DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

ELAINE DENISE BROOKINS,
Appellant,

v.

FORD CREDIT TITLING TRUST,
Appellee.

No. 4D07-2010

[July 16, 2008]

CORRECTED OPINION

FARMER, J.

The trial court granted a summary judgment in favor of a long term Lessor of a motor vehicle in a suit by a party claiming injuries in an accident involving the leased vehicle. The trial judge's stated basis for the summary judgment was that federal law has pre-empted Florida's dangerous instrumentality law. The Lessor had also argued that even if the case were governed by Florida law, it was entitled to judgment. We address both contentions.

Pre-emption of State law by federal statute is, of course, founded on the Constitution's supremacy clause.[1] But this supremacy is not the omnipotence of absolute monarchy. Rather it is a necessary constituent in a federal system of shared powers. The Government of the United States has been afforded primacy only in matters uniquely assigned to it by the Constitution.[2]

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[1] *See* U.S. Const., art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

[2] *See* U.S. Const., amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

As a consequence, the United States Supreme Court has long followed a principle that Congress did not intend to supersede the historic police powers exercised by the States in matters of public health and safety unless Congress made such a purpose "clear and manifest" in plain language. *See Cipollone v. Liggett Group Inc.*, 505 U.S. 504, 516 (1992) ("Consideration of issues arising under the Supremacy Clause 'starts with the assumption that the historic police powers of the States [are] not to be superseded by ... Federal Act unless that [is] the clear and manifest purpose of Congress.' " (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)); *Allen-Bradley Local v. Wisconsin Employment Relations Bd.*, 315 U.S. 740, 749 (1942) ("this Court has long insisted that an 'intention of Congress to exclude states from exerting their police power must be clearly manifested.' "); *Napier v. Atlantic Coast Line R. Co.*, 272 U.S. 605, 611 (1926) ("The intention of Congress to exclude states from exerting their police power must be clearly manifested."). As the Court said in *Reid v. Colorado*, 187 U.S. 137, 148 (1902):

> "It should never be held that Congress intends to supersede ... the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said — and the principle has been often reaffirmed — that 'in the application of this principle of supremacy of an act of Congress in a case where the state law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.' ").[3]

More recently in *Medtronic Inc. v. Lohr*, 518 U.S. 470 (1996), the Court made explicit the correct methodology for determining pre-emption:

> "interpretation [of federal statutes for pre-emption] is informed by two presumptions about the nature of pre-emption. *First, because the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action.* In all pre-emption cases, and particularly in those in which Congress has 'legislated ... in a field which the States have traditionally occupied,' we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and

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[3] Nothing in the recent decision in *Riegel v. Medtronic Inc.*, 552 U.S. ---, 128 S.Ct. 999 (Feb. 20, 2008), changes this principle.

> manifest purpose of Congress.' Although dissenting Justices have argued that this assumption should apply only to the question whether Congress intended any pre-emption at all, as opposed to questions concerning the scope of its intended invalidation of state law, *we used a 'presumption against the pre-emption of state police power regulations' to support a narrow interpretation of such an express command in* Cipollone. *That approach is consistent with both federalism concerns and the historic primacy of state regulation of matters of health and safety*.
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> "Second, our analysis of the scope of the statute's pre-emption is guided by our oft-repeated comment, that '[t]he purpose of Congress is the ultimate touchstone' in every pre-emption case. As a result, any understanding of the scope of a pre-emption statute must rest primarily on a fair understanding of congressional purpose.' " [c.o., e.s.]

518 U.S. at 485-86. In short the operative principle for discerning federal pre-emption of state law involving the exercise of police powers for public health and safety is this:

> (a) there is a presumption against pre-emption of such State law unless Congress has made that intention "clear and manifest", and
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> (b) when Congress has clearly and manifestly stated an intent to pre-empt such state law, even then the scope and extent of that pre-emption must be narrowly interpreted.

We now apply this operative principle to determine if the applicable Florida law has been pre-empted by Congress.

According to the common law in Florida, the Lessor of a vehicle may be held vicariously liable under the dangerous instrumentality doctrine for the negligent operation of the vehicle by a Lessee or a Lessee's agent. As the Florida Supreme Court has explained:

> "The validity or effect of restrictions on such use, as between the parties, is a matter totally unrelated to the liabilities imposed by law upon one who owns and places in circulation an instrumentality of this nature.
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> "The Florida cases initially applying this doctrine in the field of automobile liability law clearly support this conclusion.
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> 'The principles of the common law do not permit the

> owner of an instrumentality that is … peculiarly dangerous in its operation, to authorize another to use such instrumentality on the public highways without imposing upon such owner liability for negligent use. The liability grows out of the obligation of the owner to have the vehicle … properly operated when it is by his authority on the public highway.

