THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court Of Common Pleas

The Honorable George C. James, Jr., Judicial Circuit Court Judge
Case No.: 2012-CP-08-1801

RECEIVED
OCT 18 2017
S.C. SUPREME COURT

Opinion No. 2017-UP-249 (S.C. Ct. App. Filed June 21, 2017)

Appellate Case No. 2017-001890

Charles Taylor..Petitioner,

v.

Stop "N' Save, Inc., d/b/a El Cheapo Plus #7 and
Roy Rahal. ....Respondents.

RETURN TO PETITION FOR CERTIORARI

Gray T. Culbreath
James. E. Brogdon, III
Jessica A. Waller
GALLIVAN, WHITE & BOYD, P.A.
1201 Main Street, Suite 1200
Post Office Box 7368(29202)
Columbia, South Carolina 29201
(803) 779-1833 (t)

Randy J. Soriano (*pro hac vice*)
Julia Fenwick Ost (*pro hac vice*)
Bryan Cave, LLP
211 N. Broadway #3600
St. Louis, Missouri 63102
(314) 259-2000 (t)

ATTORNEYS FOR RESPONDENTS

INDEX

Introduction 3

Question Presented for Review 3

Statement of the Case 4

Argument 5

I. THE COURT OF APPEALS CORRECTLY HELD THAT THE CIRCUIT COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS..........5

A. Standard 6

B. Petitioner's New Arguments Related to the Graves Amendment Are Not Properly Before this Court..........7

C. Petitioner's New Arguments Related to Vicarious Liability and the Graves Amendment Are Direct, Not Vicarious Liability Questions, and the Court of Appeals Did Not Err in Affirming the Circuit Court's Grant of Summary Judgment on the Issues of Respondents' Direct Liability..........8

D. The Court of Appeals Properly Held that Petitioner's Original Argument Regarding Vicarious Liability Failed as a Matter of Law 10

Conclusion 12

INTRODUCTION

This matter is before the Court on a petition for a Writ of Certiorari. Respondents, Stop "N' Save, Inc., d/b/a El Cheapo Plus #7 and Roy Rahal ("Respondents"), respectfully requests that the Court deny the petition. Unfortunately, this petition centers upon Petitioner's highly improper abuse and waste of judicial resources. He now, as he has done repeatedly over the course of this litigation, asks this Court to accept his unsupported statements and allegations as true, while simultaneously asking the Court to deem all of the actual evidence submitted by the Respondents as false and fraudulently falsified. Petitioner refuses to accept the results of the case and orders herein, whether in the circuit court's well-reasoned and sound order or the opinion and order of the Court of Appeals affirming the circuit court's grant of summary judgment to Respondents as a matter of law.

The per curiam decision rendered by the Court of Appeals is supported by sound legal and factual findings. No novel question of law has been presented, and long-standing rules regarding the preservation of issues for appellate review bar Petitioner's action. Further, there was no dissent in the Court of Appeals, the Court of Appeals' decision does not conflict with a prior decision of this Court, and no substantial constitutional issues or federal questions and conflicting state and federal decisions are involved in the appeal. In short, Petitioner has offered no special or important reason why this Court should waste judicial resources and exercise its discretionary review.

