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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.: 607355

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

PETITIONER'S INITIAL BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

On July 16, 1988, in Broward County, Florida, Susan Strum was fatally injured in a motor vehicle collision with a 1986 Mazda RX7, registered and licensed in Ohio, and driven by Gail Stepien. (R. 144-151)[1] Gail Stepien was a permissive user of the Mazda, which was also titled in Ohio and owned by Huntington National Bank, an Ohio corporation.' (R. 144-151; 328-334 Ex. A) The vehicle had originally been leased on May 16, 1988 by the Bison Leasing Company, an Ohio company, to T.J. Stepien Enterprises (owned by Gail Stepien's father). (R. 328-334, Ex. B)[3] Bison Leasing Company had also simultaneously and irrevocably assigned all of its rights, title and interest in the lease to Huntington National Bank on that date, pursuant to the terms of an operating agreement between them. (R. 328-334, Ex. D; R. 415-424)[4]

The lease agreement between Huntington and T.J. Stepien Enterprises was for a term of four years and required limits of insurance in the amount of $100,000/$300,000/$50,000. The lease also provided in pertinent part:

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[1] For ease in reference on appeal, all citations to the Record on Appeal will be referred to by the letter "R" followed by the page in the record. All citations to the Appendix will be referred to by the abbreviation "App."

[2] The Petitioner, Aetna Casualty & Surety Company, will be referred to as "Aetna." The Respondent, Huntington National Bank, will be referred to as "Huntington."

[3] For this court's convenience, a copy of the lease agreement is attached to this brief as App. B.

[4] For this court's convenience, a copy of the operating agreement is attached to this brief as App. C.

> 9. OPTION TO PURCHASE: You [the lessee] have no option to purchase the vehicle
>
> ...
>
> 18. OWNERSHIP AND REGISTRATION: You [the lessee] understand and agree that this document is a Lease and not a contract of sale and that you will have no rights of ownership in and no title to the Vehicle. You agree to license plates and registration of the Vehicle in our name according to the laws of the State of Ohio.
>
> ...
>
> 26. ENTIRE AGREEMENT AND SEVERABILITY: You [the lessee] understand that this Lease is the entire agreement between you and us and may not be changed without the written consent of both parties. You understand and agree that this Lease shall be construed, interpreted and determined by the State of Ohio. You understand and agree that if any provision of this Lease is found unenforceable by any court, the remaining provisions of the Lease will remain in full force and effect.

(App. B).

In a wrongful death action filed on behalf of the deceased, the Plaintiff sued Gail Stepien, T.J. Stepien Enterprises, Bison Leasing Company, Inc., Huntington, and Aetna. (R. 1-5; 6-11, 144-151) The Defendants settled with the Plaintiff for $1.5 million dollars, dividing their contributions as follows: (1) St. Paul Insurance Company, as insurer of T.J. Stepien and Gail Stepien, paid its policy limits of $1 million dollars: (2) Huntington, as owner of the vehicle and Aetna, as uninsured motorist insurer of Susan Strum, each agreed to contribute an additional $250,000, while reserving their respective rights to litigate between

themselves the ultimate liability for the entire $500,000 balance. (R. 245-249, 250-251)

Huntington and Aetna sought declaratory relief in the form of their respective cross-claims and both moved for summary judgment. (R. 262-265, 288-294) Huntington contended that it was exempt from liability under section 324.021(9)(b) Fla.Stat., which provides:

> (b) 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.

(R. 262-265) Aetna contended that the statute was not applicable to the Ohio lease in this case.

