SUPREME COURT OF FLORIDA

CASE NO. SC08-2269

RAFAEL VARGAS,

Petitioner,

v.

ENTERPRISE LEASING CO.,
et. al,

Respondent
_____/

AMICUS BRIEF OF
RAMON VILLANUEVA

In Support of Petitioner

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STATEMENT OF INTEREST OF AMICUS

Although the present case involves a short term rental, governed by §324.021 (9)(b)(2), Florida Statutes, and not a long term lease, governed by §324.021(9)(b)(1), Florida Statutes, this Court has stayed proceedings in Rosado v. DaimlerChrysler Financial Services Trust, Case No. SC09-390, a long term lease case, pending resolution of the present case.

Amicus Ramon Villanueva is the plaintiff in a case styled Ramon Villanueva vs. Leandro Gutierrez and DCFS Trust, a Delaware Business Trust, et al, Case No. 07-7925 CA 23, pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. Mr. Villanueva was seriously injured in a collision with a vehicle driven by Mr. Gutierrez, which Mr. Gutierrez leased from DCFS Trust under a long term lease. DCFS Trust has raised the Graves Amendment as a defense to Mr. Villanueva's claim.

Mr. Villanueva agrees with Petitioner that the decision of the District Court below in Vargas v. Enterprise Leasing Co., 993 So. 2d 614 (Fla. 4th DCA 2008) was incorrect. But the purpose of this brief is not merely to echo the argument of Vargas' exceedingly capable counsel. Rather, Mr. Villanueva is "primarily interested in making sure that [the] court does not inadvertently stray into issues that need not be decided in this case." Neonatology Associates, P.A. v. Commissioner of Internal Revenue, 293 F.3d 128, 133-34 (3d Cir. 2002) (Alito, J.). Mr. Villanueva argues that the case for Graves Amendment preemption of claims against short term lessors is weak, but the case for Graves Amendment preemption of claims against long term lessors is even weaker.

Mr. Villanueva hopes that the Court will reverse the decision below based on Petitioner's argument, the arguments of the dissents below, and the argument of the dissent in Rosado v. DaimlerChrysler Financial Services Trust, 1 So.3d 1200 (Fla. 2d DCA 2009). Should the Court reverse, it may issue an opinion applicable to long

term leases, since most of the considerations are the same. However, assuming without conceding that the Graves Amendment might preempt claims against short term lessors, it does not preempt claims against long term lessors, so any such opinion should be carefully tailored to affect only cases against short term lessors, and should make clear that cases involving long term leases, like Mr. Villanueva's, present additional reasons for not preempting lessees' claims.

STANDARD OF REVIEW

The court reviews the pure legal issues of federal preemption *de novo*. Marcy v. DaimlerChrysler Corp., 921 So. 2d 781 (Fla. 5th DCA), *rev. denied*, 939 So. 2d 1059 (Fla. 2006).

SUMMARY OF ARGUMENT

The reasons for denying Graves Amendment preemption in short term rental cases, as set forth by the dissenters below, are compelling. But there are additional reasons for denying preemption in long term lease cases, which should not be overlooked regardless of how the court rules in this case.

Vicarious liability in long term lease cases was not established in the common law of Florida prior to the enactment of what is now §342.021(9)(b)(1), Florida Statutes, the long term lease statute. Thus, the long term lease statute did not just limit liability, it also imposed liability on long term lessors if they failed to comply with the specified insurance requirements. Therefore, §324.021(9)(b)(1), Florida Statutes is not only a "law imposing financial responsibility or insurance standards on the owner of a motor vehicle" under 49 U.S.C. §30106(b)(1). It is, in addition, a law "imposing liability for failure to meet . . . liability insurance requirements under state law," under 49 U.S.C. §30106(b)(2) of the Graves Amendment. Consequently, claims against long term lessors are not preempted.

Therefore, while it would be correct to rule that claims against short term lessors are not preempted, there is even more reason to find that claims against long

term lessors are not preempted. Consequently, if this Court finds claims against short term lessors preempted – which we do not concede – we respectfully ask the Court to narrowly tailor its decision, and to specify that claims against long term lessors are not included in any such ruling.

