

FLORIDA SUPREME COURT

Case No.: SC14-1404

T. PATTON YOUNGBLOOD,)
Defendant/Petitioner,)
vs.)
ESTATE OF REINALDO)
VILLANUEVA, by and through)
ROSALINA VILLANUEVA,)
as Personal Representative,)
Plaintiff/Respondent.)
_____)

JURISDICTIONAL BRIEF OF DEFENDANT/PETITIONER

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STATEMENT OF THE CASE AND FACTS

In the instant case, the Petitioner had entrusted, by consignment, a motor vehicle, of which the trial court declared him to be the beneficial owner, to a used car dealership. One of the employees of the dealership, without Petitioner's knowledge or consent, had been using the vehicle as his own person vehicle, and negligently operated the vehicle causing the death of Respondent's decedent. The question presented is whether the consignment is a "loan" of the vehicle, under §324.021(9)(b)(3), *Fla. Stat.*, which would serve to limit Petitioner's monetary liability. Petitioner argues that because the jury determined that the employee had not converted or stolen the vehicle at the time of its use, thus making him a permissive user; and Youngblood would have enjoyed either the return of sale proceeds or the motor vehicle, that this provision applies to limit his liability.

This Court previously took conflict jurisdiction of the instant cause in that the Second District Court of Appeal found that consigning a car to a used car dealership did not fall under the "shop rule" exception. *Youngblood v. Villanueva*, 57 So.3d 859 (Fla. 2d DCA 2011). Youngblood had appealed to this Court because of the conflict with the Fourth District Court of Appeal, in *Fought v. Mullen*, 609 So. 2d 726 (Fla. 5th DCA 1992). In that case, the court applied the shop exception since Mullen had entrusted his car to the auction company at the

registration desk for the service of auctioning it. The *Fought* court specifically stated, "...we find no reason to distinguish between types of service when applying the automobile service exception and hold that under the facts in this case the auctioning of an automobile is a service which falls within the exception." *Id.* at 727 (citing *Michalek v. Shumate*, 524 So. 2d 426,427 (Fla. 1988)). After granting jurisdiction and hearing oral argument, this Court entered an Order that it had improvidently granted jurisdiction, and remanded the matter to the trial court.

The facts of this case are that, on December 4, 2002, Petitioner/Defendant Youngblood delivered his vehicle to Extreme Auto Sales and Accessories, Inc. and consigned it there for sale.¹ (A. 2). Youngblood handed the keys to the car to one of Extreme Auto's employees, Teddy Aponte, with instructions only to sell the vehicle for a certain amount, and placed no time limit on which to sell it. (*Id.*). Because both Aponte and Youngblood agreed that the vehicle's value far exceeded the approximate payoff, Youngblood did not anticipate to get the vehicle back; rather, he expected only to receive the sale proceeds. (*Id.*). On December 24, 2002, Aponte and a friend, on their way to a party, violated the right of way of

¹ Youngblood's ex-wife, unbeknownst to him, had transferred the insurance he had pre-paid on the vehicle to her new vehicle when she gave Youngblood the vehicle to sell. Otherwise, it would have been insured at the time of the subject accident.

decedent, causing his death. Aponte went to prison for, approximately, 6-7 years for DUI manslaughter.

Aponte testified that he had been using the vehicle as his own, and because he had been using it as his personal vehicle, Youngblood argued that the use constituted conversion or theft. (A. 2). With regard to liability for operation of the motor vehicle, the trial court instructed the jury as follows:

“When control of a vehicle is voluntarily relinquished to another, only a breach of custody amounting to a conversion or theft will relieve the owner of responsibility for its use or misuse.”

“The validity or effect of restrictions on such use as between Extreme Auto and T. Patton Youngblood is a matter totally unrelated to the liabilities imposed by law upon one who owns the vehicle.”

TT at 354:9-16.

The trial court rejected Youngblood’s argument that the Plaintiff must prove that Youngblood had knowledge of or consented to Aponte’s operation of the motor vehicle.

MR. ROE [Attorney for Youngblood]: “In order for Mr. Youngblood, who now you’ve said is the owner, to be responsible under the dangerous instrumentality doctrine, it must be shown to the jury that someone used it with his permission.”

