IN THE SUPREME COURT OF FLORIDA

CASE NO.

ALAMO RENT-A-CAR, INC.,

Petitioner,

vs.

MICHAEL MANCUSI,

Respondent.
_____/

On Petition for Discretionary Review from the District Court of Appeal of Florida, Fourth District

PETITIONER'S JURISDICTIONAL BRIEF
(With Separately Bound Appendix)

WALTON LANTAFF SCHROEDER & CARSON
By: G. BART BILLBROUGH
Attorneys for Petitioner
One Biscayne Tower, 25th Floor
2 South Biscayne Boulevard
Miami, Florida 33131
(305) 379-6411

TABLE OF CONTENTS

TABLE OF AUTHORITIES

WALTON LANTAFF SCHROEDER & CARSON
TWENTY-FIFTH FLOOR, ONE BISCAYNE TOWER, 2 SOUTH BISCAYNE BOULEVARD, MIAMI, FL 33131 • TEL. (305) 379-6411

INTRODUCTION

The Petitioner, Alamo Rent-A-Car, Inc., seeks this Court's review of the April 22, 1992 opinion of the Fourth District Court of Appeal. Alamo Rent-A-Car, Inc. v. Mancusi, 599 So.2d 1010 (Fla. 4th DCA 1992). This Court has jurisdiction because the opinion below expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. Article V, Section 3(b)(3), Fla. Const. (1980); Fla.R.App.P. 9.030(a)(2)(A)(iv).

STATEMENT OF THE CASE AND THE FACTS

For jurisdictional purposes, the following Statement of the Case and Facts is derived exclusively from the Fourth District Court of Appeal's opinion below. See, Alamo Rent-A-Car, Inc. v. Mancusi, 599 So.2d 1010 (Fla. 4th DCA 1992).

This was an appeal brought by Defendant Alamo[1] from a final judgment awarding Plaintiff, Michael Mancusi, $300,000.00 in compensatory damages and $2,700,000.00 in punitive damages in a malicious prosecution action. Mancusi brought a malicious prosecution action against Alamo subsequent to the termination of a criminal case in which Mancusi was charged with and prosecuted for having violated § 817.52(3), Fla. Stat. (1985), for failure to redeliver a hired vehicle. The State brought criminal charges against Mancusi after an Alamo employee signed an affidavit that was utilized as part of a probable cause affidavit against Mancusi. (A. 2).

The facts leading up to Mancusi's arrest on the criminal charges were contested at trial. The Fourth District noted, however, that Mancusi rented a vehicle from Alamo with the

---

[1] The Petitioner, Alamo Rent-A-Car, Inc. was the Defendant in the trial court and will be referred to on appeal as the Petitioner, the Defendant, or as "Alamo".

The Respondent, Michael Mancusi, was the Plaintiff in the trial court and will be referred to on appeal as the Respondent, the Plaintiff, or by name.

References to the Appendix will be designated by the letter "A".

alleged belief that his contract entitled him to use of the vehicle for one month, while the contract showed that the rental period was for one week only. Eventually, Alamo was able to contact Mancusi, who stated his belief that he had rented the vehicle for one month, and asked Alamo to retrieve the vehicle from his business location because it would not start. Alamo had the vehicle towed to its lot, and collected payment for only a portion of the time that Mancusi had used the vehicle. Although the vehicle had been returned, the Fort Lauderdale Police Department continued its investigation into the incident, and approximately two weeks after the vehicle was returned to Alamo, Mancusi was taken to the Fort Lauderdale Police Department, questioned, and arrested. (A. 2).

The transcript of Mancusi's criminal case, proffered by Alamo during the malicious prosecution trial, reveals that after approximately one-half day of testimony in Mancusi's criminal trial, the State announced a nolle prosequi following lengthy discussions between the State, Alamo, and Mancusi. During these discussions, it was determined that the State would announce a nolle prosequi, and Mancusi would pay $364.00 to Alamo and execute a release in favor of the City of Fort Lauderdale, the State Attorney's Office, the State of Florida, and the City of Dania. Alamo also proffered the testimony of Mancusi's criminal attorney, which indicated that the nolle prosequi was announced after a bargain had been struck between the State and Mancusi. (A. 2-3).

The trial court did not allow Alamo to admit testimony regarding the circumstances surrounding the nolle prosequi because the trial court ruled that the nolle prosequi Mancusi received after jeopardy had attached in his criminal case constituted a bona fide termination of the criminal litigation in Mancusi's favor as a matter of law. In the Fourth District Court of Appeal, however, this ruling was found to be erroneous. (A. 3).

