THAYER V. RANDY MARION CHEVROLET BUICK CADILLAC, LLC: ELEVENTH CIRCUIT HOLDS THAT CAR DEALERSHIP'S PRACTICE OF PROVIDING TEMPORARY VEHICLES TO CUSTOMERS IN EXCHANGE FOR OPPORTUNITY TO SERVICE CUSTOMERS' VEHICLES FELL WITHIN PURVIEW OF THE GRAVES AMENDMENT

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In *Thayer v. Randy Marion Chevrolet Buick Cadillac*, *LLC*, the United States Court of Appeals for the Eleventh Circuit addressed claims brought by vehicular collision victim, Cindy Thayer, against automobile dealership, Randy Marion Chevrolet Buick Cadillac, LLC ("Randy Marion"), alleging vicarious liability under Florida's dangerous instrumentality doctrine.[1] In affirming the United States District Court for the Middle District of Florida's grant of summary judgment in favor of Randy Marion, the Eleventh Circuit reasoned that Randy Marion's act of providing a temporary vehicle to the customer who collided with Thayer in return for the opportunity to service the customer's car and receive payment constituted an exchange of consideration sufficient to classify the transaction as a "rental or lease."[2] Thus, the Graves Amendment, which serves to preempt the application of

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[1] 30 F.4th 1290, 1292 (11th Cir. 2022). Florida's dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." Estate of Villanueva *ex rel.* Villanueva v. Youngblood, 927 So. 2d 955, 957 (Fla. Dist. Ct. App. 2005) (citing S. Cotton Oil Co. v. Anderson, 86 So. 629, 632 (Fla. 1920)). Justifications for the common law doctrine are largely rooted in public policy concerns over the safety of Florida's roads. Garcia v. Vanguard Car Rental USA, Inc., 510 F. Supp. 2d 821, 827 (M.D. Fla. 2007), *aff'd*, 540 F.3d 1242 (11th Cir. 2008) ("[The doctrine] is premised upon the theory that the one who originates the danger by entrusting the automobile to another is in the best position to make certain that there will be adequate resources with which to pay damages caused by its negligent operation." (quoting Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000))). While an automobile is not an *inherently* dangerous tool—i.e., it is not necessarily a threat to the safety of others while sitting at the dealership—the operation of that automobile on a public road creates a "dangerous agency" that begets the need for regulation in the interest of public safety. *S. Cotton Oil Co.*, 86 So. at 635–36.

[2] *Thayer*, 30 F.4th at 1293–94.

Florida's dangerous instrumentality doctrine, shielded Randy Marion from any vicarious liability allegedly owed to Thayer.[3]

The Graves Amendment limits the application of certain legal machinations which seek to impose liability on automobile lessors who have entrusted lessees with automobiles that the lessees then negligently operate, causing injury to another at no fault of the lessor.[4] The amendment states that "[a]n owner of a motor vehicle that *rents or leases* the vehicle to a person . . . shall not be [vicariously] liable . . . 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."[5] To be afforded the protection of the Graves Amendment, however, the owner (1) must be in the "business of renting or leasing motor vehicles," and (2) cannot himself be negligent or have committed any criminal wrongdoing in connection with the alleged accident.[6]

On September 4, 2015, Samuel Pope brought a car belonging to Rebecca Lowthorp—Pope's soon-to-be bride—into Randy Marion, an automobile dealership in North Carolina, for maintenance by the dealership's service department.[7] Pope and Lowthorp (the "Popes") were to be married the following day and had plans to drive to Florida for their honeymoon soon thereafter.[8] Per company policy, Randy Marion provided one of its dealership-owned vehicles to the Popes for use while their car was being serviced.[9] Unfortunately, while they were

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[3] *See id.* at 1293; 49 U.S.C. § 30106.

[4] 49 U.S.C. § 30106; *Garcia*, 510 F. Supp. 2d at 824. One example of such a legal machination, for the purposes of this case, is the dangerous instrumentality doctrine. *See supra* note 2 and accompanying text.

[5] 49 U.S.C. § 30106 (emphasis added).

[6] *Id.* § 30106(a)(1)–(2). Before the statute's enactment in 2005, many car and truck rental and leasing companies throughout the country were forced to carry costly insurance policies to cover their liability because of the vicarious liability laws imposed in numerous states. Robert Hanlon, Jr., *The Who, What and When of the Graves Amendment*, LINKEDIN (Feb. 8, 2021), https://www.linkedin.com/pulse/who-what-when-graves-amendment-robert-hanlon-jr-/ [https://perma.cc/JV3B-5ZYJ]. These companies were also required to pay out enormous amounts in court judgments resulting from vicarious liability suits. *See* 151 CONG. REC. H1034-01, at H1202 (2005) (statement of Rep. Smith). It was contemplated that these costs were then levied onto consumers in the form of higher prices, creating a need for legislative action in the interest of public policy. *See id.* at H1200 (statement of Rep. Nadler). Thus, the Graves Amendment aimed at correcting these inequities. *Id.* (statement of Rep. Graves) ("By reforming vicarious liability to establish a national standard that all but a small handful of States already follow, we will restore fair competition to the car and truck renting and leasing industry and lower costs and increase choices for all consumers.").

[7] *Thayer*, 30 F.4th at 1291–92.

[8] *Id.* at 1292.

