IN THE SUPREME COURT OF FLORIDA

CASE NO. 85,492

2 DCA Case No. 94-01400

Fla. Bar No. 137172

DAVID J. ADY, as Personal Representative of the Estate of JANET A. ADY, deceased,

Petitioner,

vs.

AMERICAN HONDA FINANCE CORPORATION a/k/a AHFC, a California corporation,

Respondent.
_____/

PETITIONER'S BRIEF AND APPENDIX IN SUPPORT OF JURISDICTION
(Conflict Certiorari)

ARNOLD R. GINSBERG, P.A.
and
NANCE, CACCIATORE, SISSERSON
& DURYEA, P.A.
410 Concord Building
Miami, Florida 33130
(305) 358-0427
Attorneys for Petitioner

TOPICAL INDEX

LIST OF CITATIONS AND AUTHORITIES

I.

INTRODUCTION

The petitioner, David J. Ady, as personal representative of the estate of Janet A. Ady, deceased, for and on behalf of lawful claimants/survivors, the estate of Janet A. Ady, deceased, David J. Ady, husband, and children, Kimberly Weinmeister, Kelly Jo Ady and David Ady, was the plaintiff in the trial court and was the appellant in the Second District. The respondent was the defendant/appellee. In this brief of petitioner on jurisdiction the parties will be referred to as the plaintiff and the defendant and, alternatively, by name. The symbol "A" will refer to the rule-required appendix which accompanies this brief. All emphasis has been supplied by counsel unless indicated to the contrary.

II.

JURISDICTIONAL STATEMENT

The instant cause is in direct and irreconcilable conflict with the Fourth District's opinion in GEDERT v. SOUTHEAST BANK LEASING CO., 637 So. 2d 253 (Fla. App. 4th 1994). In GEDERT the court, in speaking directly about Section 324.021(9)(b), Florida Statutes, stated:

> "Because the statute contains no exception to the requirement that the lessee have insurance in effect at the time of the accident, we disagree with Southeast's position that the lessor's contingent liability policy can fulfill the statutory requirement. Accordingly, we hold that Southeast's contingent liability policy does not satisfy the statutory requirement that Grannum (lessee) have valid insurance at the time of the accident." 637 So. 2d at page 254.

In GEDERT the court reversed the final judgment entered in favor of the long-term lessor. The court found that where the lessee did not have in place on the day of the accident the insurance required by the statute, the "contingent liability policy" obtained by Southeast (the lessor) did not satisfy the statutory requirement of Florida Statute 324.021(9)(b).

In the instant cause the Second District stated:

> "The appellant, relying on our sister court's opinion in Gedert v. Southeast Bank Leasing Co., 637 So. 2d 253 (Fla. 4th DCA 1994), contends that AHFC is not exempt from the dangerous instrumentality doctrine because the lessee did not obtain the insurance policy in question. The appellee, on the other hand, contends that Mr. Pelley was an insured under an insurance policy that complied with Section 324.021(9)(b) and that the trial court correctly entered a summary judgment in its favor. We agree with appellee." (A. 3)

The Second District affirmed the final judgment entered in favor of the long-term lessor. The court found that where the lessee did not have in place on the day of the accident the insurance required by the statute, the "contingent liability policy" obtained by AHFC (the lessor) did satisfy the statutory requirement of Florida Statute 324.021(9)(b).

This Court has jurisdiction because the Second District squarely stated:

> "To the extent that our sister court's decision in Gedert would require a different result, we disagree with it." (A. 5)

Conflict exists!

III.

STATEMENT OF THE CASE AND FACTS

The facts pertinent to the jurisdictional issue may be learned from the opinion herein sought to be reviewed. As pertinent the opinion provides:

* * *

"...Janet A. Ady was killed as the result of an automobile accident which occurred in Lee County, Florida, on March 8, 1993. One of the three vehicles involved in the accident was a Honda automobile owned by AHFC and leased to, and driven by, Robert J. Pelley.

"David J. Ady,...filed a civil action against AHFC and several others. The complaint alleged that Mrs. Ady was killed as a result of Mr. Pelley's negligence and/or the negligence of the driver of the other vehicle involved in the accident. Mr. Ady contended that AHFC was responsible to the estate because of the dangerous instrumentality doctrine. AHFC, in addition to denying the material allegations of the complaint, affirmatively alleged that it was not liable under the dangerous instrumentality doctrine because of Section 324.021(9)(b), Florida Statutes (1991).

* * *

"It is undisputed in this case that the lease was for 60 months and required the lessee to obtain insurance coverage with limits not less than those set forth in Section 324.021(9)(b). The lessee did not purchase this insurance, but was an insured under a policy purchased by AHFC. This policy provided the insurance required by the statute to any lessee who did not purchase his own insurance pursuant to the requirements of the lease. The limits of the policy were tendered to the appellant.