THE COURT: No.” *TT at 36:20-25.*

For this reason, and based on the above instructions, the jury had no choice but to impose liability on Youngblood. (A. 2).

SUMMARY OF ARGUMENT

The Second District Court held that because Petitioner's consignment does not constitute a "loan", then §324.021(9)(b)(3), *Fla. Stat.*, does not apply. Petitioner is a "natural person"; and the jury found that Aponte was a "permissive user" of the vehicle by rejecting Petitioner's arguments that he had converted or stolen the vehicle. Thus, the only basis upon which the Second District based its decision to disallow application of §324.021(9)(b)(3), *Fla. Stat.*, turned on the definition of a "loan". By strictly construing the word "loan", and disregarding the balance and intent of the statute, the Second District Court's decision places Petitioner in that black hole wherein although the jury determined that a permissive user was operating the vehicle, and Petitioner is a natural person who authorized the use according to the jury's verdict, his liability is not limited simply by virtue of him "consigning" rather than "loaning" the vehicle to the used car dealer. Further, the fact that Petitioner may not have "expected" return of the vehicle, because he was confident the vehicle would sell for more than the debt thereon, is of no consequence as he did expect to obtain the equivalent of the vehicle in the

form of money, in exchange therefor.

The Second District's decision conflicts with, among others, its own case of *Fischer v. Alessandri*, 907 So.2d 569 (Fla. 2d DCA 2005), *Trevino v. Mobley*, 63 So.3d 865 (Fla. 5th DCA 2011), and all other cases citing the subject statute which recognize that the purpose of the statute was to limit the vicarious liability of the owner (a natural person) when another permissively uses his vehicle. The statute does not limit the owner's liability in the event of his own negligence.

The situation in the case at bar is one that will undoubtedly be repeated in the future with serious consequences to the parties involved. Any time someone decides to consign their vehicle, instead of fielding calls from among many of the crazies who profess to want to meet you at, inspect, and test-drive your vehicle, wherein title is not transferred to the used car dealer, the seller/natural person will have no limitation for his or her vicarious liability.

STANDARD OF REVIEW

The existence of conflict is determined as a matter of law. The district court opinion does not have to identify the conflict in order to create jurisdiction. *Ford Motor Company v. Kikis*, 401 So. 2d 1341, 1342 (Fla. 1981).

ARGUMENT

The Second District cited §265.565(2)(b), *Fla. Stat.*, in support of its opinion

that the consignment does not constitute a “loan”, as follows:

“Loans,” “loaned,” or “on loan” refers to property in possession of the museum *not accompanied by a transfer of title to the property* **or** accompanied by evidence that the lender intended to retain title to the property and to return to take physical possession of the property in the future. *Id.*

However, this statute actually supports Petitioner’s position. Evidently, the court must have read the two phrases as being one. As a matter of grammatical construction, if the phrase “accompanied by evidence that the lender intended to retain title to the property” were removed, which the court must have presumed was in the alternative to “not accompanied by a transfer of title to the property”, the sentence would make no sense and would be grammatically improper. Thus, the only logical construction is that **all** of the words after the “or” are in the alternative to “not accompanied by a transfer of title to the property”.

The used car dealer’s possession of the subject vehicle in this case was, consistent with the aforementioned definition of a “loan”, “not accompanied by a transfer of title to the property”. Thus, using the definition of the word “loan” in §265.565(2)(b), *Fla. Stat.*, as relied upon by the Second District Court, a loan of the motor vehicle by Petitioner to the used car dealer is exactly what occurred.

“Loan” is defined in Black’s Law Dictionary as “[a]nything furnished for

temporary use to a person at his request, on condition that it shall be returned, **or its equivalent in kind**, with or without compensation for its use.” (emphasis added). *Black’s Law Dictionary*, 6th Ed., p. 936. A loan is returned “‘in kind’ when not the identical article, but one corresponding and equivalent to it, is given to the lender.” *Black’s Law Dictionary*, 6th Ed., p. 787. Petitioner expected to get money, or satisfaction of the promissory note, in kind, for the vehicle, or would have eventually, expected a return of the vehicle. He certainly neither expected nor desired to get another vehicle. The idea was to sell the vehicle and get out from under the promissory note on a vehicle of which he was receiving no benefit.