The Fourth District Court of Appeal found that the trial court's ruling was in error because a nolle prosequi entered after jeopardy attaches does not indicate the innocence of the accused as a matter of law. Rather, to determine whether the nolle prosequi indicates a defendant's innocence, the Fourth District stated a jury should have been allowed to hear the circumstances surrounding the termination of Mancusi's criminal trial, including the proffered testimony of Mancusi's attorney, the criminal case transcript, and the proffered testimony of the assistant state attorney who prosecuted Mancusi's criminal case. The Fourth District stated that only after considering this evidence could the trier of fact determine whether the nolle prosequi Mancusi received was bargained for or bona fide. The Fourth District reversed the judgment in favor of Mancusi and remanded the cause for a new trial in accordance with its opinion. (A. 3-4).

This petition for discretionary review ensued.[2]

SUMMARY OF THE ARGUMENT

While the reversal of the final judgment by the Fourth District was eminently correct in the instant case, its interpretation of the bona fide termination element of the malicious prosecution cause of action and who bears the burden of proof as to that issue directly and expressly conflicts with a number of decisions of other district courts of appeal. The various district court of appeal interpretations of these points will have a confusing impact on the further proceedings to be had in the trial court on remand. Because this conflict goes to the very heart of the burden of proof and the proper construction of a key element to a common law cause of action, the public interest will best be served by this Court's acceptance of jurisdiction to clarify these fundamental issues associated with a malicious prosecution claim.

---

[2] In the event that this Court wishes to review, for any reason, the contentions of Alamo in the Fourth District below, a copy of Alamo's initial brief can be found at Appendix 6-91.

ARGUMENT

THE FOURTH DISTRICT OPINION BELOW EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL IN INTERPRETING A KEY ELEMENT OF A MALICIOUS PROSECUTION CAUSE OF ACTION AND WHAT PARTY BEARS THE BURDEN OF PROOF THEREON.

In order for a plaintiff to succeed on a claim of malicious prosecution in Florida, the following six (6) elements must be proven:

(1) The commencement of a judicial proceeding;

(2) Its legal causation by the present defendant against the plaintiff;

(3) Its bona fide termination in favor of the plaintiff;

(4) The absence of probable cause for the prosecution;

(5) Malice; and

(6) Damages.

Dorf v. Usher, 514 So.2d 68, 69 (Fla. 4th DCA 1987); Union Oil of California, Amsco Div. v. Watson, 468 So.2d 349 (Fla. 3d DCA), rev. denied, 479 So.2d 119 (Fla. 1985).

As to the "bona fide termination" element, the courts of this state have recognized that it can be established in one of two ways:

> The essential element of a bona fide termination of the criminal prosecution in favor of the persons bringing the malicious prosecution action has been held to be satisfied if there has been an adjudication on the merits favorable to him or if there

> is a good faith nolle prosequi or declination to prosecute.

Gatto v. Publix Supermarket, Inc., 387 So.2d 377, 380-81 (Fla. 3d DCA 1980).[3] Evidence of a dismissal or termination of proceedings - in and of itself - is insufficient to meet the third element of the malicious prosecution cause of action. Instead, the Plaintiff must show the termination of the proceedings to have been "bona fide." Gatto v. Publix Supermarket, Inc., supra; Jackson v. Biscayne Medical Center, Inc., 347 So.2d 721 (Fla. 3d DCA 1977); Davis v. McCrory Corp., 262 So.2d 207 (Fla. 2d DCA 1972).

"Bona fide", as used in this sense, means that the termination of the proceedings was not bargained for or obtained by the accused upon a promise of payment or restitution. Jones v. State Farm Mut. Auto. Ins. Co., 578 So.2d 783, 785-86 (Fla. 1st DCA 1991); Union Oil of California, Amsco Div. v. Watson, supra, 468 So.2d at 353; Freedman v. Crabro Motors, Inc., 199 So.2d 745 (Fla. 3d DCA 1967).

In the context of the instant appeal, it is absolutely clear that the above-cited cases require Mancusi to show that the termination of the criminal proceedings was "bona fide". To satisfy this essential element requirement, Mancusi must show that the termination was not bargained for or obtained by him upon a promise of payment or restitution. If Mancusi

---

[3] It is undisputed that no "favorable termination on the merits" occurred in this case.

cannot carry the burden on this element, the above-cited cases mandate judgment for Alamo.

The Fourth District, however, has stated in its opinion that Alamo, not Mancusi, bears the burden of proof on the bona fide termination issue. In addressing the bona fide termination element, the panel below stated:

> Further, in Liu v. Mandina, 396 So.2d 1155 (Fla. 4th DCA 1981), this court held that "[I]t is defendant's burden to establish that the decision to nolle prosequi was based solely on restitution. Id. at 1156.

