

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 03-22841 CA 30

TANIA MEDINA, as Personal
Representative of the Estate of
UGOLINO J. BORDES,

Plaintiff,

vs.

RUSSELL JAMES CYPHERS,
FIRSTLEASE, INC., a Tennessee
Corporation, and EXPEDITE
TRANSPORT, INC. d/b/a EXPEDITE
TRANSPORT, a Florida Corporation,

Defendants.

_____ /

FIRST AMENDED COMPLAINT

The Plaintiff, TANIA MEDINA, as Personal Representative of the Estate of UGOLINO J. BORDES, sues the Defendants, RUSSELL JAMES CYPHERS, FIRSTLEASE, INC., a Tennessee Corporation, and EXPEDITE TRANSPORT, INC. d/b/a EXPEDITE TRANSPORT, a Florida Corporation, and alleges as follows:

GENERAL ALLEGATIONS

1. This is a wrongful death action for damages in excess of the jurisdictional requirements of this Court, to wit: Fifteen Thousand Dollars (\$15,000.00), exclusive of interest and costs.

2. The Plaintiff, TANIA MEDINA, is a resident of the State of Florida, residing in Miami-Dade County, Florida, and is otherwise *sui juris*. TANIA MEDINA is

or will be appointed as the Personal Representative of the Estate of UGOLINO J. BORDES.

3. The survivors and beneficiaries of UGOLINO J. BORDES are TANIA MEDINA and Milagro Bordes, his daughters, and Angel Bordes and Joaquin Bordes, his sons.

4. At all times material hereto, Defendant, RUSSELL JAMES CYPHERS (hereinafter referred to as "CYPHERS"), was and is a resident of the State of Florida and conducts his business in interstate and/or intrastate commerce as a commercial truck driver. Defendant, CYPHERS, was operating the 2-axle 2004 International box truck, bearing License No. ET110Z and VIN No. 1HTMMAAL44H608635, involved in the automobile accident which is the subject of this case, and was at all times a permissive user of the subject truck.

5. Upon information and belief, the Defendant, CYPHERS, was at all times material hereto, acting within the course and scope of his employment and agency relationship with the Defendants, FIRSTLEASE, INC. and/or EXPEDITE TRANSPORT, INC., while operating the subject 2-axle 2004 International box truck at the time of the automobile accident which is the subject of this case.

6. At all times material hereto, Defendant, FIRSTLEASE, INC., was and is a Tennessee corporation authorized to conduct business and conducting business in the State of Florida, and maintains an office located in Tampa, Hillsborough County, Florida. Defendant, FIRSTLEASE, INC., at all times material, owned the 2-axle 2004 International box truck, bearing License No. ET110Z and VIN

No.1HTMMAAL44H608635, involved in the automobile accident which is the subject of this case.

7. At all times material hereto, the subject 2-axle 2004 International box truck, owned by FIRSTLEASE, INC., was operated by CYPHERS with FIRSTLEASE, INC.'s permission and consent.

8. At all times material hereto, Defendant, EXPEDITE TRANSPORT, INC. d/b/a EXPEDITE TRANSPORT (hereinafter referred to as "EXPEDITE TRANSPORT"), is a Florida corporation licensed to do and doing business in Miami-Dade County, Florida.

9. Upon information and belief, Defendant, EXPEDITE TRANSPORT, owned and/or leased the 2-axle 2004 International box truck, bearing License No. ET110Z and VIN No.1HTMMAAL44H608635, involved in the automobile accident which is the subject of this case.

10. At all times material hereto, the subject 2-axle 2004 International box truck, owned and/or leased by EXPEDITE TRANSPORT, was operated by CYPHERS with EXPEDITE TRANSPORT's permission and consent.

FACTS

11. This matter arises out of a collision between an automobile and a commercial truck, which occurred on or about July 29, 2003 at approximately 12:03 p.m. The collision occurred on State Road 25 (Okeechobee Road), at the intersection of N.W. 138th Street, in Hialeah Gardens, Miami-Dade County.

12. At the time of the accident, the Decedent, UGOLINO J. BORDES, was a passenger in a 1994 Dodge Spirit (green in color), which was owned and operated by

Pablo R. Caraballosa. Mr. Caraballosa was making a left turn from northbound State Road 25 (Okeechobee Road) to westbound North West 138th Street.

13. At the same time and place, Defendant, CYPHERS, was operating a 2-axle 2004 International box truck, bearing License No. ET110Z and VIN No.1HTMMAAL44H608635. Defendant, CYPHERS, was driving southbound on State Road 25 (Okeechobee Road), at or near the intersection of North West 138th Street.

