IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, 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.
_____/

PETITIONER'S REPLY BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Respondent's Statement of the Case and Facts contains legal assertions, statements of fact without reference to the record, and additional facts that have no bearing on the issues before the court.

The fact that Petitioner's agreement to take possession of the vehicle was included in the divorce decree does not change the record fact that Petitioner agreed to assist his former wife in selling it. (R212-213). Moreover, the fact that Petitioner took possession is undisputed, and the reason for doing so irrelevant to the arguments made in the Initial Brief.

Next, Respondent makes several statements asserting Petitioner was the "sole owner" of the vehicle and had an "insurable interest." There is no record citation to support these statements, but no matter - - the arguments contained in the Initial Brief and herein would still apply even if Mr. Youngblood had been the sole title and beneficial owner. As it happens, Mr. Youngblood was not the title owner, and had turned all control of the vehicle over to the consignment lot with no expectation of ever regaining possession. His right to receive money from the sale proceeds has no bearing on application of the *Castillo* rule.

Respondent is correct that Youngblood placed a minimum price on the vehicle to cover the loan. (R218-219). However, this does not change the fact that

it was undisputed that Extreme would be compensated for selling the car regardless of the price. (R218-219, 239).

Finally, Petitioner does not dispute Respondent's description of the district court's ruling below, with the possible exception of characterizing the Petitioner's arguments being "soundly rejected." The Second District recognized that several of the criteria for applying the "shop" exception in *Castillo* are present here, but left the decision to this Court to decide if present facts fall within the exception. Whether this is a "sound rejection" of Mr. Youngblood's argument seems to be matter of opinion rather than fact.

ARGUMENT

ISSUE

WHETHER THE EXCEPTION TO THE DANGEROUS INSTRUMENTALITY DOCTRINE ESTABLISHED IN *CASTILLO V. BICKLEY* APPLIES WHERE A VEHICLE OWNER RELINQUISHES CONTROL OVER THE VEHICLE TO A DEALERSHIP PERFORMING THE SERVICE OF SELLING IT ON CONSIGNMENT.

Respondent begins by arguing that the trial court created another exception to the dangerous instrumentality doctrine. On the contrary, the facts of this case fit well within the contours of the exception as established in *Castillo v. Bickley*, 363 So. 2d 792 (Fla. 1978), *Michalek v. Shumate*, 524 So. 2d 426 (Fla. 1988), *Fought v. Mullen*, 609 So. 2d 726 (Fla. 5th DCA 1992) and *Roberts v. United States*

Fidelity and Guarantee Company, 498 So. 2d 1037 (Fla. 1st DCA 1986), as discussed in the Initial Brief.

Instead of analyzing the *Castillo* rule and its underpinnings in these cases, Respondent offers extensive quotations from clearly distinguishable cases. The first comes from *Kraemer v. General Motors Acceptance Corporation*, 572 So. 2d 1363 (Fla. 1990), which dealt with the dangerous instrumentality doctrine in the context of long-term vehicle leases. Petitioner quotes language from *Kraemer*, which notes that there are few exceptions to the doctrine – but fails to point out that footnote 3 recognizes the *Castillo* rule as one of those exceptions. *Kraemer* did not limit the *Castillo* rule or recede from it, but rather affirmatively recognized it. The situation at bar is obviously more akin to *Castillo*, *Fought* and *Roberts* than *Kraemer* because the consignment lot was performing the service of selling the automobile for Mr. Youngblood. In contrast, a long-term lessee is not performing a service for the lessor. *Kraemer* has no application in the case at bar and, in fact, recognizes the *Castillo* exception – which does apply.

Next, Respondent quotes *Jack Lee Buick v. Bolton*, 377 So. 2d 226 (Fla. 1st DCA 1979) for the proposition that *Castillo* created a limited exception to the dangerous instrumentality doctrine for accidents "while the vehicle is under the control and direction of repair and service agencies...". Petitioner agrees. Mr. Youngblood falls within the exception because the accident occurred when the

vehicle was under the control of a service agency; i.e. the consignment shop. Respondent fails to recognize or address the observation of this Court in *Michalek* that the type of service being provided makes no difference to the application of the *Castillo* rule.

