IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO. SC09-390

ALEJANDRO ROSADO

Petitioner,

-vs-

DAIMLERCHRYSLER FINANCIAL SERVICES TRUST, ETC., ET AL.

Respondents.
_____/

BRIEF OF PETITIONER ON THE MERITS

On certified question from the Fourth District Court of Appeal

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

Cases

Statutes

Other Authorities

PREFACE

This case is on review from a question certified to be of great public importance by the Second District Court of Appeal. The parties will be referred to as Rosado (or "Plaintiff") and DCFS Trust (or "Defendant"). The following designation will be used:

"R" - Record-on-Appeal.

STATEMENT OF THE FACTS AND CASE

Alejandro Rosado filed a lawsuit after he was injured on June 29, 2003, by a vehicle leased to the LaMondue Law Firm (hereinafter "LaMondue") (R1:1-3). This action was commenced on March 10, 2004, with the filing of the original Complaint naming Carl C. LaMondue, LaMondue Law Firm, P.L.C. and Terrell Parham ("Parham") as Defendants. It was subsequently amended and deemed filed November 2005, and named DaimlerChrysler Services of North America, L.L.C. d/b/a Mercedes-Benz Credit and Tysinger Motor Co., Inc., as parties to the action (R2:384-85). The Third Amended Complaint eliminated Tysinger Motor Co., Inc., as a party-defendant, substituted DaimlerChrysler Financial Services a/k/a DCFS Trust, as the lessor in place of DaimlerChrysler Services North America, L.L.C. d/b/a Mercedes-Benz Credit, and added additional claims for active negligence against LaMondue Law Firm, P.L.C. and Carl C. LaMondue (R3:407-22). Count VI was a claim for vicarious liability against DCFS Trust as the lessor of the vehicle (R3:467-68).

The lease began on January 15, 2003, and it was for 48 months (R3:470). Pursuant to the lease, the lessee had the right to purchase the vehicle at the end of the lease term (R3:480). The vehicle was originally leased by Tysinger Motor Co., Inc. of Virginia to the LaMondue Law Firm (R3:470). The payments were guaranteed personally by Carl LaMondue (R3:471). Although the lease required

LaMondue to maintain liability insurance of $100,000/$300,000/$50,000 or $500,000 combined single limits, LaMondue failed to secure the required insurance, and the lessor did not maintain any insurance on the vehicle (R3:499). LaMondue allowed the Defendant, Terrell Parham, to use the vehicle in Florida. Parham was operating the vehicle when it collided with the vehicle being driven by Rosado.

Alejandro Rosado was injured on June 29, 2003 (R8:1371). He was driving his Honda Accord on U.S. Highway 27 going to Clermont (R8:1371-72, 1376). Although the speed limit was 65 miles per hour, he was only traveling approximately 35-40 miles per hour because it was raining at the time (R8:1377-78). As he was driving and paying close attention to the car in front of him and the truck to the side, the vehicle he was driving was struck from the left by the Defendant, Parham (R8:1380). He only saw the vehicle at the last second before impact (R8:1381). Although Rosado did not know it at the time, Parham had driven the vehicle across the median and into the oncoming traffic (R8:1381-83). Rosado's vehicle was struck in the front, the air bag deployed, and he was thrown forward (R8:1383-84). He was cut on his right arm and broke his femur (R8:1384).

Rosado filed a lawsuit against LaMondue Law Firm, PLC, Carl LaMondue and Terrell Parham (R1:1-3). The Complaint was subsequently amended on

November 18, 2005, to add DaimlerChrysler Services North America LLC and Tysinger Motor Company (R1:60-71, 139). The Third Amended Complaint modified the named DaimlerChrysler entity to the DCFS Trust.

DCFS Trust filed a Motion for Summary Judgment in which it argued that due to the enactment of the Graves Amendment, 49 U.S.C. §30106 (effective August 10, 2005), it was immune from vicarious liability claims resulting from a leased vehicle (R3:454-86). The trial court denied the motion (R4:669-72). DCFS Trust filed a Motion for Rehearing of its Motion for Summary Judgment. In the Motion for Rehearing, DCFS Trust argued that the release of the decision in Garcia v. Vanguard Rental USA, Inc., 510 F.Supp. 2d 821 (M.D. Fla. March 5, 2007), provided support for its motion that did not exist at the time of the original motion. The trial court granted the Motion for Rehearing in favor of DCFS Trust.