The non-delegable nature of this obligation is apparent from a consideration of the doctrine in the master-servant relation:

> 'The servant is empowered by the master to discharge certain duties, and it is incumbent upon him to exercise the same care and attention which the law requires of the master; and, if that care and attention be about the management and custody of dangerous appliances, the master cannot shift the responsibility connected with the custody of such instruments to the servant to whom they have been entrusted, and escape liability therefor. This rule arises from the absolute duty which is owing to the public by those who employ in their business dangerous agencies or appliances, engines, or instruments liable, if negligently managed, to result in great damage to others.'

The disobedience, or contractual violations, of one to whom such an instrumentality is entrusted can no more logically exonerate a bailor than a 'master' or employer:

> 'Says the Supreme Court of the United States: 'The intrusting such a powerful and dangerous engine as a locomotive, to one who will not submit to control, and render implicit obedience to orders, is itself an act of negligence the 'causa causans' of the mischief; while the proximate cause, or the ipsa negligentia which produces it, may truly be said, in most cases to be the disobedience of orders by the servant so entrusted. If such disobedience could be set up by a railroad company as a defense, when charged with negligence, the remedy of the injured party would in most cases be elusive. … Any relaxation of the stringent policy and principles of the law affecting such cases could be highly detrimental to the public safety.'

Some of the apparent inconsistencies in the cases result from efforts to reason within the confines of inapplicable principles, such as those of respondent superior. Confusion can be reduced by recognition that liability under this doctrine is imposed independent of other theories of

> vicarious responsibility in tort law. Where dangerous instrumentalities are utilized then, contrary to ordinary master-servant law, 'with practical unanimity the courts hold the master liable for damages caused thereby, even though the servant, who has the sole custody and control thereof, is at the time acting willfully, wantonly, and in disobedience to his master's order … the public safety demands that he shall be answerable for the exercise of his servant's judgment.' This underlying theory is equally applicable to the field of bailment. If the owner of such a vehicle cannot, in the performance of his primary duty to the public to see that it is used in a safe and proper manner, substitute or delegate such duty to a servant, then neither can he by contract substitute a bailee, except, of course, as between the parties to such contract." [c.o.]

Susco Car Rental Sys. of Fla. v. Leonard, 112 So.2d 832, 836-37 (Fla. 1959).

Florida's common law has been augmented by legislative enactment. By statute, a Lessor under a long term lease is made vicariously liable if the Lessor has failed to meet statutory conditions.[4] We note that the statute in question, section 324.021, is placed in a Chapter of the FLORIDA STATUTES pointedly entitled "*Financial Responsibility*." Section 324.021, itself, is entitled: "*Definitions; minimum insurance required*." The drafters of this statutory augmentation to our common law thereby manifested their intent in the plainest of terms that this subject concerns the *financial responsibility* of those who by lease allow the operation of motor vehicles on the public highways of Florida, as well as the minimum requirements of such *financial responsibility* as reflected in

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[4] § 324.021(9)(b)(1), Fla. Stat. (2007) ("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.*") [e.s.].

their *liability insurance* satisfying that responsibility. One may not rationally doubt that this statute imposes liability on lessor-owners of leased vehicles for the privilege of operating their vehicles, and imposes consequences for failing to meet the financial responsibility requirements stated in the statute.

Recently, Congress enacted a statute popularly called the "Graves Amendment." 49 U.S.C. § 30106, Pub. L. No. 109-59, 119 Stat. 1144 (enacted August 10, 2005). Pertinent to the issue we consider, the Graves Amendment says:

> "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 —
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> (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
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> (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner)."

49 U.S.C. § 30106(a). At the same time, however, the Graves Amendment expressly disclaims any pre-emption of certain otherwise affected State laws:

> "Nothing in this section supersedes the law of any State or political subdivision thereof —
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> (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
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> (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*." [e.s.]

49 U.S.C. § 30106(b).

So, focusing on this Congressional text, as we are charged to do by the United States Supreme Court, we do not find a "clear and manifest" intent of pre-emption of Florida's law in this regard. Rather, from subsection (b) of the Graves Amendment, we find a clear and manifest

intent *not* to pre-empt laws imposing financial responsibility on commercial or business entities leasing motor vehicles when the entities fail to meet financial responsibility or liability insurance requirements imposed by State law.

If Congressional pre-emption text must be interpreted narrowly, can there be any doubt that *disclaimers* of pre-emption by Congress must be read broadly? Using this interpretive principle for pre-emption required by the United States Supreme Court, how can it be that this disclaimer of pre-emption would be inapplicable to Florida law? We do not think it can be.