The trial court entered final summary judgment in favor of Cross-Defendant, Huntington, and against Cross-Defendant, Aetna. (R. 486-487) Aetna appealed the trial court's decision to the Fourth District Court of Appeal on the following grounds': (1) that by the terms of the lease, section 324.021(9)(b) did not apply to the lease in question; (2) that the legislative history of the statute demonstrated that it was not intended to apply to leases which were not alternative methods of financing the cars or to foreign leases. The Fourth District Court of Appeal affirmed the

summary judgment in an opinion issued on August 28, 1991.[5] Although it affirmed the trial court's decision, the Fourth District Court of Appeal expressed the need to certify to this court an issue of great public importance as follows:

> Aetna's constitutional arguments as to the validity of section 324.021(9)(b) now appear to have been settled by the Florida Supreme Court's decision in Abdala v. World O. Leasing Inc., 16 F.L.W. S464 (Fla. June 27, 1991). Although the court had analyzed that statute in Kraemer as being based on the use of such lease as primarily as a long term financing arrangement, in this case it clearly served no such function, While we might have thus questioned the application of section 324.021 (9)(b) where long term financing of the purchase of an automobile is not involved, the language of the opinion in Abdala appears to sweep more broadly. We, therefore, think it appropriate to certify to the supreme court as a question of great public importance whether section 324.021(9)(b) is applicable to long term leases which are not automobile financing substitutes.

(App. A, pp. 6-7).

[5] The opinion of the Fourth District Court of Appeal is attached to this brief as App. A.

STION

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

ANSWER OF PETITIONER

THE LEGISLATIVE HISTORY OF SECTION 324.021(9)(b) MAKES CLEAR THAT IT IS NOT APPLICABLE, TO LONG TERM LEASES WHICH ARE NOT AUTOMOBILE FINANCING SUBSTITUTES.

SUMMARY OF THE ARGUMENT

In the Florida House of Representatives debate that preceded the passage of section 324.021(9)(b), the House members repeatedly justified the passage of the amendment on the grounds that long term leases of vehicles were actually alternative methods of financing vehicles. Thus, where a long term lease required the lessee to obtain $100,000/$300,000/$50,000 coverage, the legislature would recognize that the lessee, not the titled owner, was the actual "owner" of the vehicle for purposes of tort liability. (App. D) The sponsor of the bill in the House repeatedly explained to his colleagues that the amendment dealt with long term leases, "the situation which is an alternative way of financing an automobile." (App. D, pp. 3-4) He reiterated the rationale for passing this amendment as follows:

> If you use this alternative financing, you've got to carry $100,000/$300,000 liability . . . this is a good amendment. It simply covers what has been wrongly done in the past, and 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.

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

Obviously, the amendment was never intended to apply to the lease at issue in this case, a Ohio lease which gives the lessee no option to purchase, no ownership rights, returns the car back to the owner/lessor after four years, and in no way constitutes an alternative method for financing the car. In fact, section 324.021(9)(a) adopts the position that a lessee under a lease that

provides for a right of purchase or vests possession of the vehicle upon conditions met in the lease is deemed an "owner" of the vehicle. It is the further recognition and natural extension of this ownership described in section 324.021(9)(a) that relieves the titled owner/lessor of tort liability under section 324.021(9)(b).

To date, this court has consistently honored this legislative intent when construing this amendment, In Kraemer V. General Motors Acceptance Corporation, 572 So.2d 1363 (Fla. 1990), this court prefaced its decision to uphold the constitutionality of section 324.021(9)(b) on the fact that in the legislative discussions concerning this amendment, the representatives repeatedly discussed the fact that leases for more than one year were "nothing more than alternative methods for financing the purchase of a car." Id. at 1367 (emphasis added). Again, in Abdala V. World Omni Leasing, Inc., 583 So.2d 330 (Fla. 1991), this court emphasized the importance of the legislators' perception of the amendment, holding that the leases to which the amendment applied "are actually an alternative method of financing the purchase of a motor vehicle," leading the legislature to alter the definition of "owner" accordingly. Id. at 334 (emphasis added).

This court has in the past, and may now again, look beyond the surface language of the statute in order to honor the spirit of the statute, its legislative intent. Therefore, the amendment to the statute should not apply to the lease at hand, an Ohio lease which is clearly not an alternative method of financing a vehicle.

