

IN THE SUPREME COURT OF FLORIDA

CASE NO. 75,870

Fla. Bar No. 105417
Fla. Bar No. 307629

ALONZO T. RAYNOR, as Guardian
of the person and property of
SCOTT THOMAS RAYNOR, Incompetent,

Petitioner,

v.

EQUILEASE CORPORATION, a foreign
corporation authorized to do
business in the State of Florida;
ALEXIS DE LA NUEZ; and GILBERTO
GARAY,

Respondents.

BRIEF OF AMICUS CURIAE
FLORIDA AUTOMOBILE DEALERS ASSOCIATION

WILLIAM C. OWEN
F. TOWNSEND HAWKES
CARLTON, FIELDS, WARD, EMMANUEL,
SMITH & CUTLER, P.A.
410 First Florida Bank Building
P. O. Drawer 190
Tallahassee, FL 32302
(904) 224-1585

TABLE OF CONTENTS

| | |
|---|--------|
| TABLE OF CONTENTS | i |
| TABLE OF CASES AND CITATIONS | ii,iii |
| INTRODUCTION | 1 |
| STATEMENT OF THE CASE AND FACTS | 1 |
| SUMMARY OF ARGUMENT | 2 |
| ARGUMENT | |
| I. THE LONG-TERM LESSOR IN THIS CASE HAD INSUFFICIENT AUTHORITY TO CONTROL THE USE OF THE TRUCK, AND THEREFORE COULD NOT BE VICARIOUSLY LIABLE UNDER THE DANGEROUS INSTRU- MENTALITY DOCTRINE. | 4 |
| CONCLUSION | 16 |
| CERTIFICATE OF SERVICE | 16 |

TABLE OF CASES AND CITATIONS

| <u>CASE</u> | <u>PAGE(S)</u> |
|---|----------------|
| <u>Anderson v. Southern Cotton Oil Co.,</u> 73 Fla. 432, 74 So. 976, 978 (1917) | 5,6 |
| <u>Boggs v. Butler,</u> 129 Fla. 324, 176 So. 174 (1937) | 4 |
| <u>Castillo v. Bickley,</u> 363 So.2d 792 (Fla. 1978) | 5,6,13 |
| <u>Cox Motor Co. v. Faber,</u> 113 So.2d 771 (Fla. 1st DCA 1959) | 5 |
| <u>Folmar v. Young,</u> 15 F.L.W. D366 (Fla. 4th DCA Feb. 6, 1990) | 10 |
| <u>Holstun v. Embry,</u> 124 Fla. 554, 169 So. 400 (1936) | 4 |
| <u>Klein v. Leatherman,</u> 270 Cal.App.2d 792, 76 Cal. Rptr. 190 (1969) | 9 |
| <u>Kraemer v. G.M.A.C.,</u> 556 So.2d 431 (Fla. 2d DCA 1989) | 8,14,15 |
| <u>Lee v. Ford Motor Co.,</u> 595 F.Supp. 1114 (D.D.C. 1984) | 9 |
| <u>Lynch v. Walker,</u> 59 Fla. 188, 31 So.2d 268 (1947) | 4 |
| <u>May v. Palm Beach Chemical Co.,</u> 77 So.2d 468, 472 (Fla. 1955) | 6 |
| <u>Moore v. Ford Motor Credit Co.,</u> 166 Mich. App. 100, 420 N.W.2d 577 (1988) | 9 |
| <u>Palmer v. R.S. Evans, Jacksonville, Inc.,</u> 81 So.2d 635 (Fla. 1955) | Passim |
| <u>Perry v. G.M.A.C. Leasing Corp.,</u> 549 So.2d 680 (Fla. 2d DCA 1989), <u>review denied</u> , 558 So.2d 18 (Fla. 1990) | 14 |
| <u>Southern Cotton Oil Co. v. Anderson,</u> 80 Fla. 441, 86 So. 629 (1920) | 4 |
| <u>Susco Car Rental System v. Leonard,</u> 112 So.2d 832 (Fla. 1959) | 5 |

