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IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,065

AETNA CASUALTY AND SURETY COMPANY,

Petitioner,

vs.

HUNTINGTON NATIONAL BANK, an Ohio Corporation,

Respondent.

Florida Bar No.: 661104

ON REVIEW FROM THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT, CASE NO. 90-1251

BRIEF OF RESPONDENT

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PREFACE

Respondent, Huntington National Bank, will be referred to as "Huntington". Petitioner, Aetna Casualty and Surety Company, will be referred to as "Aetna".

References to the appendix to Huntington's brief will be designated Resp.App.__. References to the appendix to Aetna's initial brief will be designated Pet.App.__.

Huntington does not dispute Aetna's statement of the case and of the facts and, therefore, will not include in this brief a separate statement of the case and of the facts.

CERTIFIED QUESTION

WHETHER SECTION 324.021(9)(b) **IS APPLICABLE** TO **LONG-TERM LEASES WHICH ARE** NOT **AUTOMOBILE FINANCING SUBSTITUTES?**

HUNTINGTON'S ANSWER

YES. THE LANGUAGE AND **HISTORY OF SECTION** 324.021(9)(b) **UNEQUIVOCALLY ESTABLISH THAT THE STATUTE APPLIES TO ALL MOTOR VEHICLE LEASES FOR ONE** YEAR OR **LONGER, INCLUDING LEASES WHICH** ARE NOT **FINANCING SUBSTITUTES,**

SUMMARY OF THE ARGUMENT

The language of Section 324.021(9)(b) is clear and unambiguous. Consequently, its meaning can be determined from the words used in the statute. The plain meaning of the statute is obvious -- the lessor under *any* motor vehicle lease for one year or longer is not liable under the dangerous instrumentality doctrine provided that the lessee maintains requisite minimum insurance coverage. The statute explicitly applies to agreements "to lease a vehicle for one year or longer", and there is no evidence that the Legislature intended to limit application of the provision to leases which are financing substitutes.

The language used in Fla. Stat. Section 324.021(9)(a) demonstrates the Legislature's awareness of various types of automobile financing arrangements. Since the Legislature was aware of the distinction between leases and other means of automobile finance, had it intended to limit or specify the types of leases to which Section 324.021(9)(b) should apply, it could have done so.

Florida common law recognizes a distinction between a lease and a conditional sales contract (i.e., a financing substitute). Section 324.021(9)(b) should be construed in harmony with existing common law. The term "agreement to lease" as it appears in the statute should he given its plain and ordinary meaning as derived from Florida common law and be deemed to include all automobile leases which otherwise meet the statutory criteria.

Contrary to Aetna's assertion, the legislative history af **Section** 324.021(9)(b) does not evidence any intent to exclude from the statute's application leases which are not financing substitutes. The transcript of the debate of the House of Representatives regarding **passage** of the subject legislation simply reflects the **Legislature's** awareness that long-term automobile leasing is a prevalent alternative to purchasing. Moreover, **there** is no practical difference between a **lease** which provides an option or obligation to purchase and one which does not. Consequently, whether a **lease** for a period exceeding one year involves a purchase right or obligation is irrelevant.

Aetna's argument that the statute should apply only to Florida **leases** executed by Florida **lessors** has been rejected twice by the Fourth District and is unsupported by the language of the statute or its legislative history. For the same reasons stated above, the statute should be held to apply to all **leases** which meet the specified criteria, including foreign leases executed by foreign **lessors.**

ARGUMENT

Section 324.021(9)(b) Applies To All Motor Vehicle Leases for One Year or More, Including Leases Which Are Not Financing Substitutes.

Florida law is well established that legislative intent is to be "determined primarily from the language of the statute and . . . the plain meaning of the statutory language is the first consideration." Public Health Trust of Dade County v. Lopez, 531 So.2d 946, 948-949 (Fla. 1988) (citation omitted). Thus, when statutory language is clear and unambiguous, it is unnecessary to resort to rules of interpretation and construction; the statute must be given its plain and obvious meaning. Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984). Fla. Stat. §324.021(9)(b) provides:

> Owner/Lessor. - Notwithstanding any other provision of the Florida Statutes or existing case law, the lessor, under an agreement to lease a motor vehicle for one year or longer which requires the lessee to obtain insurance acceptable to the lessor which contains limits not less than $100,000/$300,000 bodily injury liability and $50,000 property damage liability, shall not be deemed the owner of said motor vehicle for the purpose of determining financial responsibility for the operation of said motor vehicle or for the acts of the operator in connection therewith; further, this paragraph shall be applicable so long as the insurance required under such lease agreement remains in effect.