Alternatively, the Ohio lease at hand would not be subject to the "double insurance" which the Florida Legislature so clearly sought to avoid since lessees from foreign states are not required to absorb their lessor's cost of insurance. On the alternative ground that the statutory amendment does not pertain to a foreign lease, the opinion below should be reversed.

ARGUMENT

THE LEGISLATIVE HISTORY OF SECTION 324.021(9)(b) MAKES CLEAR THAT IT IS NOT APPLICABLE TO LONG TERM LEASES WHICH ARE NOT AUTOMOBILE FINANCING SUBSTITUTES.

The Members of the Florida House of Representatives extensively debated Bill 902 involving the amendments to section 324.021 Fla.Stat. which became section 324.021(9)(b).[6] In the debate, the members of the House consistently and emphatically justified the amendments on the fact that long term leases which constituted nothing more than an alternative method of financing an automobile should be recognized as placing actual ownership of the vehicle in the hands of the lessee. If the lessee was also required to obtain $100,000/$300,000/$50,000 coverage, the lessee, not the titled owner, would then be considered the "owner" of the vehicle for purposes of tort liability. (App. D)

In speaking against passage of the amendment, Representative Woodruff expressed the following fear:

> Ladies and Gentlemen, what Mr. Meffert is trying to do is he's trying to get certain people out from responsibility as having an ownership of an automobile. At the present time, Florida has a dangerous instrumentality rule and people go out and rent automobiles and the rental company makes a profit off it

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[6] Fla. H.R. transcript of tape recording of proceedings (June 6, 1986) (on file with Clerk) (statement from floor debate). For this court's convenience, the Florida House of Representatives debate on Bill 902 amending Section 342.021, Fla.Stat. is attached to this brief as App. D.

> and they get the automobile back and they sell it and make a profit on it and now they don't want to have to pay in case that individual has a wreck as they would presently have to pay under the State of Florida.

(App. D, p. 1) However, Representative Meffert, the sponsor of the Bill attempted to calm Representative Woodruff's concerns by explaining that the Bill pertained to leases which were, in reality, alternative methods of financing an automobile rather than the situation Representative Woodruff described. Representative Meffert's explanation is cited in full (emphasis added) as follows:

> There are two amendments, the first one deals with long term leases, the situation which is an alternative way of financing an automobile. The next amendment is one in response to the trial lawyers, in that it requires financial responsibility in the 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 wouldn't have to carry any liability insurance. If you use this alternative financing, you've got to carry $100/$300 liability . . . this is a good amendment. It simply covers what has been wrongly done in the past, and 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.

(App. D, pp. 3-4) Representative Gallagher, speaking in support of the amendment, agreed:

> 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 . . . and so this will save you from paying for double insurance if you lease a car the same as you wouldn't have to pay for double insurance if you purchase a car.

(App. D, p. 3) The reason for imposing limits of $100,000/$300,000/$50,000 was explained by Representative Silver as follows:

> The reason for that is that's kind of customary in the trade as it exists today and most of the people that are doing this type of arrangement are doing it as an alternative financincr arrancrement and this is usually a minimal limit that you have to carry in order to carry umbrella policies or other types of liability insurance.

(App. D, p. 5) The House adopted the amendment with 91 yeas and 10 nays.

Florida law has long held that a statute is to be construed in such a way as to achieve the legislative intent. Johnson v. State, 336 So.2d 93 (Fla. 1976). Legislative intent is always the polestar by which courts must be guided in interpreting statutory provisions. Parker v. State, 406 So.2d 1089 (Fla. 1981). This court has held that it must look not only at the plain language of the statute, but also its history. Carawan v. State, 515 So.2d 161 (Fla. 1987). In construing this statute, this court has held that it will consider the history of the statute, the evil to be corrected, the intention of the law-making body, the subject regulated, and the object to be obtained. Smith v. Ryan, 39 So.2d 281 (Fla. 1949). Legislative intent must be given effect even though it may appear to contradict the strict letter of the statute and well-settled cannons of construction. Id. A literal interpretation should not be given to a statute if that interpretation leads to a purpose not designated by the law makers. City of Boca Raton V. Gidman, 440 So.2d 1277 (Fla. 1983).