The *Bolton* case itself, of course, is distinguishable because it falls within the category of cases where the owner specifically entrusted an identified person to use the car for a particular purpose. This places *Bolton* in the same category as *Michalek*, supra, *Lopez v. Demaria Porche-Audi*, 395 So. 2d 199 (Fla. 3d DCA 1981), and *Grille v. Le-Bo Properties Corp.*, 553 So. 2d 352 (Fla. 2d DCA 1989). Respondent fails to address the argument distinguishing these cases appearing on pages 16-18 of the Initial Brief. The quotation from *Aurbach v. Galina*, 753 So. 2d 60 (Fla. 2000) on page 5 of the Answer Brief serves only to reinforce the application of *Castillo* to the case at bar.

Further, Respondent's argument concerning beneficial ownership has no bearing on the whether the *Castillo* rule applies here. Mr. Youngblood would be entitled to summary judgment even if he were the title holder and beneficial owner of the subject vehicle in this case (as were the owners in *Castillo, Fought* and *Roberts*). If, in fact, Mr. Youngblood is not deemed to be the owner of the vehicle, that would be yet another, independently sufficient basis for summary judgment.

On page 6 of the Answer Brief, Respondent argues that Petitioner is liable under the dangerous instrumentality doctrine because the used car dealer had possession of the vehicle for the "mutual benefit of the dealer and Youngblood" and because there was "no service or repair being performed on his vehicle." As to the first argument, it is difficult to understand why handling, storing, advertising, test driving and selling a car should not be considered a "service." Again, the *Michalek* decision refutes this argument in no uncertain terms. As to "mutual benefit;" *every* service arrangement is for the mutual benefit of the owner and service provider. The service provider makes money; the owner receives a service. This does not distinguish the facts at bar from *Castillo*, *Fought* or *Roberts*.

The final quotation offered by Respondent is from *Burch v. Sun State Ford, Inc.*, 864 So. 2d 466 (Fla. 5th DCA 2004), where it was ruled the dangerous instrumentality doctrine could apply in cases of reckless driving and other intentional misconduct by an operator. The excerpt is a general discussion of the history of the dangerous instrumentality doctrine. It contains no analysis of the exceptions to the doctrine relevant to the present case. The Respondent relies on *Burch* and *Lynch v. Walker*, 31 So. 2d 268 (Fla. 1947) to argue that the dangerous instrumentality doctrine applies to bailments and, therefore, must apply in this case. This argument fails to recognize that *Lynch* predates *Castillo* and does not

apply. Further, the situation at bar is more than a mere bailment, as a service was performed, which places this case within the *Castillo* rule.

At no place in the Answer Brief is the *Castillo* rule analyzed, discussed or even acknowledged. *Michalek* appears only within another quotation. Respondent ignores the historical and public policy bases of the *Castillo* rule and the arguments appearing on pages 8-13 of the Initial Brief. As to *Fought v. Mullen*, it is mentioned only to say that it is wrongly decided. Further, the Respondent similarly ignores the argument in the Initial Brief regarding *Roberts*.

The Respondent in this case was absolutely justified and correct in suing the Apontes and Extreme – the truly culpable and legally responsible parties. Under any fair and logical reading of *Castillo* and *Michalek* - and their proper interpretation in *Fought* and *Roberts* - can lead to only one conclusion: Mr. Youngblood falls within the *Castillo* rule and was entitled to summary judgment. The true miscarriage of justice would be for Mr. Youngblood to be financially ruined by a misapplication of law in a case where he is utterly blameless. He had completely relinquished control of his ex-wife's vehicle to the consignment lot so they could perform the service of selling it. He had no control over the vehicle or ability to dictate its use - - and never expected to regain any such control. This is exactly the kind of situation for which the *Castillo* rule was created. He does not request an expansion of the rule, but only a proper application of it.

CONCLUSION

For the reasons stated in the Initial Brief on the Merits and herein, Petitioner respectfully requests this Honorable Court quash the ruling of the Second District and remand this matter for reinstatement of the summary judgment in favor of the Defendant/Petitioner.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via United States Mail to **Kennan G. Dandar,** Dandar & Dandar, P.O. Box 24597, Tampa, Florida 33623-4597, *Attorney for Plaintiff/Appellant/Respondent,* on this _____ day of January, 2007.

ABBEY, ADAMS, BYELICK, KIERNAN, MUELLER & LANCASTER, L.L.P.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing satisfies the requirements of Florida Rules of Appellate Procedure 9.100(1) and 9.210(a)(2) and is submitted in Times New Roman 14-point font.

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Scot E. Samis