Nevertheless, two courts in Florida have found pre-emption of this Florida statute in spite of this disclaimer in the Graves Amendment. In *Kumarsingh v. PV Holding Corp.*, --- So.2d ---, 2008 WL 238955, 33 Fla. L. Weekly D376 (Fla. 3d DCA Jan. 30, 2008); and *Bechina v. Enterprise Leasing Co.*, 972 So.2d 925 (Fla. 3d DCA 2007), the Third District held that the Graves Amendment "by its clear and unambiguous wording, supersedes and abolishes all state vicarious liability laws as they apply to lessors of motor vehicles for causes of action filed on or after August 10, 2005, the effective date of that federal statute." 2008 WL 238955 at *4. The Third District based its conclusions on a decision of one federal *trial* judge in Florida. *See Garcia v. Vanguard Car Rental USA Inc.*, 510 F.Supp.2d 821 (M.D. Fla. 2007), appeal dismissed (11th Circ. 07-12235) (Jul 30, 2007). As it happens, however, the Third District did not engage in any independent analysis of its own to reach that conclusion but instead merely followed *Garcia*.

Neither the analysis nor the holding in *Garcia* are reliable as expositions of either the federal law on pre-emption or of the Florida law said to have been pre-empted. The *Garcia* opinion fails to mention the fundamental interpretive principle prescribed in *Medtronic Inc. v. Lohr* and *Cippolone* and discussed above. Yet *Garcia* erroneously interprets Florida law to place it outside the disclaimer of pre-emption in the Graves Amendment. *Garcia* also proceeds on a conclusion that Florida law fails to "create" a cause of action for damages against a Lessor of a vehicle whose operation causes injury. But the Graves Amendment does not use *create* as its operative term. *See* 49 U.S.C. § 30106(b) (specifying "the law of any state … *imposing* financial responsibility or insurance standards" on long term Lessors).

Even more critically, *Garcia* isolates State common law from State statutory law to determine whether the Graves Amendment pre-empts Florida law. But the Graves Amendment plainly uses the more inclusive

term "the law". Unquestionably, both the common law and the statutory law make up "the law" of Florida. *See* § 2.01, Fla. Stat. (2007) ("The common and statute laws of England … down to the 4th day of July, 1776, are declared to be of force in this state…"). The statutory term "the law of any State" obviously can have no other meaning than to refer to the entire legal corpus of a State. *Garcia*'s attempt to segregate the common and statute law of Florida to show that, read in isolation, they do not satisfy the Graves disclaimer of pre-emption violates the United States Supreme Court's binding interpretive principle for determining federal pre-emption of State law under the police powers for public health and safety. When the whole law of Florida is considered, as the Graves Amendment itself intends, Congress has clearly and manifestly stated that the Florida dangerous instrumentality law as augmented by statute has not been "superseded".

It is not possible to deny that, as expressed in the combination of its common law and section 324.021(9), Florida law *imposes* financial responsibility and insurance standards on Lessors of motor vehicles under long term leases made in Florida. It is not possible to deny that the whole law of Florida *imposes* "liability on business entities … leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law." 49 U.S.C. § 30106(b). *Garcia* does not correctly read Florida law. When Lessors do not satisfy the financial responsibility and liability insurance requirements specified in section 324.021(9), then liability for injury is imposed upon them by the law of Florida.

Finally, there is one other significant aspect about the Third District and federal trial court decisions concluding that the applicable Florida law has been pre-empted by the Graves Amendment. Another federal case actually concludes that Florida law is *not* pre-empted because the Graves Amendment is unconstitutional. *Vanguard Car Rental USA Inc. v. Huchon*, 532 F.Supp.2d 1371 (S.D. Fla. 2007), held that the Act was not sustainable under the Commerce Clause. It seems odd that the Third District would accept a federal trial judge's dubious reading of state law, about which the Third District is more competent, but reject a federal judge's reading of federal constitutional law, about which he is more authoritative than they. We choose to exercise our own independent analysis. Upon so doing, we conclude there is no federal pre-emption of the applicable Florida law. We certify conflict with the contrary decision on the same point of law in *Kumarsingh* and *Bechina*.

We thus proceed to consider whether the Lessor in this case has satisfied the requirements of Florida law to avoid the imposition of

liability for the injuries caused in the accident. The Lessee failed to maintain the liability insurance specified in the Lease. We also accept the plaintiff's contention that the Lessor did not have a special policy of insurance explicitly listing the vehicle involved in this case and the Lessee as driver. But the Lessor did in fact maintain a blanket policy of liability insurance covering its fleet of leased automobiles with expressed limits of $1 million. That policy satisfied the requirements of Florida law. *See* § 324.021(9)(b)1 ("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.").

For the reasons expressed in this opinion, the summary judgment is therefore

Affirmed.

POLEN and HAZOURI, JJ., concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Dorian K. Damoorgian, Judge; L.T. Case No. 06-3446 (02).

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Not final until disposition of timely filed motion for rehearing.