTS

Petitioner, PARVIN WRIGHT ("WRIGHT"), filed a personal injury lawsuit alleging that GENERAL MOTORS ACCEPTANCE CORPORATION ("GMAC") was vicariously liable for the negligence of the driver/lessee.

Respondent, GMAC, entered into a lease agreement with the driver/lessee of the motor vehicle. Under the agreement, the lessee was required to obtain certain limits of insurance coverage. Pursuant to the terms of the lease agreement, the lessee obtained and maintained the required coverage and the coverage was in effect on the date of the loss.

GMAC moved for Summary Judgment on the basis that Florida Statute §324.021(9)(b) released a lessor/owner from vicarious liability whenever the statute's requirements are met.

On November 29, 1989, the Honorable Mario Godrich entered Summary Judgment on behalf of GMAC.

WRIGHT contended that GMAC is the legal owner under the Dangerous Instrumentality Doctrine. Furthermore, WRIGHT argued that if §324.021(9)(b) applied then the statute was an unconstitutional denial of the Equal Protection Clause and an infringement on a litigants access to court.

GMAC contended that §324.021(9)(b) is an statutory exemption to the Dangerous Instrumentality Doctrine. Additionally, GMAC contended that the statute did not confer ownership status on long-term lessors when the lessee has obtained the required insurance coverage.

The trial court granted Summary Judgment. The decision of the trial court was affirmed by the Third District Court of Appeals and the issue was certified to the Supreme Court as one of great public importance.

SUMMARY OF ARGUMENT

I.

GMAC is not the owner of the leased motor vehicle pursuant to Florida Statute §324.021(9)(b). In 1986 the legislature enacted subsection (b) with the intent and purpose of exempting lessor/owners from liability whenever the requirements of the statute are met.

II.

The enactment of §324.021(9)(b) does not deny a litigant its access to courts pursuant to Article I, Section 21 of the Florida Constitution. A litigant is able to proceed against the lessee for any damages sustained even if the statute is applied and the lessor/owner is found not to be the owner for purposes of liability.

III.

Florida Statute §324.021(b) does not create by definition two distinct classifications. The statute merely operates to absolve from liability lessors/owners who have fulfilled the

statutory requirements. The statute is not arbitrary and capricious nor does it deny equal protection of the law.

ARGUMENT

POINT I

"Whether GMAC is the owner of the subject vehicle for purposes of imposing tort liability pursuant to Section 324.021(9)(b), Florida Statutes (1986)?"

The GMAC lease agreement in this case requires the lessee to obtain insurance as a condition to the lease. The subject condition provides: "You must insure the vehicle for the term of the lease...with limits of not less than $100,000 for any one person for bodily injury or death, $300,000 for any one accident..., and $50,000 for property damage...". (Petitioner's Appendix 37-40). Here, the required insurance liability limits were in effect on March 2, 1987, when the accident occurred.

In 1986, the Florida legislative created Florida Statute §324.021(9)(b). That statute provides that a owner/lessor will not be deemed the owner of a leased motor vehicle if certain requirements are met. The statutory requirements are: 1) the lease agreement must be for one year or longer; 2) the lessee must obtain insurance which contains limits not less than $100,000/$300,000 and $50,000. The statute is applicable so long as the required insurance remains in effect.

If the statutory requirements are met then a long-term lessor shall not be deemed the owner of said motor vehicle for

the purposes of determining financial responsibility or for the acts of the operator in connection therewith.

In Kramer v. GMAC, 16 F.L.W. 20 (Jan. 4, 1991), this court specifically noted that Florida Statute §324.021(9)(b) eliminated the lessors liability when the leased automobile carried the requisite liability insurance. In the case sub judice the statutorily required liability insurance was in effect on the date of loss.

Likewise, in Raynor v. De La Nuez, 16 F.L.W. 588 (Jan. 18, 1991), this Court noted:

> "it was evident that by enacting section §324.021(9)(b), which provides relief for long-term lessors under certain circumstances,..."
>
> Raynor, at 89.

While neither Raynor and Kramer deals specifically with the applicability of §324.021(b). This court provided a clear indication that in cases involving §324.021(b), lessors would not be deemed owners.

In Kramer, this court rejected the contention that the legislature intended to create an exception to the Dangerous Instrumentality Doctrine by enacting Florida Statute §324.021(9)(a). However, this court accepted the premise that:

> "in 1986 the legislature did act to eliminate long-term lessors from liability under the dangerous instrumentality doctrine under certain circumstances by the passage of Chapter 86-229, Laws of Florida,...codified at Section 324.021(9)(b), Florida Statutes (1988)..."
>
> Kramer, at 22.

The legislative history of Florida Statute §324.021(9)(b) supplements the argument that the amendment was intended to eliminate a long-term lessors liability.

