IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

NATASHA ROMERO,

Appellant,

v.

Case No. 5D20-1819
LT Case No. 2017-CA-001647

FIELDS MOTORCARS OF FLORIDA, INC., STATE FARM MUTUAL AUTOMOBILE INSURANCE CO., ALLSTATE INSURANCE CO., AND GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Appellees.
_____/

Opinion filed January 7, 2021

Appeal from the Circuit Court
for Orange County,
Patricia Strowbridge, Judge.

Eric S. Block, of Morgan & Morgan, P.A., Jacksonville, and Ady A. Goss, of Morgan & Morgan, P.A., Orlando, and Thomas J. Seider, of Brannock Humphries & Berman, Tampa, for Appellant.

Hinda Klein, of Conroy Simberg, Hollywood, for Appellees.

WOZNIAK, J.

Natasha Romero appeals the final summary judgment rendered in favor of Fields Motorcars of Florida, Inc. ("Fields") in her suit seeking to hold Fields vicariously liable under the dangerous instrumentality doctrine for damages she incurred when her vehicle was allegedly struck by a loaner vehicle owned by Fields and driven by its customer, Mr. Abriola. Fields successfully claimed it was immune from liability under the federal Graves Amendment, 49 U.S.C. § 30106(a),[1] which prohibits imposition of vicarious liability on a category of commercial vehicle lessors for injuries resulting from the negligent use or operation of the leased or rented vehicle under certain conditions. Romero argues that the Graves Amendment does not apply where a dealership has provided a complimentary loaner vehicle to its customer because the Graves Amendment expressly applies only in a rental or lease situation. We agree and therefore reverse.

The Graves Amendment provides that the

> 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

[1] The Graves Amendment was enacted by Congress in 2005 as part of a comprehensive transportation bill entitled the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. Pub. L. No. 109-59, 119 Stat. 1144 (2005). The Graves Amendment preempts contrary state law. Vargas v. Enter. Leasing Co., 60 So. 3d 1037, 1041 (Fla. 2011).

> 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
>
> (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). Romero does not contest that Fields is a dealership that buys, sells, leases, and services automobiles, nor does she allege any wrongdoing or negligence on the part of Fields. Rather, this case turns on whether Fields' provision of the admittedly complimentary loaner vehicle—without its customer knowingly entering into a rental or lease agreement and knowingly providing consideration therefor—brought Fields within the term "owner of a motor vehicle that rents or leases the vehicle." We hold it does not. Because the plain meaning of the phrase "rents or leases" used in the Graves Amendment does not encompass a dealership's gratuitous provision of a loaner vehicle, we reverse the judgment in favor of Fields.

In March 2015, Mr. Abriola and Romero were involved in a vehicle accident in Winter Park. Mr. Abriola was driving a complimentary loaner vehicle obtained from Fields at the time. He explained that he had taken his

personal truck, which he had purchased from Fields, back to Fields to have warranty work performed on it and had obtained a loaner vehicle to drive while his truck was being serviced. To obtain the loaner vehicle from Fields, Mr. Abriola signed the "Fields Loaner Agreement," acknowledging that Fields was providing him with "a loaner car ('Vehicle') for the express purpose of my personal transportation while my car is being serviced. In consideration for use of the Vehicle, I agree to the following terms and conditions . . . ." Included in those terms was paragraph three, which states that the "Agreement is solely for the purposed [sic] of creating a bailment which allows Customer to use the Vehicle as permitted by the terms and conditions of this Agreement." Mr. Abriola signed and initialed as required. No payment exchanged hands, and the invoice for the service work reflected a zero charge for the use of the complimentary loaner vehicle.

Although the evidence was clear that Mr. Abriola did not directly pay for the use of the complimentary loaner vehicle, Fields' contention below was that the cost of the short-term complimentary loaner vehicle is factored into the cost of the customer's vehicle upon purchase and into the subsequent service costs; as such it had, in fact, received consideration for the loaner

vehicle.[2] Fields argued that because there was consideration, the transaction with Mr. Abriola constituted a lease or rental, thus bringing it within the Graves Amendment's requirement that the owner "rents or leases the vehicle." However, the mere fact that Fields may have built into the purchase price or service charges the cost of its complimentary loaner vehicles does not a rent or lease contract make.

