IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC04-157

5DCA Case No. 5D02-2807

SUN STATE FORD, INC.,

Petitioner,

vs.

LAVERICA BURCH, as Parent and Natural Guardian of NY JAE AALIYAH MILES, and REGINA PACE, as Parent and Natural Guardian of AEKIA D. MILES, jointly as Co-Personal Representatives for the Estate of AARYON MILES, and WILLIE GENE BEAUFORD, JR., individually,

Respondents,

_____/

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF CASE AND FACTS

The Plaintiffs, (Respondents herein), as joint personal representatives of Aaryon Miles' estate, appealed a final order granting summary judgment in favor of Sun State Ford, Inc. (hereinafter "Sun State"), in a wrongful death action. [App. 1]. The Respondents sought recovery from Sun State, as the owner of the vehicle driven by Willie Gene Beauford, Jr. (hereinafter "Beauford"), for its alleged vicarious liability under the dangerous instrumentality doctrine, based on a car-chase that resulted in the death of Aaryon Miles (hereinafter "Miles"). [App. 1-2]. The lower court determined that Sun State was not vicariously liable under the dangerous instrumentality doctrine because Beauford's manner of driver amounted to intentional misconduct. [App. 1].

The following facts led up to the car-chase: Beauford drove his girlfriend, Teresa Wilson (hereinafter "Wilson"), and Bridget Lee (hereinafter "Lee"), to the Caribbean Club, a nightclub in Orange County.[1] [App. 1, 2]. Beauford dropped Wilson and Lee off and went to visit a friend. [App. 2]. Later, Beauford picked up Wilson and Lee from the Caribbean Club and at their request, drove Wilson and Lee to Hero's, another club. [App. 2]. While Wilson and Lee were in Hero's, Beauford played cards with a friend and drank "a couple of beers." [App. 2]. Two hours later, Beauford returned to Hero's and saw Wilson and Lee leave the club

[1] The vehicle driven by Beauford's was owned by Sun State. [App. 2]. Sun State had rented the vehicle to Beauford's sister, who, in turn, had loaned it to Beauford. [App. 2].

and get into the car being driven by Miles. [App. 2]. Beauford then got in his vehicle and followed them. [App. 2].

At some point, Miles stopped his car. [App. 2]. Beauford got out of his vehicle and approached Miles' vehicle, but when he got close, Miles drove off. [App. 2]. Beauford returned to his vehicle and began to chase Miles. [App. 2]. During the chase, both vehicles traveled at high rates of speed, running red lights and stop signs. [App. 2]. The chase ended when Miles lost control of his vehicle and hit a tree. [App. 2]. Miles died in the crash and Wilson and Lee were severely injured. [App. 2]. As a result of the incident, Beauford was convicted of willful or wanton reckless driving. [App. 2].

The lower court found that based upon Beauford's conviction, no disputed issue existed as to the fact that Beauford had engaged in intentional misconduct and summary judgment was warranted pursuant to Caetano v. Bridges, 502 So. 2d 51 (Fla. 1st DCA 1987). [App. 2, 3].

In reversing the lower court's entry of summary judgment, the Fifth District held:

> . . . that the doctrine is not limited to negligent operation of a vehicle and that reckless driving or other intentional misconduct by an operator does not terminate liability under the doctrine.

[App. 7]. The court further concluded that the only manner of improper driving which will cut off an owner's liability under the doctrine is when a vehicle is used

in a weapon-like manner with the intent to inflict physical injury, unless such use is reasonably foreseeable. [App. 7-9]. Because the Fifth District found that Beauford's intent in following and then chasing Miles was unclear, the court concluded that summary judgment was improper. [App. 9].

In reaching its decision, the Fifth District disagreed that Caetano stands for the proposition that any type of intentional misuse of a vehicle results in the severance of liability under the dangerous instrumentality doctrine. [App. 3-4]. The court recognized that the Third District cited Caetano for this proposition in Sun Chevrolet, Inc. v. Crespo, 613 So. 2d 105 (Fla. 3d DCA 1993)(doctrine only applies to negligent operation of vehicle). [App. 4]. However, to the extent Caetano may be read in this manner, the court declined to follow it and declared conflict with Sun Chevrolet. [App. 3-7].