* * *

"In this case the vehicle involved was insured to the limits required by the statute. The lessee, Mr. Pelley, was insured according to those limits and AHFC was, accordingly, exempt from liability. The fact that Mr. Pelley did not purchase or pay for the insurance called for under the lease, does not change our decision." (A. 1-5)

After noting its disagreement with the Fourth District's opinion in GEDERT, supra, the Second District affirmed the trial court's order. This proceeding followed.

IV.

SUMMARY OF ARGUMENT

The plaintiff would suggest to this Court that the decision herein sought to be reviewed is in conflict with the Fourth District's opinion in GEDERT v. SOUTHEAST BANK LEASING CO., supra.

In GEDERT the court reversed the final judgment entered in favor of the long-term lessor. The court found that where the lessee did not have in place on the day of the accident the insurance required by the statute, the "contingent liability policy" obtained by the lessor did not satisfy the statutory requirement of Florida Statute 324.021(9)(b).

In this case the court affirmed the final judgment entered in favor of the long-term lessor. The court found that where the lessee did not have in place on the day of the accident the insurance required by the statute, the "contingent liability policy" obtained by the lessor did satisfy the statutory requirement of Florida Statute 324.021(9)(b).

Further, this Court has jurisdiction because the Second District squarely stated:

> "To the extent that our sister court's decision in Gedert would require a different result, we disagree with it." (A. 5)

Conflict exists!

V.

ARGUMENT

THE DECISION HEREIN SOUGHT TO BE REVIEWED IS IN DIRECT CONFLICT WITH THE FOURTH DISTRICT'S OPINION IN GEDERT v. SOUTHEAST BANK LEASING CO., supra.

In GEDERT the Fourth District in interpreting the scope, extent and meaning of Section 324.021(9)(b), Florida Statutes, stated:

> "...The statute clearly requires the lessee to have valid insurance on a leased automobile at the time of an accident; otherwise, liability under the dangerous instrumentality doctrine reverts to the lessor (citations omitted). Because the statute contains no exception to the requirement that the lessee have insurance in effect at the time of the accident, we disagree with Southeast's position that the lessor's contingent liability policy can fulfill the statutory requirement. Accordingly, we hold that Southeast's contingent liability policy does not satisfy the statutory requirement that Grannum have valid insurance at the time of the accident." 637 So. 2d at page 254.

The Fourth District rejected the long-term lessor's argument that because it had in effect at the time of the accident a "contingent liability policy" it could not be vicariously responsible as the owner/lessor of the allegedly offending vehicle. The court stated:

> "We agree with Gedert's contention that Southeast's interpretation of Section 324.021(9)(b) contradicts the plain language of the statute." 637 So. 2d at page 254.

The court in GEDERT found significant the fact that the statute required the lessee to have valid insurance on a leased automobile at the time of an accident and further found

significant the following qualifying language contained in the statute:

> "...Further, this paragraph shall be applicable so long as the insurance required under such lease agreement remains in effect."

Regarding the above language, the court stated:

> "In our view, the underlined clause qualifies the exemption. The phrase 'the insurance required under such lease' is a reference to the insurance policy, mentioned in the first sentence of the paragraph, that the lessee, (Grannum)...is required to obtain under the terms of the automobile lease agreement." 637 So. 2d at page 254.

In this case the Second District has opined:

> "In this case the vehicle involved was insured to the limits required by the statute. The lessee, Mr. Pelley, was insured according to those limits and AHFC was, accordingly, exempt from liability. The fact that Mr. Pelley did not purchase or pay for the insurance called for under the lease, does not change our decision.
>
> "To the extent that our sister court's decision in Gedert would require a different result, we disagree with it." (A. 4 and 5)

The law in the Fourth District is that the "Long Term Lease" statute clearly requires a lessee to have valid insurance on a leased automobile at the time of an accident. Absent the lessee having such valid insurance, liability under the dangerous instrumentality doctrine reverts to the lessor. The law in the Second District is to the contrary! The Second District has acknowledged that the law in its district is contrary to the law in the Fourth District. The conflict is real, express, direct and irreconcilable. This Court should

exercise its discretionary authority and resolve the confusion and uncertainty that now exists in this state as to this issue.

VI.

CONCLUSION

Based upon the foregoing reasons and citations of authority, the plaintiff respectfully urges this Honorable Court to accept jurisdiction and to review the merits of this case.

Respectfully submitted,

ARNOLD R. GINSBERG, P.A.
and
NANCE, CACCIATORE, SISSERSON
& DURYEA, P.A.
410 Concord Building
Miami, Florida 33130
(305) 358-0427
Attorneys for Petitioner

By: _____
Arnold R. Ginsberg

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true copy of the foregoing Brief and Appendix in Support of Jurisdiction was mailed to the following counsel of record this 17th day of April, 1995.