ARGUMENT

THE GRAVES AMENDMENT DOES NOT PREEMPT CLAIMS AGAINST EITHER SHORT TERM OR LONG TERM LESSONS BUT, WHETHER OR NOT THIS COURT FINDS CLAIMS AGAINST SHORT TERM LESSORS PREEMPTED, IT SHOULD MAKE CLEAR THAT LONG TERM LEASE CASES PRESENT ADDITIONAL REASONS AGAINST PREEMPTION NOT ADDRESSED IN THIS CASE.

In1986, the Florida Legislature enacted §324.021(9)(b), Florida Statutes, setting out the financial responsibility and insurance requirements for long term lessors. That provision has been amended and is now codified at §324.021(9)(b)(1), Florida Statutes. Prior to its enactment, no Florida case specifically addressed the liability of a long term lessor. See Abdala v. World Omni Leasing Inc., 583 So. 2d 330, 333 (Fla. 1991). The statute now provides:

> (b) Owner/lessor.--Notwithstanding any other provision of the Florida Statutes or existing case law:
>
> 1. 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 or not less than $500,000 combined property damage liability and bodily injury liability, shall not be deemed the owner of said motor vehicle *for the purpose of determining financial responsibility for the operation of said motor vehicle or for the acts of the operator* in connection therewith; further, this subparagraph shall be applicable so long as the *insurance meeting these requirements* is in effect. The insurance *meeting such requirements* may be obtained by the lessor or lessee, provided, if such insurance is obtained by the lessor, the combined coverage for bodily injury liability and property damage liability shall contain limits of not less than $1 million and may be provided by a lessor's blanket policy.

(emphasis added).

This provision makes the long term lessor the “owner” of the vehicle and

"financially responsib[le]" unless either the lessor or the lessee maintains a liability insurance policy satisfying the *"requirements"* of the statute. See Ady v. American Honda Finance Corp., 675 So.2d 577 (Fla. 1996).

Three different provisions of the Graves Amendment exempt state laws from preemption: Subsection (a)(2) of the Graves Amendment allows liability when there is negligence on the part of the lessor or an affiliate. Subsection(b)(1) of the Graves Amendment exempts state laws "imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle". And subsection (b)(2) of the Graves Amendment exempts state law "imposing liability . . . for failure to meet . . . liability insurance requirements under state law." While all three exemptions should apply to both short term and long term leases, subsection (b)(2) of the Graves Amendment applies with special force to long term leases.

Subsection (b)(2) of the Graves Amendment provides that the Graves Amendment does *not* supersede any state law "*imposing liability* on business entities engaged in the trade or business of renting or leasing motor vehicles *for failure to meet* the financial responsibility or *liability insurance requirements* under state law." (emphasis added). Section 324.021(9)(b)(1) does exactly that – it *imposes liability* on business entities in the motor vehicle leasing business for *failure to meet liability insurance requirements*.

The Florida long term lease statute makes the long term lessor financially responsible and legally liable for damages caused by the operation of the vehicle unless the lessor ensures that the "required" liability insurance is in place, either through insurance obtained by the lessee or by the lessor. History shows that the long term lease provision both *imposes* and limits liability.

The liability of long term lessors for the operation of the vehicle by the lessee at common law was "unsettled at the time of the enactment" of the Florida long term

lease statute. Abdala v. World Omni Leasing, Inc., 583 So.2d 330, 333 (Fla. 1991). At the time the legislature enacted the long term lease statute in 1986[1]

[1] See Ch. 86-229, Laws of Florida (1986), cited in Abdala, 583 So. 2d at 331.

, the Supreme Court had not yet decided Kraemer v. General Motors Acceptance Corp., 572 So.2d 1363 (Fla. 1990), holding long term lessors liable for the negligence of a lessee.