The House debate leaves no question that the legislature intended the amendment to pertain to situations where a lease agreement is actually an alternative method of financing the purchase of a motor vehicle. Thus, when called on to interpret this statutory amendment, this court and the intermediate appellate courts in Florida have treated the legislative history of this amendment as crucial to an understanding of its application. To date, the courts have consistently honored legislative intent when construing this amendment. For example, in Folmar v. Young, 560 So.2d 798 (Fla. 4th DCA 1990), amended on denial of rehearing, 16 F.L.W. D1688 (Fla. 4th DCA, June 26, 1991), the court also looked to the House debate for guidance. Noting that, in deciding to pass section 324.021(9)(b), "the representatives repeatedly discussed the fact that leases for more than one year are nothing more than an alternative method for financing the purchase of a car," the Fourth District concluded that "[u]nder these circumstances, there is no reason to distinguish between the liability of the person who sells the vehicle as opposed to the lessor who leases it. Id. at D1689. (emphasis added). See also, Perry v. G.M.A.C. Leasing, 549 So.2d 680 (Fla. 2d DCA 1989), rev. denied, 558 So.2d 18 (Fla. 1990) (finding section 324.021(9(b) applicable when the lease was for five years, gave the lessee the option to Purchase the vehicle at the end of the lease term and required the lessee to obtain the insurance specified in the statute which, in fact, the lessee had obtained).

In Kraemer v. General Motors Acceptance Corporation, 572 So.2d 1363 (Fla. 1990), this court agreed with the Fourth District in Former in upholding the constitutionality of section 324.021(9)(b). In addition, this court emphasized the importance of the fact that "[i]n the legislative discussions concerning this amendment, the representatives repeatedly discussed the fact that leases for more than one year are nothing more than alternative methods for financing the purchase of the car." Id. at 1367 (emphasis added). This court citedthe words of Representatives Gallagher, Silver and Upchurch who all stressedthat these long term leasing arrangements have become a way of alternatively financing the sale of a car. Id. at 1367. This court then held:

> Under these circumstances, there is no reason to distinguish between the liability of the person who sells the vehicle as opposed to the lessor who leases it.

Id. (emphasis added).

This court revisited the issue of the interpretation of section 324.021(9)(b) in Abdala v. World Omni Leasing, Inc., 583 So.2d 330 (Fla. 1991). Again, this court emphasized the importance of the legislators' perception of the amendment by stating:

> In arriving at our conclusion in Kraemer, we were somewhat affected by the statute under consideration and the perception the legislature held on the liability of long term lessors and its effect on long-term financing. By implication, we recognize its viability.

Id. at 333. The most important point made by this court in Abdala, however, was the conclusion that in a leasing situation which is actually an alternative method of financing, the actual owner of

the motor vehicle is the lessee for all practical purposes, a concept recognized and given credence by the Florida Legislature. In fact, this court in Abdalq underscored its reliance on the legislative history by holding that the intention of the legislature to honor this alternative method of financing the purchase of a motor vehicle provided the "rational basis for the legislation" by stating as follows:

> The legislature, by enacting subsection 324.021(9)(b), simply redefined "owner" of a motor vehicle so as to exclude a long-term lessor upon satisfaction of the statutory pre-conditions. The legislative history behind the statute indicates that the legislature recognized that leases for a period in excess of one year are actually an alternative method of financing the purchase of a motor vehicle to take advantage of certain tax considerations and, therefore, altered the definition of "owner" accordingly.

Id. at 334 (emphasis added).