We first must turn our attention to the language of the Graves Amendment, as the beginning point in interpreting the language of a statute is the language of the statute itself. See Lieupo v. Simon's Trucking, Inc., 286 So. 3d 143, 145 (Fla. 2019). In the absence of a statutory definition for a given word, the words of a statute are to be given their "plain and ordinary meaning." Barnett v. Dep't of Fin. Servs., 303 So. 3d 508, 513 (Fla. 2020). Indeed, the Florida Supreme Court has spoken on the issue of statutory interpretation:

> In interpreting the statute, we follow the "supremacy-of-text principle"—namely, the principle that "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 56 (2012). We also adhere to Justice Joseph Story's view that "every word employed in [a legal text] is to be expounded in its

[2] Fields also asserts for the first time on appeal that consideration exists because Mr. Abriola brought his car in for servicing and in return received a loaner vehicle to use. Because this argument was not preserved for appeal, we decline to consider it.

> plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it." Advisory Op. to Governor re Implementation of Amendment 4, the Voting Restoration Amendment, 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Joseph Story, Commentaries on the Constitution of the United States 157-58 (1833), quoted in Scalia & Garner, Reading Law at 69).
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> We thus recognize that the goal of interpretation is to arrive at a "fair reading" of the text by "determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued." Scalia & Garner, Reading Law at 33. This requires a methodical and consistent approach involving "faithful reliance upon the natural or reasonable meanings of language" and "choosing always a meaning that the text will sensibly bear by the fair use of language." Frederick J. de Sloovère, Textual Interpretation of Statutes, 11 N.Y.U. L.Q. Rev. 538, 541 (1934), quoted in Scalia & Garner, Reading Law at 34.

Ham v. Portfolio Recovery Assocs., LLC, 308 So. 3d 942, 946–47 (Fla. 2020).

The words "rents" and "leases" are not defined in the Graves Amendment, but they have well-defined meanings. "Rent," when used as a noun, is the "[c]onsideration paid, usu. periodically, for the use or occupancy of property (esp. real property)." Rent, Black's Law Dictionary (8th ed. 2004).[3] "Lease," as a noun, is defined as to personal property as "[a] contract

[3] Although the 8th edition of Black's Law Dictionary, which is the version in existence when the Graves Amendment was enacted, does not contain a definition of "rent" when used as a verb, we note the current edition defines "rent," when used as a verb, as meaning "[t]o pay for the use of another's property." Rent, Black's Law Dictionary (11th ed. 2019).

by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Lease, Black's Law Dictionary (8th ed. 2004). As a verb, "lease" is defined as meaning "[t]o grant the possession and use of (land, buildings, rooms, movable property, etc.) to another in return for rent or other consideration." Id. Other dictionaries contain similar definitions. See, e.g., The New Oxford American Dictionary 1434 (2d ed. 2005) (defining, as pertinent here, the noun "rent" as "a tenant's regular payment to a landlord for the use of property or land" and "a sum paid for the hire of equipment"; defining the verb "rent" as to "pay someone for the use of (something, typically property, land, or a car)" and to "let someone use (something) in return for payment"); The New Oxford American Dictionary 964 (2d ed. 2005) (defining the noun "lease" as "a contract by which one party conveys land, property, services, etc., to another for a specified time, usually in return for a periodic payment"; defining the verb "lease" as meaning to "grant (property) on lease").