Id. (emphasis added).

This language is clear, precise and unambiguous, By its express terms, Section 324.021(9)(b) applies to agreements "to

lease a motor vehicle for one year or longer." There is no ambiguity in this provision and no basis for Aetna's contention that its application is limited to leases which are financing substitutes. Consequently, it is unnecessary to *go* beyond the written words of the statute to determine its meaning. Holly, 450 So.2d at 219. The plain meaning of the statute is obvious -- the lessor under any motor vehicle lease for one year or longer, pursuant to which the lessee maintains the requisite minimum insurance, shall not be deemed the owner of the motor vehicle for purposes of determining financial responsibility. ~~*See* also~~, Abdala v. World Omni Leasing, 583 So.2d 330, 332 (Fla. 1991) (pursuant to Section 324.021(9)(b), "the lessor of a motor vehicle for a period in excess of one year is not liable under the dangerous instrumentality doctrine . . . provided that the lessee maintains the requisite minimum insurance coverage").

Aetna does not dispute (i) that Huntington was the lessor under an agreement to lease a motor vehicle for one year or longer, (ii) that the lease required the lessee to obtain insurance consistent with the statutory requirements, and (iii) that the lessee did in fact obtain insurance in excess of *such* requirements, which insurance was effective at the time of the subject accident. Aetna simply seeks to have this Court limit application of the statute so as to exclude leases which are not automobile financing substitutes.[1] However, Florida courts are

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1/ Aetna does not suggest how it would be possible to determine which leases are "automobile financing substitutes". Far example, it is unclear if a lease with an option, but not an

Faotnote continued on next page . . .

"without power to construe an unambiguous statute in a way which would extend, modify or limit, its express terms or its reasonable and obvious implications, To **do so** would **be** an abrogation **of** legislative power." Holly, 450 So.2d at 219 (emphasis in original) (citations omitted) (declining to limit application of discovery privilege provided in Fla. Stat. §768.04(4) to medical malpractice actions); see also, Public Health Trust of Dade County v. Lopez, 531 So.2d 946 (Fla. 1988) (declining to limit definition of "natural person" in constitutional homestead exemption provision). Aetna requests this Court to impermissibly limit the application of Section 324.021(9)(b) by "grafting onto" the statute "something that is not there". Lopez, 531 So.2d at 949.

The interpretation Aetna urges this Court to adapt would change the meaning of the statute by limiting the scope of its application. under such circumstances, "the presumption of an intention to make the statute operate as it would when so altered must be so strong that the contrary thereof cannot reasonably be supposed, or it must clearly appear that such words were inadvertently omitted." Owen v. Cheney, 238 So.2d **650,** 654 (Fla. **2nd** DCA **1970)** cert. dischg'd, **253** So.2d **869** (Fla. **1971)** (footnotes omitted). There is no evidence that the Legislature did not intend for Section 324.021(9)(b) ta apply to all automobile leases for mare than one year, including those leases

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obligation, to purchase would constitute a ''financing substitute".

which do not serve as financing substitutes, nor is there any evidence that the Legislature inadvertently omitted any limiting terms from the statute. Consequently, there is no basis for any presumption that the statute should be restricted to leases which are financing substitutes.

Aetna's argument overlooks the precept that "where the statute is clear and unambiguous a court should refrain from engaging in speculation as to what the Legislature intended . . . (and) will refuse to tack additional words on a statute in a situation where uncertainty prevails as to the Legislature's intent. When there is doubt as to the Legislative intent or where speculation is necessary, then the doubt should be resolved against the powers of the courts to supply missing words." In re Estate of Jeffcott, 186 So.2d 80, 84 (Fla. 2d DCA 1966) (emphasis added) (citations omitted). Because Section 324.021(9)(b) is clear and unambiguous, this Court should decline Aetna's invitation to imply words of limitation to the statute.

Review of the subject provision in pari materia with Section 324.021(9)(a)[2] dictates the conclusion that the Legislature intended Section 324.021(9)(b) to apply to all motor vehicle leases which exceed one year. It is fundamental that "the legislature must be assumed to know the meaning of the words and to have expressed its intent by the use of the words found in the statute." Barnett Bank v. State Dep't of Revenue, 571 So.2d

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2/ "[L]egislative intent should be ascertained from an examination of a statute as a whole, rather than any one part thereof." Shuman v. State, 358 So.2d 1333, 1336 (Fla. 1978).