In the opinion issued in the instant case, the Fourth District remarked that it would have questioned the application of the statutory amendment in this case after Kraemer because the lease was not a financing arrangement, the car was required to be returned to the owner after the term of four years, and the lessee had no option to purchase the vehicle at the end. However, the Fourth District was concerned that the language of this court's opinion in Abdala appeared to "sweep more broadly." It is apparent, however, that this court's reiterance, in Abdala, of the statutory intent to recognize the lessee as the true owner of a vehicle when a lease is merely an alternative method of financing the purchase of a motor vehicle, requires that component to exist

in order to trigger application of the statute. In fact, the Senate Staff Analysis[7] pertaining to this amendment comments that the legislature should revise the amendment "to properly evidence the legislative intent underlying it." (App. E, p. 2) This court and the intermediate appellate courts have corrected this deficiency, however, by consistently looking to the House debate when determining the application of the statute.

This court has in the past, and may now again, look beyond the surface language of the statute in order to honor the spirit of the statute, its legislative intent. Clearly, the members of the House did not wish this statute to be approved under scenario described by Representative Woodruff, where the rental company "makes a profit off it and they get the automobile back and they sell it and make a profit on it," but do not want to have financial responsibility under Florida's dangerous instrumentality rule. (App. D., p. 1)

Obviously, the amendment was never intended to apply to the lease at issue in this case, a lease which gives the lessee no option to purchase, no ownership rights, and in no way constitutes an alternative method of financing a car. In fact, section 324.021(9)(a) adopts the position that a lessee under a lease that provides for a right of purchase or vests possession of the vehicle upon conditions met in the lease is deemed an "owner" of the vehicle. It is the further recognition and natural extension of

[7] For this court's convenience, a copy of the Senate Staff analysis for Senate Bill 902 is attached to this brief as App. E.

this type of ownership described in section 324.021(9)(a) that relieves the titled owner/lessor of tort liability under section 324.021(9)(b). Thus, the certified question should be answered in the negative and section 324.021(9)(b) should be applicable only to long term leases which are actually automobile financing substitutes.

Once this court accepts a case for consideration, its review is not limited to the question certified. Bell v. State, 394 So.2d 979, 980 (Fla. 1981); [illegible] o an , 238 So.2d 594, 596 (Fla. 1961). Thus, Aetna seeks this court's consideration as to whether section 324.021(9)(b) applies to leases executed in foreign states by foreign leasing companies. Aetna asks this court to determine that such leases also do not fall within the legislative intent of the amendment. An alternative reason for passing the amendment was economic -- that at this time, the lessor of the vehicle was passing on his increased costs of carrying insurance on the vehicle to the lessee, who also had to purchase the insurance coverage. The legislators were concerned that the Florida consumer was thus paying for double premiums of insurance, (App. D, p. 3)

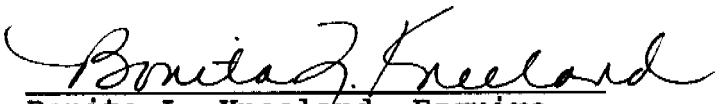
Ohio lessees would not be subject to the "double insurance" which the Florida legislature so clearly sought to avoid. Lessees from foreign states are not required to absorb their lessors' cost of insurance, as the dangerous instrumentality is unique to Florida. Thus, there would be no denial of equal protection because the "rational basis" standard of review is satisfied. This

standard is applied to a statute where there is no suspect classification (i.e., no classification based on race, religion or gender). Under a "rational basis" standard of review, a court inquires only as to whether it is conceivable that the statute bears some rational relationship to a legitimate state purpose. The Florida High School Activities Ass'n. v. Thomas, 434 So.2d 306, 308 (Fla. 1983). Thus, on the alternative ground that the amendment does not pertain to a foreign lease, the opinion below should be reversed.

CONCLUSION

The legislative history of section 324.021(9)(b) makes clear that it is not applicable to long term leases which are not automobile financing substitutes. Thus, the affirmative question should be answered in the negative. In the alterative, or in addition to the above, this court should hold that the amendment does not pertain to foreign lease.

Respectfully submitted



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail to JEFF LLOYD, ESQUIRE, Squire, Sanders & Dempsey, 3000 Miami Center, 100 Chopin Plaza, Miami, FL 33131 on January 13, 1992.

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