IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: 77,251

PARVIN WRIGHT,

Petitioner,

(DISCRETIONARY REVIEW)

DCA-3 NO. 90-176

v.

GENERAL MOTORS
ACCEPTANCE CORPORATION,
a foreign corporation,

Respondent.

_____/

PETITIONER'S REPLY BRIEF
ON APPEAL FROM THE THIRD DISTRICT COURT OF APPEAL

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REPLY BRIEF OF PETITIONER

I

ARGUMENT

POINT I

Section 324.021(9), Florida Statutes, does not immunize a party who contracts that it is the owner of a leased vehicle from liability under the Dangerous Instrumentality Doctrine.

The 1986 Amendment to Section 324.021 was part of a larger bill; Ch. 86-229, Laws of Florida, the primary purpose of which was to amend the "Motor Vehicle Warranty Enforcement Act (Chapter 681, Fla. Stat.)" by expanding its protection to those consumers who lease motor vehicles rather than purchase them. Included within this "consumer legislation" was the portion of the bill that amends 324.021.

Chapter 324, often referred to as the Financial Responsibility Law, deals with the requirements imposed on owners and operators of motor vehicles to show proof of insurance or other financial security, and provides penalties for those who fail to do so. The purpose of the Chapter, as described in Section 324.011, is to

require proof that certain owners and operators of motor vehicles have the financial responsibility to respond for the damages they may cause to others. Section 324.021 is the section that provides definitions for various terms used throughout the Chapter, including the definition of "owner". The 1986 Amendment to Section 324.021 (9)(b) provides that a long term lessor who requires the lessee to maintain at least $100,000/$300,000 insurance coverage, is not considered the "owner" of the vehicle "for the purpose of determining financial responsibility" for the operation of the vehicle.

Properly interpreted, the 1986 Amendment to the Statute only operates to relieve a long-term lessor from its obligation to provide proof of financial responsibility under Chapter 324. It does not eliminate the tort liability of lessors under the long standing Dangerous Instrumentality Doctrine.

This Court in the recent decision in Kraemer v. General Motors Acceptance Corporation, 572 So. 2d 1363 (Fla. 1990) concluded that the provisions of 324.021 had the effect of requiring certain lessees to purchase liability insurance and did not reflect an intent to exonerate lessors from liability under the Dangerous Instrumentality Doctrine, which originated in the case of Southern Cotton Oil Co. v. Anderson, 80 Fla. 441; 86 So. 629 (Fla. 1920).

In its Answer Brief, Respondent argues that the legislative intent is clear. Contrary to Respondent's argument, the legislative intent of Florida Statute 324.021(9) is unclear as

evidenced in the Senate Staff Analysis and Economic Impact Statement, (A 55-56).

This Court should pay particular attention to the language on Page 2 of "The Senate Staff Analysis and Economic Impact Statement" which expresses concern that the language of the new Amendment is nonsensical, confusing and in need of further legislative attention to clarify its intent.

The failure of the 1986 Statutory Amendment to state that it intended to abolish a common-law doctrine leads to the conclusion that such a radical change was not intended by the legislature. A proper reading of the statute shows that the legislature only intended to shift the requirement of showing proof of financial responsibility under Chapter 324 from the lessor to the lessee when the lessor of a long-term lease requires the lessee to maintain at least $100,000.00/$300,000.00 limits of insurance coverage.

Accordingly, the statute is subject to a very sensible interpretation that would save it from being declared unconstitutional pursuant to the long-standing rules of statutory construction.

POINT II

The 1986 Amendment to Section 324.021 (9)(b) violates the "Access to Courts" provision in Article I, Section 21 of the Florida Constitution.

It is unconstitutional for the legislature to take away an accident victim's common law right to sue the owner of a leased vehicle in exchange for the purchase of a $100,000.00 insurance policy.

As this Court states in Kraemer, the Dangerous Instrumentality Doctrine seeks to provide greater financial responsibility to pay for the carnage on our roads. It is premised upon the theory that one who originates the danger by entrusting the automobile to another is in the best position to make certain that there will be adequate resources with which to pay the damages caused by its negligent operation. If Florida's traffic problems were sufficient to prompt its adoption in 1920, there is all the more reason for its application to today's high-speed travel upon crowded highways. The Dangerous Instrumentality Doctrine is unique to Florida and has been applied with very few exceptions. We are loath to engraft upon this doctrine a further exception that would have such far reaching consequences. Kraemer, at 1365.

In its Answer Brief, Respondent argues to this Court that a Plaintiff is not denied access to the Courts or is limited to a certain amount or recovery by 324.021 (9)(b) and attempts to persuade this Court that by requiring lessees to have higher limits than required on other vehicle owners. This argument cannot withstand close scrutiny.

Regardless of any insurance limits, an injured Plaintiff has a common law right to sue the owner of a leased vehicle under the long standing Dangerous Instrumentality Doctrine. Whether a Plaintiff's common law right to recover a Judgment in excess of liability limits of insurance coverage against an owner has been terminated by the passage of Section 324.021 (9)(b). In effect, an accident victim's common law right has been bargained away by the purchase of a $100,000.00 liability insurance policy. A less restrictive cap of $450,000.00 on non-economic damages has been found unconstitutional as denying access to the Courts. See Smith v. Department of Insurance, 507 So. 2d 1080 (Fla. 1987).

POINT III

The 1986 Amendment to Section 324.021(9)(b) violates the "Equal Protection of Law" provision in Article 1, Section 2 of the Florida Constitution .

Section 324.021(9)(b) creates two distinct classifications as outlined in Frothingham v. Jabe Tile Corporation, et. al., 14 FLW 105, 7th Judicial Circuit, Case Number: 87-22252 CJ, December 6, 1988.

In its Answer Brief, Respondent argues to this Court that a Plaintiff is not denied equal protection of law under Section 324.021 (9)(b). This argument cannot withstand close scrutiny.

A Plaintiff injured by a long term lessor cannot collect any damages from the long-term lessor-owner under Section 324.021 (9)(b) whereas another Plaintiff can collect damages from an owner under the long-standing Dangerous Instrumentality Doctrine.

The amounts of insurance coverage available to an injured Plaintiff under Section 324.021 (9)(b) not only cap damages which may be recovered but, also takes away a vested common law right without providing a reasonable alternative benefit, thereby denying Equal Protection of Law.

II

CONCLUSION

Based upon the foregoing cases and arguments, Petitioner, WRIGHT, respectfully requests that this Court reverse the decisions of the District and Trial Courts.

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III

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief was mailed this 3 day of APRIL, 1991 to:

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