

O/a 1-9-86

IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO.: 67,142

BRIAN J. SHEEN,

Petitioner,

v.

ARCHIBALD LYON and
ROSE LYON,

Respondents.

BRIAN J. SHEEN,

Petitioner,

v.

NICHOLAS TATUSKO and
ANNA TATUSKO,

Respondents.

FILED

SID J. WHITE

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CLERK, SUPREME COURT

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RESPONDENTS' ANSWER BRIEF

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PREFACE

The parties will be referred to as the plaintiff and the defendants or by their proper names.

The following symbol will be used: R - Record.

ISSUE

DOES THE RELEASE OF MERRILL LYNCH AND ITS AGENTS AND EMPLOYEES RELEASE AN AGENT OR EMPLOYEE INVOLVED IN THE INCIDENT WHO WAS NO LONGER EMPLOYED BY MERRILL LYNCH AT THE TIME THE RELEASE WAS EXECUTED?

STATEMENT OF THE CASE AND FACTS

Respondents accept petitioner's statement of the case and facts as correctly stated.

SUMMARY OF ARGUMENT

The release executed by plaintiffs is at best ambiguous as to who it releases and plaintiffs' affidavits create a question of fact as to the parties intent to release Sheen. The holding of the 4th District is consistent with statutes and case law on the subject. The absence of Brian Sheen's name in the release creates a question of intent precluding entry of summary judgment.

ARGUMENT

ISSUE

DOES THE RELEASE EXECUTED BY PLAINTIFFS, RELEASING MERRILL LYNCH AND ITS AGENTS AND

EMPLOYEES, RELEASE AN AGENT OR EMPLOYEE INVOLVED IN THE INCIDENT WHO WAS NO LONGER EMPLOYED BY MERRILL LYNCH AT THE TIME THE RELEASE WAS EXECUTED?

Petitioner's reliance on Ford v. Coleman, 462 So.2d 834 (Fla. 5th DCA 1984), is inapplicable to this case because the offending driver was driving the vehicle with the consent of the owner. In that case it was the driver who was the actual tortfeasor, not the owner. However, under the law, the owner is equally liable as the person who actually commits the tort. In the fact sub judice, both Merrill Lynch, Pierce, Fenner & Smith Inc. and Brian J. Sheen were alleged to have committed torts against the plaintiffs irrespective of one another. Respondent suggests that if the driver and the owner had committed distinct torts on their own, a release naming the owner but not the driver would serve to release the owner and not the driver.

Respondent relies entirely on their initial brief in the 4th District Court of Appeal which is filed as an appendix to this answer brief. The content and argument in the Lyon brief is identical to that of the Tatusko brief.

CONCLUSION

The opinion of the 4th District should be affirmed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been sent by mail to: Al LaSorte, Esquire, 1655 Palm Beach Lakes Boulevard, Forum III, Suite 800, West Palm Beach, Florida 33401 and to Larry Klein, Esquire, 501 South Flagler Drive, Suite 503, West Palm Beach, Florida 33401; this 17th day of November, 1985.

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