Rosado appealed the decision to the Second District. In a split decision, the majority held that the Graves Amendment preempted vicarious liability against DCFS Trust as the lessor. The majority found that subsection (b)(1) (regarding long-term lessors) was preempted by the Graves Amendment because it was similar to subsection (b)(2) (regarding short-term lessors) in that:

> [i]t provides that the lease car company is not deemed the owner for financial responsibility or for vicarious liability so long as either the lessee has the designated policy of liability insurance in place or the lessor has a $1,000,000 blanket policy. Like subsection (b)(2), this subsection does not "impos[e] financial responsibility or insurance

> standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle" and does not "impose 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." It merely gives the leasing company the option to have insurance in place to avoid liability in Florida under the dangerous instrumentality doctrine.

Rosado v. DaimlerChrysler Fin. Services Trust, 1 So.3d 1200, 1205 (Fla. 2d DCA 2009).

In his dissent, Judge Altenbernd wrote that, in his opinion, subsection (b)(1) was not preempted by the Graves Amendment because

> …from a practical or functional perspective, the legal owner of the leased or rented motor vehicle had no monetary exposure for risks associated with the use or operation of the motor vehicle so long as the prescribed insurance was in place. The "penalty" for failure to maintain the insurance was a return to unlimited liability under the dangerous instrumentality doctrine…
>
> * * *
>
> The clear purpose of the Graves Amendment is to prevent a multitude of different liability rules among the states for lease and rental car companies that operate throughout the country while allowing the states to impose liability on lease car companies that do not provide the insurance designated by state law. It seems to me that section 324.021(9)(b)(1), in conjunction with Florida's dangerous instrumentality doctrine, accomplishes precisely that purpose in Florida, and I see no basis to rule that Congress has preempted this sound state law.

Judge Altenbernd wrote that subsection (b)(1) did not expressly contain an insurance "requirement," but it nevertheless accomplished the goal of requiring insurance by giving a lessor the option to obtain insurance as a way to avoid vicarious liability. According to Judge Altenbernd, § 324.021(9)(b)(1) was what Congress intended when it exempted from the Graves Amendment state statutes "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."

The majority certified the following question to this Court as one of great public importance:

> DOES THE GRAVES AMENDMENT, 49 U.S.C. §30106, PREEMPT SECTION 324.021(9)(b)(1), FLORIDA STATUTES (2002)?

This Court accepted jurisdiction.

SUMMARY OF ARGUMENT

The certified question should be answered in the negative. Section 324.021(9)(b)(1), Fla. Stat., is a statute which imposes liability as a result of the lessor's violation of the insurance requirement contained in the statute. As such it is specifically exempted from the preemptive effect of the Graves Amendment, 49 U.S.C. § 30106(b)(2).

In its opinion, the Second District incorrectly blended the requirements of §324.021(9)(b)(2), Fla. Stat., regarding short-term vehicle rentals and §324.021(9)(b)(1), Fla. Stat., regarding long-term leases, which resulted in an incorrect conclusion. The district court did not consider that short-term lessors are deemed to be the owner for purposes of liability, while long-term lessors are deemed to not be the owner. Liability is only imposed on a long-term lessor if the lessor fails to obtain the insurance required by the statute.

By ignoring the legislature's intention to require long-term lessors to maintain insurance, the Second District failed to give effect to the statute, and left those who have claims for injuries caused by the leased vehicle without any financially responsible person to respond to the claim.

ARGUMENT

CERTIFIED QUESTION

DOES THE GRAVES AMENDMENT, 49 U.S.C. §30106, PREEMPT SECTION 324.021(9)(b)(1), FLORIDA STATUTES (2002)?

Standard of Review

The issue presented herein is a pure question of law, subject to de novo review. Vargas v. Enter. Leasing Co., 60 So.3d 1037, 1040 (Fla. 2011), cert. denied, 80 USLW 3201 (U.S. 2011).

Merits

The certified question arises out of a lawsuit against a long-term lessor. In Vargas, this Court was only presented with a claim against a short-term lessor, and the question of whether the Graves Amendment (49 U.S.C. § 30106 (2006)) preempted state law imposing vicarious liability pursuant to the dangerous instrumentality doctrine. In this case, DCFS Trust argued that the Graves Amendment also preempts Florida state law regarding the liability of a long-term lessor of motor vehicles.