SUMMARY OF ARGUMENT

The Fifth District's decision expressly and directly conflicts with the First District's decision in Caetano v. Bridges, 502 So. 2d 51 (Fla. 1st DCA 1987), which held that under the dangerous instrumentality doctrine, an owner is only liable for the negligence of its permissive user, and is not accountable if the operator is involved in intentional misconduct which is not foreseeable. The First District intended to sever liability under the doctrine for any type of intentional

misuse of a vehicle as evidenced by the plain language used by the court in Caetano.

The Fifth District's decision also expressly and directly conflicts with the Third District's opinion in Sun Chevrolet, Inc. v. Crespo, 613 So. 2d 105 (Fla. 3d DCA 1993), which likewise held that an owner who allows his vehicle to be driven on the open road is liable only if the driver is negligent.

Further still, the Fifth District's decision expressly and directly conflicts with the principle articulated by this Court in Orefice v. Albert, 237 So. 2d 142 (Fla. 1970, wherein the Court recognized that a co-owner of a dangerous instrumentality is liable to a nonowner third person, only if the operator was negligent under the circumstances.

Petitioner respectfully submits that this Court should accept jurisdiction over this case to resolve the conflict.

ARGUMENT

THE FIFTH DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIRST DISTRICT'S DECISION IN CAETANO V. BRIDGES, THE THIRD DISTRICT'S DECISION IN SUN CHEVROLET, INC. V. CRESPO AND THE PRINCIPLE SET FORTH BY THIS COURT IN OREFICE V. ALBERT THAT AN OWNER IS ONLY LIABLE FOR THE NEGLIGENT ACTS OF ITS PERMISSIVE USERS

The Fifth District's decision expressly and directly conflicts with the First District's opinion in Caetano v. Bridges, 502 So. 2d 51 (Fla. 1st DCA 1987). In this case, the Fifth District concluded that an owner of a vehicle is liable under the dangerous instrumentality doctrine for all manners of its permissive user's driving, including reckless driving and other intentional misconduct, except for when the operator unforeseeably uses the vehicle in a weapon-like manner with the intent to injure another.

Conversely, the Caetano court held:

> A car owner's liability grows out of his obligation to have a vehicle, dangerous in its use, properly operated when it is by his authority upon the public highway; however, he is liable only if the operator is *negligent* under the circumstances and is not accountable if the operator is involved in intentional misconduct which is not foreseeable. Southern Cotton Oil Co. v. Anderson, *supra*.

Id. at 53 (emphasis in original). Because evidence existed in the Caetano record that the operator's conduct may have been intentional, which would absolve the defendant owner of the vehicle from liability under the doctrine, the First District reversed summary judgment in favor of the plaintiff. Id. Thus, contrary to the Fifth District's opinion, the First District has concluded that any type of intentional misuse of a vehicle which is not foreseeable, results in the severance of liability under the dangerous instrumentality doctrine.

The Fifth District's decision in this case does not square with Caetano even though the Fifth District disagrees that Caetano intended to relieve an owner from liability for all types of intentional misconduct. Contrary to the Fifth District's opinion, what was intended by intentional conduct, is evidenced by the plain language used by the Caetano court.

In Caetano, the lower court entered summary judgment on liability in favor of the plaintiff, not the defendant owner of the vehicle, as the Fifth District's opinion states. The record included evidence that the driver in question may have intentionally used the vehicle to run-down the plaintiff. Id. at 51. Thus, the use of the vehicle in Caetano, may have been in a weapon-like manner.

In reversing summary judgment, the First District applied the facts of the record when it articulated the legal premise upon which it based its decision, and deliberately stated that an owner "is liable *only* if the operator is *negligent* under the circumstances." Id. (first emphasis added.) The court reached this conclusion based on the longstanding principles articulated by this Court in Southern Cotton Oil v. Anderson, 86 So. 629 (Fla. 1920) and its progeny, that under Florida's dangerous instrumentality doctrine, "the owner of a vehicle is liable to third persons for its negligent operation." Id. at 52-3; *see also*, Southern Cotton, 86 So. at 636. Consequently, the First District's clear and intended meaning of intentional misconduct as evidenced by the plain language used by the court, was that liability

does not impute to an owner for any conduct that is not negligent. In other words, any intentional misconduct.

