IN THE SUPREME COURT OF FLORIDA

T. PATTON YOUNGBLOOD,

Petitioner,

vs.

DCA No. 2D05-3112
Case No. 03-3591

ESTATE OF REINALDO VILLANUEVA,
by and through ROSALINA VILLANUEVA
as Personal Representative,

Respondent.
_____/

RESPONDENT=S ANSWER BRIEF ON THE MERITS

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TABLE OF CONTENTS

Table of Citations ii

Statement of the Case and Facts..... 1

Summary of the Argument..... 2

Argument..... 3

Issue

WHETHER THE ASHOP RULE@ EXCEPTION TO OWNER LIABILITY UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE APPLIES TO A VEHICLE UNDER CONSIGNMENT WHILE BEING DRIVEN BY THE USED CAR DEALER.

Conclusion 9

Certificate of Service 10

Certificate of Compliance 10

TABLE OF CITATIONS

Aurbach v. Gallina, 753 So.2d 60 (Fla., 2000)..... 5,7

Burch v. Sun State Ford, Inc., 864 So.2d 466
Fla. 5th DCA 2004) 8

Fahey v. Raftery, 353 So.2d 903, 904 (Fla. 4th DCA 1977) 9

Fought v. Mullen, 609 So.2d 726 (Fla. 5th DCA 1992) 9

Jack Lee Buick v. Bolton, 377 So.2d 226 (Fla 1st DCA 1979)..... 5

Kraemer v. General Motors Acceptance Corp.,
572 So.2d 1363 (Fla. 1990) 4

Lynch v. Walker, 31 So.2d 268 (Fla.1947) 6,8

STATEMENT OF THE CASE AND FACTS

In this appeal, the Petitioner, YOUNGBLOOD, requests this court to expand the Shop Rule Exception to the Dangerous Instrumentality Doctrine by including a used car dealer as a *service or repair agency* under a consignment of the owner=s vehicle. Most of the Statement of the Case and Facts presented by YOUNGBLOOD are correct. However, Respondent makes the following clarifications.

YOUNGBLOOD took possession of the subject Lexus as a result of a divorce degree awarding him exclusive possession, rather than as a favor to his ex-wife as he suggests. (R.217@39:21-22). At the time of the divorce decree and at the time of the accident, he was the sole owner of the vehicle, even though he failed to have the title of the vehicle transferred from his ex-wife=s name to his name. YOUNGBLOOD always remained on the note for the vehicle and therefore had an insurable interest in the vehicle. Even though he had an insurable interest, YOUNGBLOOD, a trial lawyer, failed to take any action to transfer the title and claims he was unable to get insurance for the automobile. (R. 21634-35). YOUNGBLOOD placed a *minimum price* on the vehicle to cover the payoff on the loan with the dealer getting all of the excess. (R. 218-219).

In the court below, YOUNGBLOOD argument to affirm the summary judgment was soundly rejected by the Second District Court of Appeal, which held that consignment of the used car creates a bailment situation which does not fall within the limited exception to the Dangerous Instrumentality Doctrine known as the AShop Rule Exception;@ there were genuine issues of material fact as to whether or not there was a

theft or conversion; and YOUNGBLOOD=s argument that he did not give consent for the owner of the used car dealer to operate his vehicle at the time of the accident was totally without merit, since there was implied consent. YOUNGBLOOD concedes that he never placed any restrictions on the use of the car. (R. 218).

SUMMARY OF THE ARGUMENT

This court should not permit another paring back of the Dangerous Instrumentality Doctrine as urged by YOUNGBLOOD. Under no circumstance should the facts of this case fall within the Shop Rule Exception since there is no servicing and repair being requested by the owner of the car. Rather, this is a business venture where both YOUNGBLOOD and the used car dealer stand to benefit financially in their arrangement to consign and sell YOUNGBLOOD=s automobile.

The unique fact pattern of this case imposes liability against the owner of the vehicle, YOUNGBLOOD. It was YOUNGBLOOD who delivered the vehicle to the used car lot and specifically delivered it to one of the owners of the car lot, Teddy Aponte. YOUNGBLOOD did not discuss any restrictions whatsoever with Mr. Aponte on the operation of the vehicle. It was Mr. Aponte who was driving the vehicle at the time of the fatality.

A bailment, such as the consignment of the car to the used car dealer, should not and does not fall within the Shop Rule Exception, simply because the consignment/bailment does not involve any service or repair to the vehicle.

YOUNGBLOOD never lost control of the vehicle since it was being driven by the exact person to whom it was entrusted.

ARGUMENT

<u>ISSUE</u>

THE ASHOP RULE@ EXCEPTION TO OWNER LIABILITY UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE DOES NOT APPLY TO A VEHICLE UNDER CONSIGNMENT WHILE BEING DRIVEN BY THE USED CAR DEALER.