MATHEW DANAHY, ESQ.
Shofi, Smith, Hennen, et al
P. O. Box 10430
Tampa, Florida 33679

_____
Arnold R. Ginsberg

APPENDIX

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

DAVID J. ADY, as Personal Representative of the Estate of JANET A. ADY, deceased, Appellant, v. AMERICAN HONDA FINANCE CORPORATION a/k/a AHFC, a California corporation, Appellee.	CASE NO. 94-01400

Opinion filed March 10, 1995.

Appeal from the Circuit Court for Lee County; Lynn Gerald, Jr., Judge.

Arnold R. Ginsberg of Arnold R. Ginsberg, P.A., and Nance, Cacciatore, Sisserson and Duryea, P.A., Miami, for Appellant.

Matthew R. Danahy of Shofi, Smith, Hennen, Jenkins, Stanley & Gramovot, P.A., Tampa, for Appellee.

SCHOONOVER, Judge.

The appellant, David J. Ady, as personal representative of the Estate of Janet A. Ady, deceased, challenges a final summary judgment entered in favor of the appellee, American Honda

Finance Corporation a/k/a AHFC, a California corporation. We affirm.

The facts material to this appeal indicate that Janet A. Ady was killed as the result of an automobile accident which occurred in Lee County, Florida, on March 8, 1993. One of the three vehicles involved in the accident was a Honda automobile owned by AHFC and leased to, and driven by, Robert J. Pelley.

David J. Ady, the deceased's husband, after qualifying as personal representative of Mrs. Ady's estate, filed a civil action against AHFC and several others. The complaint alleged that Mrs. Ady was killed as the result of Mr. Pelley's negligence and/or the negligence of the driver of the other vehicle involved in the accident. Mr. Ady contended that AHFC was responsible to the estate because of the dangerous instrumentality doctrine. AHFC, in addition to denying the material allegations of the complaint, affirmatively alleged that it was not liable under the dangerous instrumentality doctrine because of section 324.021(9)(b), Florida Statutes (1991).

After the action was at issue, AHFC filed a motion for summary judgment. It contended that it was exempt from liability under the dangerous instrumentality doctrine because a policy of insurance which met the requirements for coverage set forth in section 324.021(9)(b) was in effect at the time of the accident and that Mr. Pelley was an insured under that policy. The trial court granted AHFC's motion and entered a final summary judgment in its favor. Mrs. Ady's estate filed a timely notice of appeal.

The appellant, relying on our sister court's opinion in Gedert v. Southeast Bank Leasing Co., 637 So. 2d 253 (Fla. 4th DCA 1994), contends that AHFC is not exempt from the dangerous instrumentality doctrine because the lessee did not obtain the insurance policy in question. The appellee, on the other hand, contends that Mr. Pelley was an insured under an insurance policy that complied with section 324.021(9)(b) and that the trial court correctly entered a summary judgment in its favor. We agree with appellee.

Section 324.021(9)(b) 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 1 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.

It is undisputed in this case that the lease was for sixty months and required the lessee to obtain insurance coverage with limits not less than those set forth in section 324.021(9)(b). The lessee did not purchase this insurance, but was an insured under a policy purchased by AHFC. This policy provided the insurance required by the statute to any lessee who did not purchase his own insurance pursuant to the requirements

of the lease. The limits of the policy were tendered to the appellant.

In Gedert, our sister court held that section 324.021(9)(b) clearly requires the lessee to have valid insurance on a leased automobile at the time of an accident; otherwise, liability under the dangerous instrumentality doctrine reverts to the lessor. The court held further that the statute contained no exception to the requirement that the lessee have insurance in effect at the time of the accident, and therefore, a lessor's contingent liability policy providing the required benefits could not fulfill the statutory requirement. The court apparently focused on insurance of the lessee rather on insurance covering the vehicle. The same court, however, in Folmar v. Young, 591 So. 2d 220 (Fla. 4th DCA 1991), considered the statute in a situation involving two lessees. The Folmar court rejected a contention that the coverage referred to in the statute was per lessee and not per vehicle. The court concluded in an en banc decision that the plain meaning of the statute is that each lease agreement requires insurance in the stated minimum amounts. The court stated that it found no language indicating that each lessee must secure separate insurance coverage. According to that opinion, the owner of the vehicle is exempt from liability even if one of the lessees does not have the insurance required by the lease.

In this case the vehicle involved was insured to the limits required by the statute. The lessee Mr. Pelley was

insured according to those limits and AHFC was, accordingly, exempt from liability. The fact that Mr. Pelley did not purchase or pay for the insurance called for under the lease, does not change our decision.

To the extent that our sister court's decision in Gedert would require a different result, we disagree with it.

Affirmed.

FRANK, C.J., and FULMER, J., Concur.