The Fifth District's decision that the dangerous instrumentality doctrine is not limited to the negligent operation of a vehicle, directly and expressly conflicts with the First District's decision in Caetano on the same question of law.

The Fifth District's decision also expressly and directly conflicts with the Third District's opinion in Sun Chevrolet, Inc. v. Crespo, 613 So. 2d 105 (Fla. 3d DCA 1993). There, the personal representative of the estate of a deceased automobile accident victim, brought civil suit against the driver and Sun Chevrolet, alleging vicarious liability under the dangerous instrumentality doctrine. Id. at 106. In a prior criminal action, the driver pled guilty to vehicular manslaughter. Id. The lower court entered summary judgment in favor of the plaintiff finding Sun Chevrolet liable for the negligent acts of the driver and finding Sun Chevrolet was prohibited from refuting liability under Florida's restitution statute. Id. 107. The Third District Court of Appeal reversed summary judgment, concluding:

> The doctrine holds that the owner of a dangerous instrumentality, for example an automobile, who entrusts its use to another is liable for the negligence of the person to whom the instrumentality is entrusted. [citations omitted] Thus, the owner of an automobile who allows his vehicle to be driven on the open road is liable only if the driver is *negligent*. *Caetano v. Bridges*, 502 So. 2d 51 (Fla. 1st DCA 1987)(owner of a vehicle not responsible if the operator is involved in intentional misconduct which is not foreseeable).

Id. (emphasis in original). The Third District further held that Sun Chevrolet could not be estopped from introducing evidence that the operator "was not negligent, a necessary element for recovery under the dangerous instrumentality doctrine." Id. at 107-108.

Thus, as recognized and declared in its opinion, the Fifth District's decision directly and expressly conflicts with the Third District's decision in Sun Chevrolet.

Further still, while this Court has not rendered a decision on a case with the same facts as the instant case, this Court has opined on the same question of law. In Orefice v. Albert, 237 So. 2d 142 (Fla. 1970), when addressing the issue of whether a mother could maintain an action on behalf of her son, against the co-owner of the airplane in which her son was killed when being operated by her husband, the other owner, this Court stated:

> The co-owner's liability to a nonowner third person grows out his obligation to have an airplane, dangerous in its use, properly operated when it is by his consent or authority being operated. He is liable *only* if the operator was *negligent* under the circumstances.

237 So. 2d at 144 (emphasis added)(citations omitted). Thus, the Fifth District's decision is at directly at odds with the principle recognized in Orefice that an owner is only liable for the negligent acts of its permissive user under the dangerous instrumentality doctrine.

The Fifth District's decision that the dangerous instrumentality doctrine is not limited to the negligent operation of a vehicle, and that the only manner of intentional misuse that will sever an owner's liability is the unforeseeable use of the vehicle in a weapon-like manner with the intent to injure, expressly and directly conflicts with the First District's decision in Caetano v. Bridges, the Third District's decision in Sun Chevrolet, Inc. v. Crespo and the principle enunciated by this Court in Orefice v. Albert. Accordingly, this Court should accept jurisdiction to resolve the conflict and clarify whether an owner is liable to third persons for injuries caused by the intentional misconduct of its permissive user.

CONCLUSION

Wherefore, based on the foregoing reasons and authorities, Petitioner, SUN STATE FORD, INC., respectfully requests that this Court accept jurisdiction in this case.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 19th day of February, 2004 on: Daryl D. Parks, Esq., Parks & Crump, LLC, 240 North Magnolia Drive, Tallahassee, FL, 32301, Tel: (850) 224-6400, *Counsel for Plaintiffs/Respondents; Warren B. Kwavnick, Esq, Cooney Matson Lance Blackburn Richard & O'Connor, P.A., P.O. Box 14546, Fort Lauderdale, FL 33302, Tel: (954) 568-6669, Counsel for Appellant, Co-Defendant Beauford*; Lucinda A. Hoffman, Holland & Knight, LLP, 701

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that this supplemental answer brief complies with Rule 9.210, Fla.R.App.P., and is typed in Times New Roman 14-point font.

By:_____
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