In this case, the trial court created another exception to the dangerous instrumentality doctrine by holding that a used car dealer, who has the owner=s car under consignment, is a service and repair related business, thereby shielding the owner of the vehicle under the Ashop rule@ exception to the dangerous instrumentality doctrine. If this case involved a service related entity, YOUNGBLOOD would not have been joined as a party. However, this case involves a consignment of YOUNGBLOOD=s vehicle to a used car dealer, where both have the mutual economic goal to sell the Lexus at the highest price.

> AThe dangerous instrumentality doctrine seeks to provide greater financial responsibility to pay for the carnage on our roads. It is premised upon the theory that the one who originates the danger by entrusting the automobile to another

> is in the best position to make certain that there will be adequate resources with which to pay the damages caused by its negligent operation. If Florida's traffic problems were sufficient to prompt its adoption in 1920, there is all the more reason for its application to today's high-speed travel upon crowded highways. The dangerous instrumentality doctrine is unique to Florida [FN2] and has been applied with very few exceptions. [FN3] ***We are loath to engraft upon this doctrine a further exception that would have such far-reaching consequences.***@ (Emphasis added).

Kraemer v. General Motors Acceptance Corp., 572 So.2d 1363 (Fla. 1990), (owner of vehicle under long-term lease liable under the dangerous instrumentality doctrine for the negligence of driver of vehicle).

> It seems clear from the *Castillo* opinion that the court has receded from the broad liability imposed upon an owner under the dangerous instrumentality doctrine (as in *Susco Car Rental System of Florida v. Leonard*, 112 So.2d 832 (Fla.1959)), ***only to a limited extent***; that is, in the case of accidents while the vehicle is under the control and direction of repair and service agencies during their work related

> operations. We must therefore reject appellant's contention that the "independent contractor" status of the operator of the vehicle is the determining factor in insulating the owner from liability. See footnote 4, *Castillo v. Bickley*, supra, citing *Demshar v. AAA Con Auto Transp. Inc*., 337 So.2d 963 (Fla.1976). (Emphasis added).

Jack Lee Buick v. Bolton, 377 So.2d 226 (Fla 1st DCA 1979), where liability was affirmed against the dealership owner for injuries to a third party during transport of the vehicle from the dealership to a detail shop by the shop=s driver.

Therefore, even though the used car dealer in this case is an independent contractor, that status of the dealer does not shield the owner from liability under the judicially created dangerous instrumentality doctrine.

> AThe *Castillo* exception only applies to the vehicle=s negligent use during servicing, service-related testing, or service-related transport of the vehicle.@ *Michalek v. Shumate,* 524 So.2D 426 (Fla., 1988), where the Supreme Court held that there was owner liability for the negligent operation by the agency=s employee of a car being delivered to the agency for service.

Aurbach v. Gallina, 753 So.2d 60 (Fla. 2000), where this Court again recognized that bare legal title is not enough to impose liability. Rather, beneficial ownership is the

determinative factor. Here, the lower court erred in stating genuine issues of fact existed as to the ownership of the Lexus. Only YOUNGBLOOD is the beneficial owner as a result of the Final Judgment of Dissolution of Marriage with attached Martial Settlement Agreement in his divorce giving him complete ownership of the Lexus. YOUNGBLOOD was the sole payor and guarantor of the loan on the automobile. Following the accident, he had the loan paid off by the lienholder=s insurance company (R.222@59:16-22). He was the only one to make payments on this vehicle during the marriage (R.213@ 22:10-12 & 24:24-25:01) and he was the one who did not pursue getting the title to the vehicle in his name following his divorce (R.220@4915-24). Most importantly, YOUNGBLOOD chose to permit the insurance on the car to lapse prior to the fatal accident (R.216@35:09-13 & 220@18-23).

The used car dealer had possession of his vehicle at the time of the accident for the mutual benefit of the dealer and YOUNGBLOOD, i.e., to secure the vehicle for the convenience of YOUNGBLOOD and to sell the vehicle to financially benefit both the dealer and YOUNGBLOOD. Therefore, YOUNGBLOOD is liable under the dangerous instrumentality doctrine since there is no service or repair being perform-ed on his vehicle.

> The dangerous instrumentality doctrine was adopted by the Florida Supreme Court in 1920. *Southern Cotton Oil Co. v. Anderson*, [80 Fla. 441,] 86 So. 629 (Fla.1920). It is premised on the belief that a vehicle, when used for its designed purpose, is likely to cause serious injury to others. Id. at 634.