Statutes and Other Authorities:

Section 324.021(9)(a), Florida Statutes Passim
Section 324.021(9)(b), Florida Statutes 7,10
Section 627.7262, Florida Statutes (1989) 11
Section 627.7263, Florida Statutes 11

Introduction

Florida Automobile Dealers Association [FADA] is an association of approximately 900 new car dealers in Florida. FADA is familiar, through its membership, with the customs and business practices of the automobile industry, and particularly with the practices of dealers regarding the leasing of cars and the procurement of insurance coverage for those leased cars. This Amicus Brief is submitted in support of the position of Respondent, Equilease Corp.

Statement of Case and Facts

Amicus generally adopts the Statement of Case and Facts submitted by Respondent, Equilease Corp. Amicus would, however, emphasize that the approximately four (4) year, long-term lease involved in this case gave the right to immediate possession of the vehicle (a commercial tractor truck) to the lessee, and also granted the lessee a right to purchase the truck. (Lease attached as App. A). Furthermore, the terms of the lease provided that the truck was to be maintained and serviced by the lessee, and that all licenses, registration, and insurance were to be acquired by the lessee. The lease also indicated on its face that it was a financing device designed to secure a "credit risk". See App. A at 2, ¶19. In sum, the lease gave complete right of possession and control to the conditional lessee and protected only the financial interest of the lessor.

Summary of Argument

Petitioner's major premise is that the owner's authority to control a vehicle is an irrelevant issue for determining the scope of vicarious liability under Florida's dangerous instrumentality doctrine. This premise is, however, flawed. The rulings of this Court have repeatedly recognized that the key to assessing owner vicarious liability is the authority to control a vehicle. This logic derives from the purpose of the doctrine: to encourage an owner to ensure that his vehicle is properly operated on the public highways. This liability is based on the concept of respondeat superior, under which principles of control are essential for inputting an agent's negligence to the principal. Once the Petitioner's premise is undercut, it is apparent that the long-term lessor in this case lacked any significant authority to control the truck involved here. Petitioner does not contend otherwise.

Furthermore, the principles announced in Palmer v. R.S. Evans, Jacksonville, Inc., 81 So.2d 635 (Fla. 1955), which were codified in Section 324.021(9)(a), Florida Statutes, in 1955, exclude the lessor in this case from vicarious liability. Under the terms of the lease, the conditional lessee was given immediate possession and the right to purchase the truck. Therefore, Section 324.021(9)(a) designates the lessee to be the "owner" for purposes of the dangerous instrumentality doctrine.

This statutory provision recognizes, based on Palmer, that a lease can be nothing more than a means of financing the purchase

of a vehicle. In the circumstances of the lease in this case, complete control of the vehicle was transferred to the lessee, and only the financial interest of the lessor was protected by the lease. Thus, this transaction should logically be treated the same as this Court treated a conditional sale in Palmer, and vicarious liability should not be imposed on a lessor who lacks any practical authority to control the instrument of liability.

Argument

I.

The Long-Term Lessor In This Case Had Insufficient Authority To Control The Use Of The Truck, And Therefore Could Not Be Vicariously Liable Under The Dangerous Instrumentality Doctrine.

The basic premise of Petitioner's entire argument is that the underlying principles of the dangerous instrumentality doctrine are not concerned with the potentially liable party's ability to control a vehicle. Petitioner frankly asserts that the ability to possess and control a vehicle is simply an "irrelevant question" when examining the scope of Florida's dangerous instrumentality doctrine. See Pet. Brief. at 20.