Mancusi, supra, 599 So.2d at 1012. Interestingly, a review of the Liu opinion finds no citation of authority to support that contention. Simply stated, this ruling, which places the burden of proof on the defendant, is in direct and express conflict with numerous other court decisions requiring the plaintiff to establish this essential element requirement. Gatto v. Publix Supermarket, Inc., supra; Jones v. State Farm Mut. Auto. Ins. Co., supra; Union Oil of California, Amsco Div. v. Watson, supra; Freedman v. Crabro Motors, Inc., supra.

The second basis for conflict jurisdiction can be found in the same quoted language from the court below. Prior to the Mancusi and Liu opinions of the Fourth District, it has never been a requirement of the bona fide termination element to establish that the dismissal "was based solely on restitution." Once again, the Fourth District has taken an overly restrictive interpretation of the bona fide termination element which is in

WALTON LANTAFF SCHROEDER & CARSON
TWENTY-FIFTH FLOOR, ONE BISCAYNE TOWER, 2 SOUTH BISCAYNE BOULEVARD, MIAMI, FL 33131 • TEL. (305) 379-6411

direct and express conflict with other district court of appeal decisions.

For example, a "bona fide termination" (where the state files a nolle prosequi) means that the "termination was not bargained for or obtained by the accused upon a promise of payment or restitution." Union Oil of California, Amsco Div. v. Watson, supra, 468 So.2d at 353 n. 3 (emphasis added); see also, Jones v. State Farm Mut. Auto. Ins. Co., supra, 578 So.2d at 786 (a dismissal resulting from negotiation, settlement or consent is generally not deemed a favorable termination of the proceedings because it reflects ambiguously on the merits of the action); Freedman v. Crabro Motors, Inc., 199 So.2d 745 (Fla. 3d DCA 1967). Until Mancusi and Liu, negotiations and bargained for dismissals precluded recovery for malicious prosecution. Id. Mancusi and Liu, however, state that only evidence of dismissal "solely" in exchange for restitution shall defeat a malicious prosecution claim on this element. The express and direct conflict is clear and unequivocal on the face of the above-cited opinions.

This Court should accept jurisdiction because the conflict presented goes to the very heart of a common law cause of action in this state. The conflict deals with critical burden of proof issues and proper treatment of the cause of action's essential elements. Maintenance of the status quo will result in divergent treatments of malicious prosecution claims brought

by litigants in this state. To maintain uniformity, the public interest mandates review of these issues on the merits.

The exercise of this Court's jurisdiction is warranted.

CONCLUSION

Based upon the foregoing rationale and authorities, Alamo Rent-A-Car, Inc. respectfully requests this Honorable Court to exercise its discretionary jurisdiction by accepting this case for consideration of the important issues raised by this dispute on the merits.

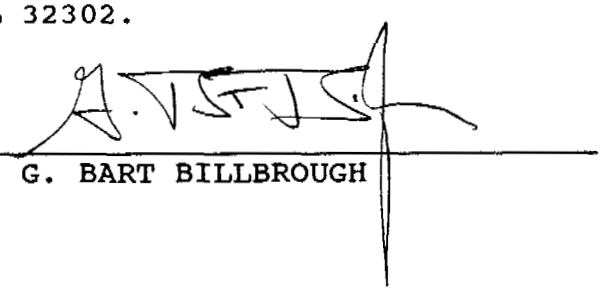
Respectfully submitted,

WALTON LANTAFF SCHROEDER & CARSON
Attorneys for Petitioner
One Biscayne Tower, 25th Floor
2 South Biscayne Boulevard
Miami, Florida 33131
(305) 379-6411

By _____
G. BART BILLBROUGH
Fla. Bar No.: 334261

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 20th day of August, 1991 to: WALTER G. CAMPBELL, JR., ESQ., 700 Southeast 3rd Avenue, Suite 100, Fort Lauderdale, FL 33316; RICHARD D. HELLER, ESQ., Tripp, Scott, Conklin & Smith, 1110 Southeast 6th Street, 28th Floor, Ft. Lauderdale, FL 33301; CRAIG WILLIS, ESQ., Assistant Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, FL 32399-1050; ROBERT MIERTSCHIN, JR., ESQ., 4000 Hollywood Boulevard, Presidential Circle, 465 South Tower, Hollywood, FL 33020; and JOHN BERANEK, ESQ., Aurell, Radey, Hinkle & Thomas, 101 North Monroe Street, Suite 1000, P.O. Drawer 11307, Tallahassee, FL 32302.

By 
G. BART BILLBROUGH

GBB/dlc
1961-0046-50