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SID J. WHITE
MAR 23 1992
CLERK, SUPREME COURT
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Chief Deputy Clerk

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 REPLY BRIEF ON THE MERITS

Bonita L. Kneeland, Esquire
FOWLER, WHITE, GILLEN, BOGGS, VILLAREAL & BANKER, P.A.
Post Office Box 1438
Tampa, FL 33601
(813) 228-7411
Attorneys for Petitioner, AETNA CASUALTY AND SURETY COMPANY

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I QUESTION

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.

REPLY ARGUMENT

The Respondent, Huntington, argues that this court cannot go beyond the statutory language in interpreting this statute. However, this conclusion ignores the fact that this court has already established a precedent of looking beyond the surface language where this statute is concerned. In both Kraemer v. General Motors Acceptance Corporation, 572 So.2d 1362 (Fla. 1990) and Abdala v. World Omni Leasing, Inc., 583 So.2d 330 (Fla. 1991), this court has pierced the statute in order to determine both the purpose of and the intent behind the statutory amendment in order to best interpret whether its application would be constitutional.

In both of the above-cited decisions, this court prefaced its decision to uphold the constitutionality of section 324.021(9)(b) on the House of Representatives debate repeatedly stressing that leases for more than one year were nothing more than alternative methods of financing the purchase a vehicle. Kraemer, 572 So.2d at 1367. This court also recognized that the definition of owner was properly altered in cases where leases were actually an alternative method of financing the purchase of a car. Abdala, 583 So.2d at 334.

Huntington now argues that this court is incorrect in piercing the statute to look at the legislative intent underlying its passage. Huntington also argues that the interpretation of the intent of the statute given by this court and intermediate appellate courts in Florida have, to date, been wrong. Yet, this court has before it again for consideration the House of

Representatives debate obviously establishing the legislative intent of this statute to apply to leases that are actually long term financing arrangements. Twice before, in Kraemer and Abdala, this court has reviewed the house debate and concluded that the legislators were addressing leases that were long term financing substitutes. After examining this language, both the Fourth District Court of Appeal in Folmer v. Young, 560 So.2d 798 (Fla. 4th DCA 1990), amended on denial of rehearing, 591 So.2d 220 (Fla. 4th DCA 1991) and the Second District Court of Appeal in Perry v. G.M.A.C. Leasing, 549 So.2d 680 (Fla. 2d DCA 1989), rev. denied, 558 So.2d 18 (Fla. 1990) concluded that section 324.021(9)(b) was applicable when the lessee had the option to purchase the vehicle at the end of the lease term. Aetna respectfully submits that this court and the intermediate appellate courts were correct in determining that the legislators intended to limit application of the statute to alternative financing methods.

The fact that the legislators could have put the clarifying language itself in the statute if it had so chosen is a moot point when, as here, we have the legislators' own words (particularly the testimony of the sponsor of the bill) telling us what they intended in passing the house bill. Representative Meffert, who sponsored the bill in the House, where it was initiated, aggressively advocated passage of the amendment on the basis that it dealt with situations which were "an alternative way of financing an automobile." (App. D. pp. 3-4, Initial Brief). Representative Meffert reiterated the logic of this amendment by stating that in

situations involving alternative financing arrangements, the incidence of ownership is actually with the lessee himself. (Id.)

Huntington raises a valid point in stating that section 324.021(9)(a) and 324021(9)(b) should be read in pari materia. In doing so, the logical result is that Aetna's position prevails. It is only logical that someone must be the "owner" of the motor vehicle in question. Under section 324.021(9)(a), if there exists a lease with a right to purchase, the lessee is the "owner." Under section 324.021(9)(b) if there is a lease for one year or longer, the lessor will not be deemed the "owner." Thus, if section 324.021(9)(b) was not intended to be limited to leases with the right to purchase, no one would be the "owner" of the vehicle under Huntington's position. The lessor would not be the "owner" because he is exempted by section 324.021(9)(b). The lessee would not be the "owner" because a long term lease without a right to purchase does not fit the definition of "owner" under section 324.021(9)(a). Therefore, if we accept Huntington's position, no one is the owner of the vehicle in this case. In reading the two parts of the statute together, the second part of the statute only makes sense when the limitation noted under the first part of the statute applies. The only logical conclusion is that a long term lease changes the incidence of ownership only when there is a right of purchase in the lease itself that sets out an anticipated or potential vested ownership.

Clearly, section 324.021(9)(b) is a logical extension of 324.021(9)(a) and, by implication, refers to leases with possession

rights. On the face of the statute, its language can be reconciled only by accepting Aetna's position. On the other hand, if reading the two portions of the statute together creates an ambiguity on the face of the statute, courts are required to examine the legislative intent in drafting the statute. This court has examined the legislative intent in the past and has reached the conclusion advocated by Aetna. So too, this logical conclusion should be reached in the case at hand.

The Petitioner, Aetna, is asking no more of this court in this case than to honor the same legislative intent. There is nothing sacrosanct about the words used in a statute if the legislators have obviously Contemplated a special application of those words. This case offers this court the opportunity to reinforce its holdings in Kraemer and Abdala by affirming again that the legislative history of section 324.021(9)(b) makes clear that the exception to the dangerous instrumentality doctrine of ownership liability, which forms the heart of this statute, is applicable only to long term leases that are automobile financing substitutes.

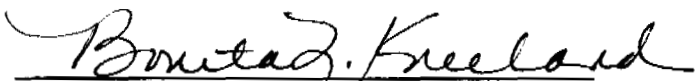
There is no question in this case that paragraph 9 of the lease states that the lessee has "no option to purchase the vehicle." Under this provision, the lessee has no pending, anticipatory, or even potential ownership rights. Paragraph 10 of the contract makes clear that the lease is nothing but a lease and is not to be construed as any alternative financing substitute. The Fourth District Court of Appeal below has also recognized that, in this case, the lease clearly served no such function. Thus,

there is no logical connection whatsoever in this lease to the exception to the dangerous instrumentality doctrine of ownership liability permitted by the legislators who enacted section 324.021(9)(a) and (b). This court, in Kraemer and Abdala have already determined that the intent of the statute is of paramount importance and that it was intended to apply to leases serving as long term financing arrangements. Aetna requests that the court affirm its earlier holdings by answering the certified question in the negative.

CONCLUSION

Aetna asks this court to answer the certified question in the negative and to reverse and remand for entry of summary judgment in favor of Aetna.

Respectfully submitted



Bonita L. Kneeland, Esquire
FOWLER, WHITE, GILLEN, BOGGS,
VILLAREAL & BANKER, P.A.
Post Office Box 1438
Tampa, FL 33601
(813) 228-7411
Attorneys for Petitioner, AETNA
CASUALTY AND SURETY COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail to SUZANNE H. YOUMANS, ESQUIRE, Squire, Sanders & Dempsey, 320 Royal Poincian Plaza, Palm Beach, FL 33480 on March 23, 1992.

Bonita J. Kneeland
Attorney