In the floor of the House debate over passage of the bill, Representative Meffert stated:

> "Florida Statute §324.021 requires financial responsibility and a minimum amount of 100/300 limits which doesn't exist now, if you went to the bank and borrowed the money and bought the car you would not have to carry liability insurance, if you used this alternative financing, you've got to carry 100/300 liability , it also provides that if the insurance is not in effect, this subsection is not operable. So we have protected those things...this is a good amendment. It provides that when you use this alternative financing arrangement, that you will have the incident of ownership with the person that has it, the lessee."
>
> Folmar v. Young, 560 So.2d 798 (Fla. 4th DCA 1978), citing Florida House Debate on Senate Bill 902 (June 6, 1986).

As seen, then, the legislature's intention was to create a statutory exemption for lessor/owners under certain circumstances. Representative Woodruff noted during the debate:

> "I think what we are being asked to do here on this amendment is to change the law of Florida as it relates to the liability of the owner...As I understand the amendment as its been explained on the House floor, it would say that the Lessor of the automobile, the owner who is allowing someone else to use it would be avoiding that liability."
>
> Folmar, at 800.

The legislators clearly understood that the intent and result of subsection (b) would be to exonerate the lessor/owner of liability whenever the statutes requirements were met.

The 1986 Amendment operates to release long-term lessors from liability in instances where the lessee has obtained the requisite insurance limits and the insurance was effective on the date of the loss. The words "financial responsibility" are not limited to the lessors obligation to provide proof under Chapter 324. A plain reading of the subsection along with legislative history of the amendment clearly indicates the statutes intention of absolving liability on behalf of the lessor for the acts of the lessee/operator in connection with the leased vehicle.

POINT II

"Whether the 1986 Amendment violates the 'Access to Courts' provision in Article I, Section 21, of the Florida Constitution?"

Florida Statute §324.021(9)(b) does not deny a litigant its access to state court for redress of "any injury". The Florida Declaration of Rights provides that:

> "...the courts shall be open to any person for redress of any injury...".

Although the statute does operate to abrogate the Dangerous Instrumentality Doctrine in certain limited circumstances, it does not affect the litigant's rights with respect to the lessee or other parties. The only limitation,

in far as recovery is concerned, is against the lessor of the motor vehicle. Subsection (b) merely removes the lessor/owner as a potential Defendant. Further, the exemption does not become effective unless the lessee has maintains the requisite insurance limits (which are greater than the financial responsibility limits required of other vehicle owners). This provision insures a Plaintiff's recovery against the lessee if a verdict is entered on behalf of the Plaintiff.

A Plaintiff is not denied access to the courts or is he limited to a certain amount of recovery by §324.021(9)(b). The only imposition the statute has is that under certain circumstances a lessor/owner is not deemed the owner and therefore a Plaintiff is unable to join the lessor as a party Defendant under the Dangerous Instrumentality Doctrine. The only denial or loss to the Plaintiff is that of a "deep pocket" Defendant in the lessor/owner. Article I, §21 of the Florida Constitutuion does not guarantee a litigant's right to a "deep pocket" Defendant.

POINT III

"Florida Statute §324.021(9)(b) does not violate the 'Equal Protection of Law' provision in Article I, §2 of the Florida Constitution".

Florida Statute §324.021(9)(b) does not create two distinct classifications. The categories cited by the Seventeenth Judicial Circuit in Frothingham v. Jabe Tile Corporation, et al., 14 F.L.W. 105 (17th Cir. 1988), are

erroneous. The statute does not separate claims and/or Plaintiffs into amounts awarded. The statute simply releases an lessor/owner of liability in instances where the lessee has obtained certain limits of insurance.

The statute does not create a class of Plaintiffs who have damages greater that 100,000 and a class with damages less than 100,000. A Plaintiff is free to recover whatever amount of damages he has sustained. If a Plaintiff recovers damages which are more than $100,000, he is able to recover from the lessee personally if the judgment is in excess of his policy limits. Therefore a Plaintiff is not grouped into a classification merely because the statute eliminates the long-term lessor as a Defendant.

The fact that a Plaintiff who has a "deep pocket" Defendant is better able to recover an excess judgment is not a denial of equal protection. The Equal Protection Clause does not guarantee a Plaintiff's right to have a "deep pocket" Defendant so that a Plaintiff is assured of recovering a judgment.

The statute does not create a cap on the damages which a Plaintiff may recover. It only provides an option to a long-term lessor of passing its ownership interest unto the lessee of vehicle. If anything, the statute guarantees the Plaintiff will have a Defendant who has insurance coverage in the amount in excess of the financial responsibility limits required by law.

CONCLUSION

Based on the foregoing, this court is respectfully requested to affirm the Final Summary Judgment in its entirety.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 14th day of March, 1991, upon: STEVEN H. ROTHSTEIN, ESQUIRE, Robert A. Romagna, P.A., 2050 Coral Way, Suite 602, Miami, Florida 33145.

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