This argument is fundamental to Petitioner's entire position. This argument, however, is exactly contrary to the holding of this Court in Palmer v. R.S. Evans, Jacksonville, Inc., 81 So.2d 635 (Fla. 1955), in which this Court directly stated that the parameters of this doctrine of vicarious liability must logically be limited by a party's authority to control the use of a vehicle:

But the rationale of our cases which impose tort liability upon the owner of an automobile operated by another, e.g., Lynch v. Walker, 159 Fla. 188, 31 So.2d 268, Boggs v. Butler, 129 Fla. 324, 176 So. 174, Holstun v. Embry, 124 Fla. 554, 169 So. 400, and Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629, 16 A.L.R. 255, would not be served by extending the doctrine to one who holds mere naked legal title as security for payment of the purchase price. In such a titleholder, the authority over the use of the vehicle which reposes in the beneficial owner is absent.

Id. at 637 (emphasis supplied).

This principle that vicarious liability was founded upon the authority to control was first articulated by this Court in the case originally establishing the dangerous instrumentality doctrine for vehicles, when this Court stated: "The liability grows out of the obligation of the owner to have the vehicle . . . properly operated when it is by his authority on the public highway." Anderson v. Southern Cotton Oil Co., 73 Fla. 432, 74 So. 976, 978 (1917). Of course, in order to ensure that his vehicle is "properly operated", an "owner" must have sufficient control over a vehicle. Likewise, in Cox Motor Co. v. Faber, 113 So.2d 771 (Fla. 1st DCA 1959), the court recognized this same rationale for imposing vicarious liability only on the "beneficial owner" who has received "delivery, control and authority of use" of a vehicle. Id. at 774.

The growing recognition of this rationale which limits vicarious liability based on limited control caused this Court to expressly recede from a broader liability intimated in Susco Car Rental System v. Leonard, 112 So.2d 832 (Fla. 1959). In Castillo v. Bickley, 363 So.2d 792 (Fla. 1978), this Court recognized that "authority and control" were key elements for imposing vicarious liability, and expressly receded from Susco Car Rental. The logic for the holding in Castillo refused to allow imposition of liability on a car owner who had relinquished control of his car to a repair shop:

An automobile owner is generally able to select the persons to whom a vehicle may be entrusted

for general use, but he rarely has authority and control over the operation or use of the vehicle when it is turned over to a firm in the business of service and repair.

Id. at 793 (emphasis supplied). This Court concluded that under these circumstances an owner had "no ability to ensure the public safety." Id.

Thus, Petitioner is mistaken in its position that there has been no rationale which limited the scope of vicarious liability based upon the authority to control a vehicle. The dangerous instrumentality doctrine is not strictly a means to provide a plaintiff with another defendant to sue, as Petitioner argues. See Pet. Brief at 10. Rather, the doctrine reflects a social policy designed to encourage parties with authority to control the use of a dangerous instrumentality to carefully exercise that authority. Otherwise, imposition of vicarious liability would be totally arbitrary, irrational, and constitutionally unsupportable. Although vicarious liability may rationally be imposed without fault, it may not reasonably be imposed without at least the authority to control the instrument of liability, as for example in a principal-agent situation. See May v. Palm Beach Chemical Co., 77 So.2d **468**, 472 (Fla. 1955) ("doctrine of vicarious liability on the part of an automobile owner . . . is bottomed squarely upon the doctrine of respondeat superior arising from a principal and agent relationship implied in law".) This is exactly what this Court explained in Anderson, Palmer, and Castillo.

The rationale expounded in Palmer was codified in 1955 by

the enactment of what appears today as Section 324.021(9)(a), Florida Statutes. This law provides that a conditional lessee with the right of possession and the right to purchase a vehicle is deemed to be the "owner":

(9) OWNER; OWNER/LESSOR.--

(a) Owner.--A person who holds the legal title of a motor vehicle; or, in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

This provision has recognized since 1955 that a conditional lessee could be the owner of a vehicle for purposes of financial responsibility and liability under the dangerous instrumentality doctrine. Thus, Petitioner has apparently overlooked this provision when it argues that Equilease would theoretically have been liable based on the enactment of Section 324.021(9)(b), expressly exempting certain long-term lessors who meet insurance requirements from the dangerous instrumentality doctrine.' This

¹ 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

position ignores that lessors who could meet the requirements of subparagraph (a) could also have been excluded from vicarious liability. Subparagraph (b) now clarifies this exemption by applying to all leases over one-year with adequate insurance requirements.