There is a long-standing presumption against federal preemption of the exercise of the power of the states. See, New York State Dep't of Social Services.

v. Dublino, 413 U.S. 405, 413-14, 93 S.Ct. 2507, 2513, 37 L.Ed.2d 688 (1973). The party claiming preemption bears the burden of proof and must establish that Congress has clearly and unmistakably manifested its intent to supersede state law. Hernandez v. Coopervision, Inc., 661 So.2d 33, 34-35 (Fla. 2d DCA 1995).

The Graves Amendment provides in pertinent part:

> **Section 30106. Rented or leased motor vehicle safety and responsibility**
>
> (a) In general.—An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—
>
> > (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
> >
> > (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).
>
> (b) Financial Responsibility Laws.—Nothing in this section supersedes the law of any State or political subdivision thereof—
>
> > (1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or
> >
> > (2) 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.

Vargas and Section 324.021(9)(b)(1) Make Preemption Inappropriate

There are distinct differences between the provisions of § 324.021(9)(b)(1), Fla. Stat., regarding long-term leases, and § 324.021(9)(b)(2), Fla. Stat., regarding short-term leases. These substantive differences compel a conclusion that the Graves Amendment does not preempt Florida law regarding the vicarious liability of a long-term lessor.

Section 324.021(9), Fla. Stat., contains the following provisions (emphasis added):

> (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.

By contrast, the next subsection of the statute relates only to short-term leases:

> 2. The lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, shall be deemed the owner of the motor vehicle for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith only up to $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than $500,000 combined property damage and bodily injury liability, the lessor shall be liable for up to an additional $500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages shall be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator. Nothing in this subparagraph shall be construed to affect the liability of the lessor for its own negligence.

The obvious distinction between these provisions is the requirement of insurance in subsection (9)(b)(1) that is missing from subsection (9)(b)(2). Short-term lessors are deemed the owner of the vehicle and have no requirement to secure insurance, whereas long-term lessors are deemed to not be the owner of the vehicle and are required to either: 1) secure insurance themselves for $1 million, or 2) require the lessee to obtain insurance and monitor the lessee to make sure the insurance stays in full force and effect throughout the lease term. This language is important when considering the application of the Graves Amendment.

In Vargas, this Court concluded that the Graves Amendment preempted Florida law imposing vicarious liability on the owner of a motor vehicle for the negligence of a permissive user. This Court's analysis in Vargas is critical to understanding the distinction between the application of the Graves Amendment on short-term rental contracts (Vargas) and the application of Graves to long-term leases as in this case. This Court distinguished between § 324.021(9)(b)(1), Fla. Stat. (2007) (regarding **long-term** lessors) and § 324.021(9)(b)(2), Fla. Stat. (2007) (regarding **short-term** lessors):

> Under these provisions, long-term lessors "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." § 324.021(9)(b)(1), Fla. Stat. (2007). However, short-term lessors, under the provision at issue here, "shall be deemed the owner" for the aforesaid purposes "up to $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage."

Vargas v. Enter. Leasing Co., 60 So.3d at 1041. This Court went on to explain that when the legislature added the provision related to short-term lessor, the existing definition of "owner/lessor already eliminated vicarious liability for long-term lessors by providing they 'shall not be deemed the owner' of the vehicle for vicarious liability purposes." Id. at 1042. This Court repeated the distinction in the next paragraph of the opinion, noting again that Congress enacted the Graves Amendment in 2005, at a time when "Florida had eliminated vicarious liability for

a certain category of owners/lessors and preserved but limited it for other categories…." Id. a 1042.

A conclusion that the lessor is not the owner of the vehicle is also required by the definition of the "owner" contained in § 324.021(9)(a), Fla. Stat. (2007) (emphasis added):

> (a) Owner.--A person who holds the legal title of a motor vehicle; or, in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

The lease in this case contained a right to purchase the vehicle upon the performance of specified conditions (R3:480). As a result, §324.021(9)(a), Fla. Stat., made LaMondue the owner of the vehicle for purposes of imposing liability, even though DCFS Trust was the legal owner.