> *Kraemer was the first decision of this Court specifically to hold long term lessors of motor vehicles liable for injuries caused by the operation of those vehicles. . . .*
>
> In arriving at our conclusion in Kraemer, we were somewhat affected by the statute under consideration and the perception the legislature held on the liability of long term lessors and its effect on long term financing. . . . The legislature can determine the circumstances permitting vicarious liability without violating [the constitutional right of access to courts], particularly when the *law is unsettled* at the time of the enactment.

Abdala, 583 So.2d at 333 (emphasis added). Thus, the Court viewed the long term lease statute as actually imposing vicarious liability which previously was not established in Florida law.

In fact, the Supreme Court in Kraemer reversed a Second DCA decision which had held, in a case that arose before the statute, that a long term lessor was *not* liable under the dangerous instrumentality doctrine. See Kraemer v. General Motors Acceptance Corp., 556 So.2d 431 (Fla. 2d DCA 1989)(Kraemer I); reversed, 572 So.2d1363 (Fla. 1990)(Kraemer II). The Second District Kraemer I decision was the only Florida case addressing liability of long term lessors, and it held the lessor was *not* vicariously liable. At the time the legislature enacted the long term lessor statute in 1986, Florida case law only addressed short term rentals. There was no decision specifically addressing long term lessors.

Prior to Kraemer, the most closely analogous Florida case law appeared to be Palmer v. R.S. Evans Jacksonville, Inc., 81 So.2d 635 (Fla. 1955), holding that a conditional sales contract made the buyer a beneficial owner, relieving the seller of responsibility under the dangerous instrumentality doctrine. Long term leases were

viewed as "little more than a method of creative financing." Kraemer I, 556 So.2d at 435 (Altenbernd, J., concurring). Law from other jurisdictions held the long term lessor was not responsible. 556 So. 2d at 434. And Florida statutes defined the term "owner" to include conditional vendees and lessees. 536 So.2d at 433. That was the state of the law at the time the long term lease statute was enacted.

Thus, the enactment of the long term lease statute not only limited the liability of long term lessors; it also ensured that liability would be *imposed* on long term lessors when the minimum *insurance requirements* of the statute are not met. That responsibility had not been clearly established in Florida law up to that time. The enactment of the statute both imposed liability and limited it.

Because the long term lease provision of §324.021(9)(b)(1), Florida Statutes, is a law imposing liability on businesses leasing cars which fail to meet liability insurance requirements, the Graves Amendment does not preempt this provision of the Florida statute. Consequently, assuming - but *not* conceding - that this Court may rule that the Graves Amendment preempts claims against short term lessors, such a decision should not affect the liability of long term lessors.

CONCLUSION

Mr. Villanueva agrees with Petitioner that this court should reverse the decision below. However, should the court affirm, Mr. Villanueva respectfully requests that the Court specify in its decision in this case that there are additional considerations as to long term lessors which are not addressed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail on: MARIANO GARCIA, ESQUIRE, Gonzalez Porcher Albear & Garcia, Counsel for Petitioner, 2328 10th Ave. N., Ste. 600, Lake Worth, FL 33461; DAVID C. BORUCKE, ESQUIRE, Holland & Knight, Counsel for Respondent, P.O. Box 1288, Tampa, FL 33601; DAVID V. KING, ESQUIRE,

Cooke & King, Counsel for Respondent, 444 W. Railroad Ave., Ste. 400, West Palm Beach, FL 33401; JIMMY MIDDLETON c/o Elizabeth Price (Pro Se Defendant); Elizabeth Price, Pro Se Respondent, 14541 SE 91st Terr., Summerfield, FL 34491; MARJORIE GADARIAN GRAHAM, ESQUIRE, Marjorie Gadarian Graham, P.A., Counsel for Petitioner, Ste. D 129, 11211 Prosperity Farms Rd., Palm Beach Gardens, FL 33410; and ROY D. WASSON, Wasson & Associates, Chartered, Counsel for The Florida Justice Association, Courthouse Plaza, Ste. 600, 28 W. Flagler St., Miami, FL 33130 this _____ day of July, 2009.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

_____I HEREBY CERTIFY that the foregoing brief has been computer generated in 14 point Times New Roman and complies with the requirements of Rule 9.210.

_____

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