

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2008*

**JUSSI K. KIVISTO,**  
Petitioner,

v.

**GMAC LLC f/k/a GENERAL MOTORS ACCEPTANCE CORPORATION,**  
Respondent.

No. 4D08-882

[April 16, 2008]

PER CURIAM.

The issue raised by this petition for certiorari is when, in a replevin action in which the defendant has prevailed, the court must award defendant damages. In a non-final order the trial court ordered plaintiff to return the vehicle to defendant, but postponed a determination of damages for a later hearing to be scheduled.

In *McMurrain v. Fason*, 584 So. 2d 1027 (Fla. 1st DCA 1991), the first district granted a petition for certiorari under similar circumstances, holding that damages were due immediately upon the dissolving of the writ. Prior to *McMurrain*, this court had construed section 78.20, Florida Statutes (2007), upon which this issue turns, in a manner contrary to *McMurrain*. *Gimbel v. Int'l Mailing and Printing Co.*, 506 So. 2d 1081 (Fla. 4th DCA 1987). After *McMurrain* was decided the fifth district, in *Trans Atlantic Distributors, L.P. v. Whiland Co., S.A.*, 671 So. 2d 883 (Fla. 5th DCA 1996) adopted our holding in *Gimbel* and disagreed with *McMurrain*.

We agree that this order is reviewable by certiorari, based on *McMurrain*, but we disagree with the holding on the merits on *McMurrain* and agree with *Trans Atlantic*. We certify direct conflict with *McMurrain v. Fason*, 584 So. 2d 1027 (Fla. 1st DCA 1991).

*Petition denied.*

SHAHOOD, C.J., POLEN AND KLEIN, JJ., concur.

\* \* \*

Petition for writ of certiorari to the Fifteenth Judicial Circuit, Palm Beach County; Glenn Kelly, Judge; L.T. Case No. 502007CA006713XXXXXM.

Jussi K. Kivisto of Kivisto Law Firm, Lake Worth, pro se.

Mark J. Bernet of Kass, Shuler, Solomon, Spector, Foyle & Singer, P.A., Tampa, for respondent.

***Not final until disposition of timely filed motion for rehearing***