

THE WEEK IN TORTS

FLORIDA LAW WEEKLY VOLUME 39, NUMBER 15 CASES FROM THE WEEK OF APRIL 11, 2014

A PERSON WHOSE NAME IS ON THE CERTIFICATE OF TITLE OF A VEHICLE AS CO-OWNER CANNOT AVOID VICARIOUS LIABILITY UNDER THE “BENEFICIAL OWNERSHIP” OR “NAKED LEGAL TITLE” EXCEPTION TO VICARIOUS LIABILITY UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE

Christensen v. Bowen, 39 Fla. L. Weekly S214 (Fla. April 10, 2014):

A man paid for a vehicle listed in both his name and his wife's name as co-owner (they were in process of a divorce). The certificate of title was mailed to the wife's address, but was issued in the name of both the husband and the wife.

Although the man did not have a key to the vehicle, nor did he use the vehicle or reside with the co-owner, or have access to her garage where the vehicle was kept, the title to the vehicle was in his name as co-owner.

When his co-owner ex-wife killed someone in an accident 22 months later, the man was sued as the owner. He contended he was not vicariously liable, and that his intent was to purchase the vehicle as a gift for his wife and cease involvement with the vehicle after it was purchased. The Fifth District held the man was liable under the dangerous instrumentality doctrine because he retained an identifiable property interest in the vehicle by having his name placed on the title as co-owner. The court found that the man's subjective intent was insufficient to defeat vicarious liability. It did, though, certify the question as one of great public importance.

There is a narrow exception to the dangerous instrumentality doctrine in cases where the title owner lacks beneficial ownership. Under this “bare legal title” exception, a titleholder may avoid vicarious liability if the titleholder demonstrates that he or she does not have the authority to exert any dominion or control over the vehicle, and is not a beneficial owner of it.

In this case, the defendant was a joint title owner with joint tenancy interest in the vehicle, and had the right to possess and use the vehicle. Each joint titleholder in this case had a statutorily conferred legal right in the vehicle, and enjoyed a right of survivorship. Additionally, where the names of joint titleholders are separated by the word “or” on the title documentation as in this case, either could unilaterally encumber or sell the vehicle. Each of those rights puts a joint titleholder in the position to exercise authority or control over the vehicle.

Additionally, a joint titleholder's assertion that he or she never subjectively intended to be a titleholder is irrelevant to the beneficial ownership of a vehicle. Here, the only evidence presented by the man to establish that he no longer owned the vehicle was that he did not use it, was not in a position to use it because he did not live with the co-owner, could not access the garage where it was kept, and subjectively intended to gift the vehicle to his ex-wife when he purchased it. However, the nonuse of the vehicle does not demonstrate that he transferred his interest or that he was not the beneficial owner. Because he was indisputably in a position to exercise dominion and control over the vehicle, he was indeed a beneficial owner of it.

ERROR TO DISMISS COMPLAINT WITH PREJUDICE ON THE GROUND THAT PLAINTIFF'S FAILURE TO AMEND THE COMPLAINT WITHIN THE TIME GRANTED BY THE COURT, WHERE THE ORDER DID NOT SPECIFY THAT FAILURE TO FILE THE AMENDED COMPLAINT WITHIN THAT TIME FRAME WOULD RESULT IN DISMISSAL WITH PREJUDICE

Merl v. Weiner, 39 Fla. L. Weekly D692 (Fla. 3rd DCA April 2, 2014).

ERROR TO GRANT ALF'S MOTION TO COMPEL ARBITRATION WHERE THE TERMS OF THE ARBITRATION AGREEMENT SUBSTANTIALLY DIMINISHED THE PLAINTIFF'S STATUTORY RIGHTS UNDER THE ASSISTED LIVING FACILITY'S AGREEMENT

Lopez v. Willow Manor, 39 Fla. L. Weekly D700 (Fla. 4th DCA April 2, 2014):

Plaintiff signed an arbitration agreement providing that any controversy or dispute between the parties would be resolved by arbitration provided by the American Health Lawyers Association (AHLA) rules. The AHLA rules improperly provided that the “clear and convincing” standard would apply only to an award of consequential exemplary or special damages in a tort action, but did nothing to erode the improper elevation of the burden of proof on a resident's potential recovery under §606 of the NHLA rules stating that an arbitrator could not award consequential exemplary incidental, punitive or special damages unless there was a clear and convincing evidence to support it.

Because the offending portion of the subject provision was not severable and was improper, the court erred in granting the motion to compel arbitration.