The difference in structure between subsection (b)(1) and subsection (b)(2) is important. The liability of a short-term lessor is based on the lessor's ownership of the vehicle. Subsection (b)(2) merely places a limitation on the dangerous instrumentality liability imposed against the owner. Subsection (b)(1), however, begins with the rule that long-term lessors are not the owner of the vehicle, and then impose liability if the lessor fails to have insurance on the vehicle. The

Second District missed this distinction when it held that subsection (b)(1) is "similar" to subsection (b)(2) in that both provisions deem the lessor to not be the owner so long as the lessee maintains insurance. Rosado, 1 So.3d at 1205. The two provisions are quite different, and that difference was the basis for this Court's decision in Vargas.

In subsection (b) of the Graves Amendment, Congress recognized two types of financial responsibility laws: 1) a law which imposes insurance standards or financial responsibility on the owner, and 2) a law which imposes liability on a leasing or rental business as a penalty for failure to purchase the insurance required. That is precisely what the Florida Legislature created in §324.021(9)(b)(1), Fla. Stat. As was recognized by Judge Altenbernd, §324.021(9)(b)(1), Fla. Stat., establishes an incentive to a vehicle lessor to require that the lessee of the leased vehicle obtain liability insurance with modest limits and to monitor the lessee to make sure the lessee keeps the liability insurance in full force and effect. The lessor may decide whether to require the lessee to obtain insurance and monitor the lessee's insurance policy to make sure the policy is in effect throughout the lease term, or the lessor may secure insurance in the amount of $1,000,000 itself, and never be held liable. In this manner, the legislature has used its authority to protect its citizens and visitors in the event of injuries caused by a leased motor vehicle. Without the threat of liability for the failure to have

insurance, the lessor has no incentive to ensure that the lessee has complied with the law, and there is no assurance that the lessee has maintained the required insurance. DCFS Trust is only vicariously liable because it failed to obtain the $1,000,000 insurance policy limits required by § 324.021(9)(b)(1), Fla. Stat.

By interpreting the Graves Amendment to preempt § 324.021(9)(b)(1), Fla. Stat., the Second District destroyed the legislature's financial responsibility system of ensuring that lessees have insurance. If upheld, the ruling would mean that an owner/lessor does not have to obtain liability insurance even though the state statute clearly requires the owner/lessor to obtain insurance. That result is contrary to the intent of the Graves Amendment and cannot be a correct interpretation. Cason v. Florida Dept. of Management Services, 944 So.2d 306, 312 (Fla. 2006) (legislative intent is the polestar of statutory interpretation, and such intent is derived primarily from the language of the statute). The Graves Amendment contains a clear intent to allow state legislatures to enact financial responsibility laws, while preventing states from imposing unlimited vicarious liability as a primary method of ensuring financial responsibility. Section 324.021(9)(b)(1), Fla. Stat., does not conflict with the Graves Amendment because it does not impose unlimited vicarious liability unless the lessor fails to comply with the "financial responsibility or insurance" requirement of § 324.021(9)(b)(1).

The decision in Rodriguez v. Testa, 993 A.2d 955 (Ct. 2010), does not contradict this conclusion because the statute considered by that court, §14-154a, Conn. Gen. Stat., was similar to § 324.021(9)(b)(2), Fla. Stat., in that it is founded on the lessor's absolute liability as the owner, which can be avoided by the purchase of insurance. The same is true of the decision in Meyer v. Nwokedi, 777 N.W.2d 218, 225 (Minn. 2010), which held that Minnesota Statutes § 65B.49, subd. 5a(i)(2) (2006), was preempted by the Graves Amendment. That statute maintained the short-term lessor's liability as the owner, but allowed the lessor to cap the liability through the purchase of insurance. The statute did not describe the purchase of insurance as a "requirement."

Section 324.021(9)(b)(1), Fla. Stat., however, specifically describes the insurance described therein as a "requirement" (emphasis added):

> 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.

When interpreting whether the Florida legislature intended the insurance provision to be a requirement, this Court should consider the context in which this provision appears. Section 324.021, Fla. Stat., is purportedly a "definition" statute, defining when the owner of motor vehicles is the "owner" for purposes of imposing liability. Including an explicit insurance requirement for the privilege of

registering or renting the vehicle in a definitional section would be awkward. The legislature merely included the requirement of insurance while keeping the wording within the context of a definition. The legal owner who enters into a long-term lease of a vehicle has the choice of either being the owner for liability purposes or not. If the lessor wants to shift "ownership" for liability purposes, he merely has to make sure he fits within the definition.