Thus, a major basis for Petitioner's argument is undercut by the exception already provided in Section 324.021(9)(a). Petitioner incorrectly assumes that, prior to 1986, vicarious liability was necessarily imposed on all long-term lessors under the dangerous instrumentality doctrine, because in 1986 the Legislature made the effort to exempt some long-term lessors from such liability. Such an assumption is unwarranted since many long-term lessors (including Equilease) already qualified for exclusion from vicarious liability under the rationale of Palmer, as codified in Section 324.021(9)(a). Thus, the holding in Kraemer v. G.M.A.C., 556 So.2d 431 (Fla. 2d DCA 1989), that vicarious liability did not extend to certain long-term lessors who lacked significant control over a vehicle, is consistent with both the rationale of Palmer and the historic provisions of Section 324.021(9)(a).

Also consistent with Palmer and Kraemer, several other jurisdictions have construed statutory provisions nearly

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.

identical to Section 324.021(9)(a) to exempt certain lessors from dangerous instrumentality liability. In Moore v. Ford Motor Credit Co., 166 Mich. App. 100, 420 N.W.2d 577 (1988) (App. B), the Michigan court held that, under a conditional lease which allowed the lessee to purchase the automobile, the lessor was not the owner for purposes of imposing owner vicarious liability.² In Lee v. Ford Motor Co., 595 F.Supp. 1114 (D.D.C. 1984) (App. C), the federal court held that because Ford had leased a car under a long-term lease, it lacked "dominion and control" over the car for purposes of a statutory provision imposing vicarious liability on owners. The court reached the conclusion despite the lack of a specific statutory exclusion for long-term lessors. The court noted that one of the purposes of owner vicarious liability is to place liability on the person in a position to prevent use of the vehicle. Id. at 1116. Since a significant degree of dominion and control was conveyed to the long-term lessee, the purposes of the owner vicarious liability statute would not be furthered by holding Ford liable.

These cases all demonstrate the growing awareness that a commercial lease transaction is a means of financing ownership of a vehicle. In recent years, the use of the lease transaction has become more and more common as an alternative means of structuring financing. Indeed, this growing custom in the

² See also Klein v. Leatherman, 270 Cal.App.2d 792, 76 Cal. Rptr. 190 (1969) (lessor under lease containing option to purchase for nominal consideration was not liable under statute imposing owner vicarious liability).

automobile industry was exactly what convinced the Legislature that another, more explicit statutory exemption was needed for ensuring that certain long-term lessors were clearly excluded from potential vicarious liability. As quoted by the Fourth District Court of Appeal in Folmar v. Young, 15 F.L.W. D366 (Fla. 4th DCA Feb. 6, 1990),³ the Legislature gave clear indications that it recognized a long-term lease as the commercial equivalent of a conditional sales transaction:

In the legislative discussions concerning this amendment [Section 324.021(9)(b)], the representatives repeatedly discussed the fact that leases for more than one year are nothing more than alternative methods for financing the purchase of a car. As Representative Gallagher stated:

What he is saying is that we are treating a lease that is for one year or more very similar to a purchase, and that's what it is, that's the latest way of handling cars is to lease them.

Representative Silver stated:

Many times it's to the advantage of businesses to lease automobiles for a year or more, all it is, is a tax advantage to that particular business.

He later added:

Most of the people who are doing this type of arrangement are doing it as an alternative financing arrangement.

³ Petitioner is incorrect in its assertion that the Fourth District inconsistently held in Folmar that all long-term lessors were liable under the dangerous instrumentality doctrine prior to the 1986 amendment, enacting Section 324.021(9)(b), Florida Statutes. Indeed, the Fourth District did not address this issue.

Under these circumstances, there is no reason to distinguish between the liability of the person who sells the vehicle as opposed to the lessor who leases it.