[9] *Id.* at 1291–92.

driving the Randy Marion-owned vehicle nine days later during their honeymoon, the Popes collided with Cindy Thayer on Interstate-4 in Florida.[10] Following the accident, Thayer brought suit against Randy Marion in the United States District Court for the Middle District of Florida for vicarious liability under the state's dangerous instrumentality doctrine.[11] Randy Marion then filed a motion for summary judgment based on an affirmative defense that the Graves Amendment shielded the dealership from liability.[12] The district court granted the motion and Thayer appealed.[13]

In reviewing the district court's decision *de novo*, the Eleventh Circuit addressed two primary issues: (1) whether the vehicle Randy Marion provided to the Popes was rented or leased and (2) whether "Randy Marion's interchangeable use of the words 'rental' or 'loaner' to refer to the vehicle preclude[d] summary judgment."[14] The court began its analysis by scrutinizing the language of the Graves Amendment and asking "what it means to rent or lease a vehicle."[15] In its attempt to reconcile the dictionary definitions of "rent" and "lease," the court stated that renting or leasing a vehicle clearly "requires an exchange of consideration for the use of the vehicle."[16] Thayer, however, argued (1) that a rental or lease requires a stipulated payment of money and (2) that "the Popes paid no money *specifically* for the rental."[17]

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[10] *Id.* at 1292.

[11] Thayer v. Randy Marion Chevrolet Buick Cadillac, LLC, 519 F. Supp. 3d 1062 (M.D. Fla. 2021), *aff'd*, 30 F.4th 1290 (11th Cir. 2022).

[12] *Id.* at 1065. In response, Thayer argued that it was disputed whether Randy Marion owned the vehicle in question, whether Randy Marion was "engaged in the trade or business of renting or leasing motor vehicles," and whether the vehicle provided to the Popes was in fact a "rental vehicle." *Id.* at 1066. Thayer also argued that because Randy Marion "interchangeably referred to the vehicle as a 'loaner' or a 'rental,'" this created a dispute of material fact such that summary judgment was inappropriate. *Id.* at 1066–67.

[13] *Thayer*, 30 F.4th at 1292. In granting the motion, the district court found that Randy Marion presented evidence sufficient to show that the dealership both owned the vehicle and engaged in the business of leasing vehicles. *Thayer*, 519 F. Supp. 3d at 1066. Moreover, using the dictionary definition of "rent," the district court found that for purposes of the Graves Amendment, Randy Marion indeed "rented" the vehicle in question to the Popes. *Id.* at 1067–68 ("The plain meaning of 'rental' is a transaction that involves payment of consideration for the use of something." (citing Rent, *Black's Law Dictionary* (11th ed. 2019))). The district court further held that the labels Randy Marion assigned to the vehicle were not dispositive of whether the amendment applied, and it was the actual substance of the relationship between Randy Marion and Lowthorp that mattered for purposes of granting summary judgment. *Id.* at 1067.

[14] *Thayer*, 30 F.4th at 1293.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 1294 (emphasis added).

Notwithstanding Thayer's contentions, the court opined that "consideration is broader than simply the payment of money" and further disagreed that a rental or lease requires the kind of *specific* payment that Thayer suggested.[18]

The court therefore held that the Popes provided adequate consideration for the use of the temporary vehicle because they would not have received it had they not brought their own car in for service.[19] Indeed, Randy Marion "only provide[d] vehicles if a customer le[ft] their own vehicle for service," and the dealership "factor[ed] the cost of providing such vehicles into its service prices."[20] The Popes provided Randy Marion with the opportunity to service their car and receive payment; in return, Randy Marion provided the Popes with a temporary vehicle.[21] Thus, the court reasoned that this constituted an exchange of consideration sufficient to classify the transaction as a rental or lease for purposes of the Graves Amendment.[22]

Regarding the second issue brought on appeal—whether "Randy Marion's interchangeable use of the words 'rental' or 'loaner' to refer to the vehicle preclude[d] summary judgment"—the court's discussion was brief.[23] Like the district court, the Eleventh Circuit explained that how a defendant labels a vehicle in such a transaction is merely ancillary to the substantive purpose of that transaction, and it "does not control the legal determination of whether the Graves Amendment applies."[24] Thus, despite the dealership's shifting use of labels for the vehicle, the Eleventh Circuit affirmed the district court's decision, holding that Randy Marion effectively rented or leased the vehicle to the Popes and that the Graves Amendment applied.[25]

The Eleventh Circuit's ruling in *Thayer v. Randy Marion Chevrolet Buick Cadillac*, *LLC* demonstrates how the Graves Amendment can lend its protection to companies that are in the business of servicing

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[18] *Id.* ("Requiring a customer to pay specifically for the rental car would remove from Graves Amendment protection any car rented through a vacation package where the customer's payment for the package includes an airline ticket, hotel, and rental car.").

[19] *Id.* (noting that Black's Law Dictionary defines the term consideration as "[s]omething (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee," and "that which motivates a person to do something, esp. to engage in a legal act." (internal quotation marks omitted) (citing *Consideration*, Black's Law Dictionary (8th ed. 2004))).

[20] *Thayer*, 30 F.4th at 1294.

[21] *Id.* at 1293–94.

[22] *Id.* at 1294.

[23] *See id.*

[24] *Id.* at 1294; *see Thayer*, 519 F. Supp. 3d at 1067.

[25] *Thayer*, 30 F.4th at 1294–95.

automobiles.[26] Because of this decision, consumers—who might otherwise be burdened by having their car serviced for any extended period of time—may indirectly benefit from the Graves Amendment since its protection, by reducing the risk of vicarious liability suits, incentivizes companies that provide maintenance services to offer those consumers temporary vehicles. Such incentive could consequently mitigate the burden of vehicle maintenance, "lower costs[,] and increase choices for all consumers" looking to service their vehicle.[27]

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[26] *See id.* at 1294.

[27] 151 CONG. REC. H1034-01, at H1200 (2005) (statement of Rep. Graves).