That the statute is set up this way does not mean the insurance provided is any less of a requirement. All statutory "requirements" are meaningful only if there is a consequence for failing to comply. In the context of this statutory scheme, the legislature has chosen to impose liability on the lessor for the failure to purchase insurance. The Second District, however, described the insurance requirement as only an "option" which the lessor could choose to avoid liability under the dangerous instrumentality doctrine. Rosado, 1 So. 3d at 1205. But one could describe any statute requiring insurance in that manner. For example, the subject statute could have been worded to explicitly require insurance:

> Every lessor of a vehicle for a period of more than one year is required to maintain liability insurance on said vehicle in the amount of $1,000,000. If the lessor fails to maintain such insurance, the lessor shall be liable for damages caused by the lessee.

This statute could also be described as one which provides an "option" to purchase insurance to avoid liability. Yet it very clearly is a statute imposing liability for the

failure to obtain insurance. Even statutes which require a driver to drive sober merely provide the driver with the "option" to drive sober in order to maintain his license and liberty.

In the Second District, DCFS Trust argued that subsection (b)(2) of the Graves Amendment only applies to penalties for violation of an insurance requirement, such as the loss of its business license, or a fine paid to the Department of Transportation. While those are examples of penalties or punishment, they are not examples of statutes "imposing liability," which is the phrase chosen by Congress. The Second District erroneously interpreted the Graves Amendment to allow the legislature to impose liability on the lessor of a vehicle when it fails to obtain insurance.

Section 324.021(9)(b)(1), Fla. Stat., is within the savings provision in the Graves Amendment because it only imposes liability on the vehicle owner/lessor if the owner/lessor fails to comply with the $1,000,000 in combined single limits coverage (described as insurance which meets the statute's "requirements") or fails to force the lessee to secure and maintain liability insurance with very modest limits. Therefore, §324.021(9)(b)(1), Fla. Stat., is a state law "imposing liability on business entities engaged in the…business of…leasing motor vehicles for failure to meet the financial responsibility or insurance requirements under State law." If DCFS Trust had secured the $1,000,000 liability policy which insured

LaMondue, then it would not be liable. It is only liable because it failed to comply with the law.

As an alternative to a penalty of unlimited liability, § 324.021(9)(b)(1), Fla. Stat., could be interpreted to impose liability of $1,000,000. The obligation on the part of the lessor to obtain insurance indemnifies the lessee because it requires the lessor to obtain $1,000,000 of insurance covering the lessee. As noted above, Congress routinely includes self-insurance as a type of financial responsibility. Florida courts have established that when a party has an obligation to purchase insurance for a third party but fails to do so, the party has an obligation to indemnify the third party to the extent of the insurance which was supposed to be purchased. Cone Bros. Contracting Co. v. Ashland-Warren, Inc., 458 So.2d 851 (Fla. 2d DCA 1984). If this Court determines that the unlimited liability imposed as a penalty for the failure to purchase insurance is a violation of the Graves Amendment, then it should enforce the more limited liability equal to the insurance the lessor was legally required to purchase.

CONCLUSION

The certified question should be answered in the negative. The Graves Amendment does not preempt § 324.021(9)(b)(1), Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true copy of the foregoing was furnished to MICHAEL B. BUCKLEY, ESQ. and ERIC W. NEILSEN, ESQ., 150 2nd Ave. North, Ste. 1600, St. Petersburg, FL 33701; LOUIS J. WILLIAMS, ESQ., 59 Lake Morton Drive, P.O. Box 2836, Lakeland, FL 33806; ROBERT D. ADAMS, ESQ., 101 E. Kennedy Blvd., Tampa, FL 33602; and DANIEL E. DIAS, ESQ., 2002 N. Lois Ave., Ste. 510, Tampa, FL 33607, by mail, on January 4, 2012.

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CERTIFICATE OF TYPE SIZE & STYLE

Petitioner hereby certifies that the type size and style of the Initial Brief of Petitioner on the Merits is Times New Roman 14 pt.

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