Indeed, these definitions comport with this Court's longstanding ruling that the amount of rent to be paid is an essential element of a lease. See Edgewater Enters., Inc. v. Holler, 426 So. 2d 980, 983 (Fla. 5th DCA 1982) ("[T]he amount of rental is an essential element of a lease, if not the basis for a lease, and an agreement to make a lease, or to renew or extend a

lease, that fails to specify either the amount of the rental or a definite procedure to be followed to establish the amount of the rental, is too indefinite to be legally binding and enforceable.") (footnote omitted); see also Alachua Cnty. v. Expedia, Inc., 110 So. 3d 941, 947 (Fla. 1st DCA 2013) (Padovano, J., dissenting) (collecting definitions of "rent" and "lease"). Statutory interpretation requires a fair reading of the text, based on how a reasonable reader would have understood the text, Ham, 308 So. 3d at 947, and a reasonable reader competent in English would not contemplate that dropping a vehicle off for service and obtaining a complimentary loaner vehicle constitutes a lease or rental situation. A gratuitous bailment, yes; a lease or rental, no.

Had Congress intended the Graves Amendment to include all forms of bailment, including gratuitous bailments, it could have used the word "bailment" in addition to, or included in, the phrase "rents or leases." It did not. Certainly, it was aware of bailments, as evidenced by its inclusion of

"bailee" in the definition of "owner,"[4] but it did not extend protection to gratuitous bailments.[5]

[4] The Graves Amendment, in 49 U.S.C. § 30106(d)(2)(C), defines "owner" to include "a lessor, lessee, or a bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles, having the use or possession thereof, under a lease, bailment, or otherwise."

[5] Florida, however, has done so with the amendment to section 324.021(9)(c)3., Florida Statutes (2020) (eff. July 1, 2020). Section 324.021(9)(c)3.a. states:

> A motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle at no charge or at a reasonable daily charge to a service customer whose vehicle is being held for repair, service, or adjustment by the motor vehicle dealer is immune from any cause of action and is not liable, vicariously or directly, under general law solely by reason of being the owner of the temporary replacement vehicle for harm to persons or property that arises out of the use, or operation, of the temporary replacement vehicle by any person during the period the temporary replacement vehicle has been entrusted to the motor vehicle dealer's service customer if there is no negligence or criminal wrongdoing on the part of the motor vehicle owner, or its leasing or rental affiliate.

The adoption of this new statutory protection for dealerships that otherwise could be held liable for the negligent operation of their loaner vehicles does not apply in this case, having been adopted after the date of the accident and not being remedial in nature. It does demonstrate, however, that gratuitous bailments could have been included in the Graves Amendment had Congress intended to include them.

In sum, a transaction involving the provision of a complimentary loaner vehicle is not a rental or lease transaction where no money or other consideration is identified by the parties at the time of the transaction; where the purported lessee was not made aware he was entering into a lease; and where there is no indicia of a lease agreement, oral or written. It defies logic to conclude Mr. Abriola was a party to a lease when he himself never agreed to a lease or the terms thereof. All he agreed to, via the Loaner Agreement, was a bailment, as expressly identified in that Agreement, and a gratuitous bailment at that. He did not believe he paid anything for the use of the complimentary loaner vehicle and certainly could not be said to have agreed to the essential terms of any rental or lease.

We note that the trial court reluctantly concluded that Collins v. Auto Partners V. LLC, 276 So. 3d 817 (Fla. 4th DCA 2019), decided during the pendency of the competing summary judgment motions filed in this case, controlled and obligated it to grant Fields' motion and deny Romero's motion, even though the court believed Collins had been wrongly decided. After careful analysis, we conclude that Collins is distinguishable. The opinion makes no mention of consideration, presumably because the plaintiff's arguments did not address it and instead challenged the status of the loaner car solely on the basis that it bore no indicia of being a complimentary

courtesy car. Simply stated, the Collins plaintiff assumed that providing a courtesy car would have placed the dealership within the protection of the Graves Amendment. That is not the case here. Romero has strenuously argued that a complimentary courtesy car does not come within the protection of the Graves Amendment.

Because there was no meeting of the minds between Fields and Mr. Abiola as to a lease or rental agreement for the use of the complimentary loaner vehicle and the evidence instead established a gratuitous bailment, we conclude that the trial court erred in granting summary judgment to Fields based on the protection of the Graves Amendment. Accordingly, we reverse that summary judgment and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED for further proceedings.

COHEN and HARRIS, JJ., concur.