527, 529 (Fla. **3rd DCA** 1990), citing S.R.G. Corp. v. Dep't of Revenue, 365 So.2d 687 (Fla. **1984).** Fla. Stat §324.021(9)(a) defines the term "owner" for purposes of financial responsibility, and provides:

> Owner. - A person who holds the legal title of a motor vehicle; or, in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed owner for the purpose of this chapter.

Id. (emphasis added).

The foregoing provision specifically categorizes various automobile financing arrangements (mortgages, conditional sales, and leases with a right of purchase) and thus reflects the Legislature's awareness of such arrangements, By contrast, Section 324.021(9)(b) [which was enacted subsequent to Section 324.021(9)(a)] simply refers to leases for one year or longer and makes no reference to any purchase right or obligation. Obviously, when Section 324.021(9)(b) was enacted, the Legislature was aware of the difference between leases and other means of automobile finance.[3] Thus, had the Legislature intended

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3/ The difference in the language of Sections 324.021(9)(a) and 324.021(9)(b) evidences the Legislature's awareness of the distinction between the generic and inclusive term "lease" and the type of conditional sale or lease agreement which may be a financing substitute. "The **Legislative** use of different terms in different portions of the same statute is strong evidence that different meanings were intended." Dep't of Prof'l **Regulation,** Bd. of Medical Examiners v. Durrani, 455 So.2d **515, 518** (Fla. 1st DCA 1984) (citations omitted). *See*

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to specify or limit the types of leases to which Section 324.021(9)(b) should apply, it could have done so. Accordingly, this court needs "look no further than the the language of the statute itself" in determining that Legislature intended to include in the application of Section 324.021(9)(b) all leases which exceed one year. Barnett Bank, 571 So.2d at 528-529.

As this Court observed in Kraemer v. Gen. Motors Acceptance Corp., 572 So.2d 1363, 1365-66 (Fla. 1990), Florida courts have long recognized the common law distinction between a lease and a conditional sales contract (i.e., a financing substitute): "[a] lease is different from a conditional sales contract . . . [a] sale has been consummated under a conditional sales contract even though the vendor holds legal title as security for the payment of the purchase price. On the other hand, a lease is an agreement for the delivery of property to another under certain limitations for a specified period of time after which the property is to be returned to the owner." Id. (emphasis added) citing Cox Motor Co. v. Faber, 113 So.2d 771 (Fla. 1st DCA 1959).

It is fundamental that "[s]tatutes ordinarily should be construed in such a way as to harmonize them with the existing common law . . . and statutes designed to alter the common law must speak in unequivocal terms." Stearns v. State, 498 So.2d

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also, Barnett Bank, 571 So.2d at 529 ("It is generally presumed that the legislature has knowledge of prior existing law when it passes later legislation").

982, 985 (Fla. 2d DCA 1986) (citations omitted). While Section 324.021(9)(b) undisputedly "constitutes an exception to the [common law] dangerous instrumentality doctrine in the case of long-term lessors", [Folmar V. Young, 16 Fla. L. Weekly D1688, 1689 (Fla. 4th DCA 1991)], there is no suggestion that the statute also alters the common law concept of a lease agreement. Consequently, the term "agreement to lease" as it appears in Section 324.021(9)(b) should be given its plain and ordinary meaning as derived by reference to Florida common law -- i.e., "an agreement for the delivery of property to another under certain limitations for a specified period of time after which the property is to be returned to the owner." Kraemer, 572 So.2d at 1366.

In support of its argument that Section 324.021(9)(b) should apply only to leases which are financing substitutes, Aetna relies on select portions of the transcript of the debate of the House of Representatives regarding passage of the subject legislation. Huntington does not dispute that several legislators characterized long-term automobile leases as financing substitutes or alternatives, and in many instances such leases very well may be financing substitutes. However, it is by no means clear that the legislators intended to exclude leases which are not financing substitutes from the application of Section 324.021(9)(b). Nowhere in the debate does there appear an affirmative intention to limit the statute's application to leases which are financing substitutes. On the contrary, the

debate reflects the Legislature's intent to treat long-term lessors of automobiles as sellers for purposes of financial responsibility, provided that the requisite insurance is maintained. For example, in discussing the proposed legislation, Representative Upchurch stated:

> This amendment is designed to help those people, many times it's to the advantage of businesses to lease automobiles far a year or more, all it is, is a tax advantage to that particular business, if you buy that Chevrolet or Ford or what have you, the dealer delivers that car and he has no more liability. What this amendment will do, is treat the dealer the same whether he leases you the car for a long time, or if he sells you the car, now I didn't like this amendment until the amendment that Mr. Meffert mentioned to you that's going to follow this one, that's going to require that when you lease a vehicle, you've got to have insurance as a lessee of a vehicle, the public is going to be protected, and your small dealers that lease or lease and sell cars will be treated fairly.