Id. at 367-68. Thus, subparagraph (b) was added to help clarify exactly which long-term leases would unquestionably be excluded from the dangerous instrumentality doctrine.

As a practical matter, prior to the 1986 amendments, many long-term lessors were understandably reluctant to drop their own insurance coverage based on the somewhat uncertain standard of non-liability set forth in Palmer and Section 324.021(9)(a), especially in light of the paucity of Florida cases directly construing this provision for leasing transactions.⁴ In order to alleviate their uncertainty and to address the growing use of leases as a financing tool, the Legislature provided specific criteria for long-term leases which would explicitly qualify for exemption. However, this 1986 amendment did not imply the opposite, i.e. that a long-term lessor arguably failing to qualify for the subparagraph (b) exemption was ipso facto liable under the dangerous instrumentality doctrine.

⁴ Petitioner's argument that because Equilease cautiously had obtained its own insurance coverage there must be liability begs the ultimate question, and is exactly why the existence of insurance coverage is not relevant to a finding of liability and why joinder of the insurance company is prohibited. See § 627.7262, Fla. Stat. (1989) (prohibiting third-party beneficiary from joining insurance company in suit to establish underlying liability). Moreover, Petitioner relies too strongly on Section 627.7263, Florida Statutes, which provides a general rule of priority between the lessor's and lessee's insurance companies. This law obviously applies only to lease transactions not exempted from the dangerous instrumentality doctrine by either Section 324.021(9)(a) or (b).

Indeed, Palmer and Section 324.021(9)(a) preclude such an assumption under the facts of this case. Here, the 4-year lease gave practically complete control and possession to the lessee, who was also given the right to purchase the vehicle. Because all practical control over the vehicle (including maintenance, use, storage, etc.) had been transferred to the lessee, the provisions of Section 324.021(9)(a) and the logic of Palmer operate to designate the lessee here as the "owner" for purposes of the dangerous instrumentality doctrine. Furthermore, the terms of the lease make it clear that the lease itself was nothing more than a financing transaction, as the terms provide that any act of the lessee which would "increase the credit risk involved" would be considered a default under the lease. See App. A. at 2, ¶ 19; 5, ¶ F. Thus, the lessee here is a conditional lessee who is intended by Section 324.021(9)(a) to be designated as the "owner".

Therefore, Petitioner's assumption that Equilease would be liable under the amended version of the statute if it applied is fallacious. Moreover, Petitioner's entire reliance on the 1986 amendment to Section 324.021, which added subparagraph (b), is fraught with ambivalence. At the same time that Petitioner implies that the amendment has no application to the dangerous instrumentality doctrine, see Pet. Brief at 13 n.7, Petitioner also urges that the Legislature must have thought that long-term lessors were covered by that doctrine or it would not have passed a provision to exempt such lessors. But Petitioner cannot have

it both ways. If the amendment does not affect the dangerous instrumentality doctrine as implied by Petitioner, then nothing whatsoever can be inferred from its passage regarding that doctrine. And if the amendment is intended to affect the vicarious liability of some long-term lessors (as it clearly was), then Petitioner has overlooked the logic of both Palmer and Section 324.021(9)(a) which would exempt Equilease from vicarious liability in the circumstances of this particular case.

Much of Petitioner's argument is centered on a hyper-technical examination of real property law concepts in an attempt to equate "equitable title" to "beneficial ownership". Amicus candidly admits that it does not understand this analogy to ancient real property law. Moreover, these ancient real property concepts are ill-adapted for assisting in understanding a modern, commercial lease transaction for movable goods such as vehicles. Petitioner's exercise in semantics also ignores this Court's repeated conclusion that the substance of the transaction will govern whether vicarious liability is imposed under the dangerous instrumentality doctrine. Thus, even though the car owner in the Castillo case was unquestionably the legal and equitable "owner" of the car, because he had transferred sufficient authority to control the car to a repair shop, technical ownership was ignored for purposes of vicarious liability. That decision was based on the substance of the transaction and not on artificial, arcane labels.