14. At the same time and place, Defendant, CYPHERS, while acting within the course and scope of his employment and agency relationship with the Defendants, FIRSTLEASE, INC. and/or EXPEDITE TRANSPORT, and as a permissive user of the subject 2-axle 2004 International box truck, improperly and without warning struck the 1994 Dodge Spirit on the right (passenger) side.

15. As a result of the collision, the Decedent, UGOLINO J. BORDES, sustained traumatic and blunt force injuries, including, but not limited to, an atlanto-occipital transection; brainstem hemorrhage and laceration; global subdural and subarachnoid hemorrhage; dicing injuries of the right side of the face; laceration of the left ear; lacerated heart, lung aorta, liver and hemidiaphragm; crushed rib cage; lacerated spleen; complete fractures of the left radius and ulna; and complete fractures of the right tibia and fibula. The Decedent, UGOLINO J. BORDES, was pronounced dead at the scene of the accident.

COUNT I
NEGLIGENCE OF THE DEFENDANT
RUSELL JAMES CYPHERS

16. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 15 above, and further alleges as follows:

17. The Defendant, CYPHERS, had a duty to operate the subject 2-axle 2004 International box truck in a non-negligent manner.

18. The Defendant, CYPHERS, breached that duty and was negligent for at least the following reasons:

- (a) Failing to yield the right of way;
- (b) Disregarding a traffic signal;
- (c) Driving at an excessive speed;
- (d) Driving recklessly and carelessly; and
- (e) Failing to take appropriate actions to avoid the accident.

19. As a direct and proximate result of the negligence of the Defendant CYPHERS set forth above, UGOLINO J. BORDES sustained traumatic and blunt force injuries from which he died at the scene of the accident, and the Plaintiff suffered the damages described in Paragraph 26, below.

COUNT II
VICARIOUS LIABILITY OF THE DEFENDANT
FIRSTLEASE, INC.

20. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 19 above, and further alleges as follows:

21. Defendant, FIRSTLEASE, INC., is liable to the Plaintiff for the injuries and death of UGOLINO J. BORDES, as a result of the negligence of Defendant CYPHERS, as set forth within Paragraph 18 above, in that, while operating the subject 2-axle 2004 International box truck, Defendant CYPHERS was acting within the course and scope of his employment and agency relationship with the Defendant, FIRSTLEASE, INC., and/or was a permissive user of the aforesaid truck owned by FIRSTLEASE, INC.

22. As a direct and proximate result of the foregoing negligence, injury and death of UGOLINO J. BORDES, the Plaintiff suffered the damages described in Paragraph 26, below.

COUNT III
VICARIOUS LIABILITY OF THE DEFENDANT
EXPEDITE TRANSPORT, INC. d/b/a EXPEDITE TRANSPORT

23. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 19 above, and further alleges as follows:

24. Defendant, EXPEDITE TRANSPORT, is liable to the Plaintiff for the injuries and death of UGOLINO J. BORDES, as a result of the negligence of Defendant CYPHERS, as set forth within Paragraph 18 above, in that, while operating the subject 2-axle 2004 International box truck, Defendant CYPHERS was acting within the course and scope of his employment and agency relationship with the Defendant, EXPEDITE TRANSPORT, and/or was a permissive user of the aforesaid truck owned and/or leased by EXPEDITE TRANSPORT.

25. As a direct and proximate result of the foregoing negligence, injury and death of UGOLINO J. BORDES, the Plaintiff suffered the damages described in Paragraph 26, below.

DAMAGES

26. As a direct and proximate result of the above-described negligence, UGOLINO J. BORDES died and the Plaintiff is entitled to recover the following damages:

- (a) On behalf of TANIA MEDINA, as the Personal Representative of the Estate of UGOLINO J. BORDES, medical and funeral expenses that have

- become charges against the estate;
- (b) On behalf of the survivors of the Estate of UGOLINO J.BORDES - Tania Medina, Milagro Bordes, Angel Bordes and Joaquin Bordes - lost support and services from the date of the decedent's injury to his death, with interest, and future loss of support and services from the date of death and reduced to present value; and loss of parental companionship, instruction, and guidance, and mental pain and suffering from the date of injury, and all other damages allowed by law.

WHEREFORE, the Plaintiff, TANIA MEDINA, as Personal Representative of the Estate of UGOLINO J. BORDES, demands judgment against Defendants, RUSSELL JAMES CYPHERS, FIRSTLEASE, INC., a Tennessee Corporation, and EXPEDITE TRANSPORT, INC. d/b/a EXPEDITE TRANSPORT, in excess of Fifteen Thousand Dollars (\$15,000) plus costs, and all other relief deemed just and proper under the circumstances, and demands a trial by jury of all issues triable as a matter of right by a jury.

DATED this _____ day of September, 2003.

Respectfully submitted,

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