(Pet.App.D-2,3) (emphasis added).

Representative Gallagher concurred:

> If you listen to what Mr. Upchurch says, what he is saying is that we are treating a lease that is for one year or more very similar to a purchase, and that's what it is, that's the latest way of handling cars is to lease them, . . . what this Bill will say when amended, will be that you can lease a car, for a year or more and you will be required to carry the $100,000/$300,000 liability, and you won't have to pay for the insurance for the company that leases you the car.

(Pet.App.D-3) (emphasis added),

The above passages, as well as those quoted by Aetna (e.g., petitioner's brief at 11), reflect the Legislature's acknowledgement that leasing is an economically advantageous

method of acquiring (whether long term or permanently) an automobile. Significantly, none of the legislators discussed or questioned application of the statute in the context of leases with purchase options versus purchase obligations (see footnote 1 at p.5). Most importantly, there is no mention of any exclusion for long-term leases which do not provide a purchase option or abligation,

As a practical matter, whether a lease for a period exceeding one year involves a purchase right or obligation is largely irrelevant for purposes of financial responsibility. In both situations the lease provides a means of acquisition and useage of a motor vehicle at lower cost than a straight purchase, and the lessor relinquishes control of the vehicle to the lessee. Representative Meffert, the sponsor of the bill, aptly recognized this:

> There are two amendments, the first one deals with long term leases, the situation which is an alternative way of financing an automobile . . . It provides that when you use this alternative financing arrangement, that you still have the incidence of ownership with the person that has it, that is the lessee.

(Pet.App.D-3,4) (emphasis added).

Given (i) that the Legislature obviously appreciated the distinction between conditional lease/purchase agreements and straight leases and (ii) the lack of practical difference between a lease which provides an option or **obligation** to purchase and One which does not, Aetna's suggested interpretation would abrogate the Legislature's expressed intent by unduly and without

justification limiting the application of Section 324.021(9)(b). Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984).

Aetna additionally contends that 324.021(9)(b) should not apply to leases executed in foreign states by foreign leasing companies. Aetna's argument is ill-conceived for two reasons. First, Aetna advanced this argument in its briefs (see Aetna's initial brief at pp. 14-17 and reply brief at pp.3-6) and motions for rehearing and additional certification (see Aetna's motion for rehearing en banc, motion for rehearing at pp. 5-7, and motion for additional certification).[4] The Fourth District expressly addressed and properly rejected Aetna's arguments in its opinion (Pet.App.A-5,6), and again necessarily rejected Aetna's arguments by denying its motions for rehearing and additional certification. Second, as in the proceedings below, Aetna offers no justification for its position, other than an unsupported statement that the statute as interpreted pursuant to Aetna's argument would not deny equal protection to out-of-state lessors. Putting aside the question of whether the Legislature could constitutionally discriminate against out-of-state lessors, it is enough to say that the Legislature did not so limit the

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4/ For this Court's reference, copies of Aetna's briefs, motions for rehearing and motion for additional certification are contained in the Appendix to Huntington's brief.

application of the statute. For these and the reasons stated above, Aetna's argument on this issue must fail.

CONCLUSION

The language of Section 324.021(9)(b) is unambiguous and establishes that it applies to all automobile leases exceeding one year. There is no evidence of any legislative intent to limit the statute's application to leases which are financing substitutes. Thus, the certified question should be answered affirmatively and this Court should hold that Section 324.021(9)(b) applies to long-term leases which are not financing substitutes. Additionally, this Court should hold that the statute applies to all long-term lease arrangements meeting the specified criteria, not just those leases involving Florida lessors.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and **correct copy** of **the** foregoing **document** was **mailed** this 26th day **of** February 1992 **to** Bonita **L.** Kneeland, **Esq.**, Fowler, **White,** Gillen, Boggs, Villareal & **Banker,** P.A., P.O. **Box 1438,** Tampa, Florida 33601.

Suzanne H. Youmans