Once the inappropriate assumptions on which Petitioner bases

1
its argument are brought into sharp focus, the muddled conclusions it draws about Perry v. G.M.A.C. Leasing Corp., 549 So.2d 680 (Fla. 2d DCA 1989), review denied, 558 So.2d 18 (Fla. 1990), and Kraemer may be quickly dispelled. In Perry, the Second District addressed the constitutionality of the 1986 amendment, Section 324.021(9)(b), Florida Statutes, and as an alternative basis for upholding the amendment merely noted that the "parameters of the common law right" to sue a long-term lessor in the circumstances of that case (i.e. lessee had right to immediate possession and right to purchase) had not been "fully established in Florida." Id. at 682. Thus, the Second District merely noted the uncertainty of any common law right to sue the long-term lessor in that case. This alternative basis for its holding is entirely consistent with the rationale of Palmer and Section 324.021(9)(a) which excluded from Florida's judicially created doctrine certain lessors who transferred sufficient control and authority to a lessee who would be deemed the beneficial owner.

I
1
1
The Second District in Kraemer examined the terms of a particular 4-year lease which gave the lessee the right to purchase the car, and required the lessee to acquire all licenses, registration, and insurance and to maintain the car. This lease is thus similar in material respects to the lease in the instant case. After analyzing the provisions of the lease involved in the Kraemer case, the Second District concluded as a matter of law that GMAC, the lessor and technical owner, did not

have sufficient control over the car under the terms of the lease to warrant imposition of vicarious liability under the dangerous instrumentality doctrine. The Second District correctly concluded that the lessor was little more than a secured party, and the lease was designed solely to protect its financial interest.⁵

Kraemer is, thus, consistent with the historic position of this Court, as well as with Section 324.021(9)(a), in construing a particular long-term lease to have transferred beneficial ownership to the lessee. This precedent, when applied to the instant case, requires a court to examine the lease at issue to determine if, as a matter of law, the lease effectively transfers beneficial ownership to the lessee. The Third District in this case was entirely correct in its legal assessment that the terms of the lease involved here sufficiently transferred authority and control of the vehicle to the long-term lessee to preclude imposing vicarious liability on the lessor.

⁵ Petitioner attempts in vain to draw any practical distinction between these long-term leases and conditional sales as security agreements. For example, Petitioner notes that the lease required the lessee to purchase insurance. But most (if not all) finance companies or banks would also certainly require the conditional vendee to purchase insurance.

Conclusion


Amicus submits that the Third District's opinion is consistent with a long history of cases and law recognizing that vicarious liability will not be imposed without some authority over the instrument of liability. Accordingly, the decision of the Third District Court of Appeal in this matter should be affirmed.



WILLIAM C. OWEN
F. TOWNSEND HAWKES
CARLTON, FIELDS, WARD, EMMANUEL,
SMITH & CUTLER, P.A.
410 First Florida Bank Bldg.
P. O. Drawer 190
Tallahassee, Florida 32302

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to GEORGE C. BENDER, Bender, Bender & Shandler, 5915 Ponce De Leon Blvd., Suite 62, Coral Gables, FL 33146; RALPH O. ANDERSON, Daniel & Hicks, 100 N. Biscayne Blvd., Suite 2400 New World Tower, Miami, FL 33132; R. W. PAYNE, Spence, Payne, Masington & Needle, P.A., Suite 300 Grove Professional Bldg., 2950 S.W. 27th Avenue, Miami, FL 33133; JOEL D. EATON, Podhurst, Orseck, Josefberg, Eaton, Meadow, Olin & Perwin, P.A., 25 W. Flagler Street, Suite 800, Miami, FL 33130 and JEFFREY B. SHAPIRO and JUDY D. SHAPIRO, Herzfeld & Rubin, 801 Brickell Avenue, Suite 1501, Miami, FL 33131, on this the 22nd day of June, 1990.



Attorney