Although originally only applicable in the master-servant context, the doctrine was later extended to bailments, including lessor-lessee relationships. *Lynch v. Walker*, [159 Fla. 188,] 31 So.2d 268 (Fla.1947). The doctrine imposes strict liability upon the owner of a motor vehicle by requiring that an owner who "gives authority to another to operate the owner's vehicle, by either express or implied consent, has a nondelegable obligation to ensure that the vehicle is operated safely." *Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla.2000). The doctrine is intended to foster greater financial responsibility to pay for injuries caused by motor vehicles because the owner is in the best position to ensure that there are adequate resources to pay for damages caused by its misuse. Id. at 62. The doctrine also serves to deter vehicle owners from entrusting their vehicles to drivers who are not responsible by making the owners strictly liable for any resulting loss.

The only state to have adopted the doctrine by judicial decision, Florida's doctrine is unique and has few exceptions. *Aurbach*, 753 So.2d at 62. *Hertz Corp. v. Jackson*, 617 So.2d 1051 (Fla.1993). It borrows characteristics from both concepts of strict liability based upon ultra-hazardous activity and vicarious liability under master-servant law. *Anderson*, 86 So. at 630-32. Liability of the owner is said to be "strict" because a plaintiff need not prove that an owner negligently entrusted the vehicle to its operator for liability to attach. However, the doctrine is distinguished from strict liability for ultra-hazardous activity, because the plaintiff must prove some fault, albeit on the part of the operator, which is then imputed to the owner under vicarious liability principles. Id. Although under master-servant law, the master is vicariously liable for the acts of the servant when the servant acts within the scope of his employment, the doctrine imputes liability to an owner even when the operator disobeys restrictions on the use of the vehicle, unless the disobedience rises to the level of theft or conversion. *Jackson*, 617 So.2d at 1054; Susco *Car Rental Sys. of Fla. v. Leonard*, 112 So.2d 832, 836 (Fla.1959).. . .

> Because an owner's liability is "strict" and his obligation is to "ensure that the vehicle is operated safely," without regard to whether the operator is disobedient, it follows logically that the manner of an operator's bad driving should not generally affect the owner's liability. Moreover, a distinction based on the manner of driving contravenes the policies that underlie the doctrine: to provide greater financial responsibility to pay for injuries and to encourage owners to entrust their vehicles to responsible drivers, thereby reducing the risk of injuries to others. Absent any countervailing policy for allowing an owner to escape liability when, instead of entrusting his car to a negligent driver, he entrusts it to a reckless one, we fail to see why the doctrine should be limited in the fashion urged by Sun State.

Burch v. Sun State Ford, Inc., 864 So.2d 466 (Fla. 5th DCA 2004).

Since the dangerous instrumentality doctrine was extended to situations involving bailment, *Burch* and *Lynch v. Walker*, 31 So.2d 268 (Fla.1947), it must then be extended here in this bailment situation.

YOUNGBLOOD was the only one who had the responsibility to carry the proper liability insurance for the operation of his vehicle. He chose to let the liability insurance lapse. He chose to bring the car to a small family run used car dealership and placed no restrictions at all on the operation of the vehicle. Under the dangerous instrumentality doctrine, YOUNGBLOOD was the only one who is financially responsible for the operation of his vehicle. It is a miscarriage of justice to permit him to escape liability.

In reviewing Florida case law, the ESTATE suggests that the Ashop rule@ exception was misapplied in *Fought v. Mullen*, 609 So.2d 726 (Fla. 5th DCA 1992), holding that an

auction yard moving an owner=s vehicle on the yard for auction is a *service related business*, and also *Fahey v. Raftery*, 353 So.2d 903, 904 (Fla. 4th DCA 1977), holding that valet parking is *a service* that falls within the automobile service exception to the dangerous instrumentality doctrine.[1] In each case, the owner=s vehicle is being driven for the *convenience of the owner* and *no service or repair* is being performed. In each case, the owner could have driven the vehicle, but chose not to do so. However, the facts in each case are also distinguishable from the instant case. Neither case involved a bailment as exists in the instant case. Furthermore, in *Fought*, the auction is paid a fee for its auction service, whether or not the car is sold, and an employee is injured by a co-employee. In *Fahey*, the owner turns over his vehicle to the valet and the valet also injures a co-employee. In the instant action, a death occurred to a member of the public by a drunk driver.

CONCLUSION

In conclusion, this court should affirm the decision of the Second District Court of Appeal and specifically hold that a motor vehicle owner who entrusts his vehicle under consignment to a used car dealer is not relieved of liability under the Ashop rule@ exception to the dangerous instrumentality doctrine for the vehicle=s negligent operation by the bailee, the used car dealer.

[1]Cases relied upon by YOUNGBLOOD.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail this 28th day of December, 2006 to SCOT E. SAMIS, ESQ., Post Office Box 1511, St. Petersburg, Florida 33731-1511.

_____
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is submitted in Times New Roman 14-point font as governed by Rule 9.100.

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