“Loan” is defined elsewhere as “the act of lending or state of being lent.” *Oxford Concise English Dictionary*, 9th Ed., p. 798. The work “lend”, the past of which, of course, is “lent”, is defined as “[to] grant (to a person) the use of (a thing) on the understanding that it **or its equivalent** shall be returned.” (emphasis added). *Id.* at 779.

The case of *Ortiz v. Regalado*, 113 So.3d 57 (Fla. 2d DCA 2013), cited by the Second District Court, has no applicability as the vehicle in that case was being operated by a co-owner of the vehicle at the time of the accident. Naturally, the *Ortiz* court pointed out that “[a]n owner of an object can only loan that object to another who has no legal right to the object.” *Ortiz*, at 60. A co-owner is not

one to whom the vehicle could be loaned. *Ortiz* also pointed out that the word “loan” is unambiguous on its face and, “[i]f necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary.” (emphasis added). *Id.* (citing *Gardner v. Johnson*, 451 So.2d 477 (Fla.1984)). *King v. King*, 82 So.3d 1124, 1130 (Fla. 2d DCA 2012).

Both *Fischer v. Alessandri*, 907 So.2d 569 (Fla. 2d DCA 2005), *Trevino v. Mobley*, 63 So.3d 865 (Fla. 5th DCA 2011), speak in terms of the legislature’s intent in enacting §324.021(9)(b)(3), *Fla. Stat.*, which was to limit the vicarious liability of the owner of a motor vehicle. As stated in *Fischer*,

“It was not until 1999 that the legislature enacted section 324.021(9)(b)(3), to limit vicarious liability under the dangerous instrumentality doctrine. To read that section to exclude from its limitation of liability the class of motor vehicles that comply with the no-fault statute *would thwart the legislature’s goal rather than advance it.*” (emphasis added). *Fischer*, at 571.

Likewise, to refuse to limit Petitioner’s vicarious liability under the circumstances of this case “would thwart the legislature’s goal rather than advance it.” When the trial court in *Fischer* reasoned that the person who was operating the vehicle was not actually the “permissive user”, but rather a person to whom the permissive user had loaned the vehicle, the *Fischer* court rejected this argument as well, stating as follows:

“This reasoning, however, ignores the rest of the sentence which states that the owner shall be liable for the ‘operation of the vehicle or the acts of the operator’ up to the limit provided in the statute.” *Fischer*, at 572.

As the *Trevino* court stated, “[t]he statute limits a vehicle owner’s exposure for vicarious liability.” *Trevino*, at 867. There is nothing particularly distinct about “loaning” the vehicle to a permissive user. Perhaps the legislature was attempting to distinguish between those to whom the vehicle was “given” (which may have suggested that it was that person’s vehicle to keep) and those who took the vehicle without permission. However, as shown hereinabove, the word loan is not limited to obtaining a return of the item “loaned”. The upshot is that the vehicle is being operated by one who is a permissive user, with an expectation of return of the vehicle or something in kind, i.e., money, in exchange for the vehicle.

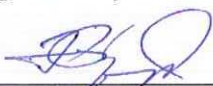
The situation in the case at bar is one that will undoubtedly be repeated in countless cases in the future with serious consequences to the parties involved. The Second District Court’s opinion, respectfully, has frustrated the goal of the law limiting the vicarious liability of a natural person, regardless of whether the vehicle was entrusted to an individual or a commercial entity.

CONCLUSION

It is respectfully submitted that the district court’s decision conflicts with

several other decisions concerning the intent of §324.021(9)(b)(3), *Fla. Stat.*, and directly conflicts with its own prior decisions, and justice dictates that it be reversed.

Respectfully submitted,



T. PATTON YOUNGBLOOD, JR., ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to: KENNAN G. DANDAR, ESQUIRE, at kgd@dandarlaw.net, Dandar & Dandar, P.A., P.O. Box 24597, Tampa, FL 33623-4597 (Attorneys for Appellee), on this 25th day of July, 2014.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Initial Brief has a typeset of Times New Roman 14.

By:



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