QUESTION PRESENTED FOR REVIEW

I. DID THE COURT OF APPEALS PROPERLY HOLD THAT THE CIRCUIT COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS?

STATEMENT OF THE CASE

On October 9, 2013, Petitioner filed a Summons and Complaint against U-Haul Co. of South Carolina, Inc. ("UHSC")[1], an unnamed U-Haul dealer, and two former individual defendants, Reginald Morton and Dana Goins ("the Morton defendants"), alleging the Morton defendants backed into Petitioner's rental property with a U-Haul Truck rented from Respondent Stop "N' Save, Inc., d/b/a El Cheapo Plus #7 ("Respondent El Cheapo"). On December 4, 2013, Petitioner filed an Amended Complaint naming Respondent El Cheapo as the previously unnamed "U-Haul Local Dealer" and adding allegations relating to Respondent El Cheapo. Thereafter, on June 9, 2014, Petitioner filed an Amended Complaint naming Respondent El Cheapo's manager, Respondent Roy Rahal ("Respondent Rahal"), as a defendant. The Amended Complaint alleged vicarious liability for the actions of the Morton defendants, gross negligence and intentional infliction of emotion distress and claimed various personal injuries associated with Respondents' failure to compensate Petitioner for the property damage allegedly caused by the driver of the U-Haul Truck.

On April 27, 2015, Respondents filed a Motion for Summary Judgment. (R. pp. 88-89).[*] On May 13, 2015, Respondent Rahal filed an Amended Motion for Summary Judgment. (R. pp. 90-91). On June 15, 2015, Petitioner filed a Motion for Summary Judgment. (R. pp. 159-164). On August 3, 2015, Petitioner filed a Motion for Sanctions. (R. pp. 92-93). On August 21, 2015, Petitioner filed a Motion for Leave to Amend his complaint to name U-Haul International, Inc. ("UHI"). (R. pp. 132-133). On September 18, 2015, Respondents filed their Motion to Dismiss for Vexatious Litigation Conduct. (R. pp. 146-147).

A hearing was held on October 14, 2015, on the various motions, and by Order dated

[1] At a hearing on June 2, 2014, the circuit court dismissed UHSC.
[*] Respondents cite to the Amended Record on Appeal, which appears to have been filed as an attachment to Petitioner's unnumbered Appendix.

November 20, 2015, the circuit court denied Petitioner's motions and granted Respondents' Motion for Summary Judgment. The court also held in abeyance its ruling on Respondents' Motion to Dismiss for Vexatious Litigation and Sanctions. Through the myriad of his filings, memorandums and briefs, Petitioner has harassed litigants and their counsel and inundated the court system and Respondents with improper affidavits, correspondence, and incompetent "evidence."

On June 21, 2017, the Court of Appeals affirmed the circuit court's order granting summary judgment to Respondents in a per curiam opinion, in pertinent part holding that the circuit court did not err in determining that there was no genuine issue of material fact and summary judgment was appropriate. (*See Generally* Appendix). In response, Petitioner filed a Petition for Rehearing on or about July 3, 2017, which was denied by the Court of Appeals by its Order entered August 18, 2017. Petitioner now petitions this Court for a Writ of Certiorari.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY HELD THAT THE CIRCUIT COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS.

Although Petitioner takes issue with the Court of Appeals' alleged failure to "explicitly address[] the issue" of his vicarious liability claim and the Graves Amendment, the Court of Appeals correctly found that summary judgment was appropriate because there is no genuine issue of material fact entitling Petitioner to a meritorious claim, whether couched under vicarious liability (which the Graves Amendment addresses) or direct liability. Thus, Petitioner fails to appreciate that the Court of Appeals' opinion did, by finding the circuit court did not err in granting summary judgment and citing the summary judgment standards, address the application and viability of Petitioner's argument with respect to the Graves Amendment.

For the first time, Petitioner seemingly argues that it is not the Morton defendants' negligence for which Respondents are vicariously liable, but for Respondents' own negligence. First, this argument was never raised to or ruled upon by the circuit court or Court of Appeals and is not properly before this Court in a petition for Writ of Certiorari; secondly, Petitioner's argument no longer speaks of vicarious liability, but rather of direct negligence, which is not preserved for this Court's review and unfounded in light of the circuit court's and Court of Appeals' rulings. Finally, the Court of Appeals correctly affirmed the circuit court's grant of summary judgment to Respondents regarding Petitioner's original vicarious liability argument. These issues will each be addressed in turn.

A. Standard

A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. Rule 242(b), SCACR. The following factors weigh in favor of the granting of a writ:

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Id. This Court will not generally accept matters on a writ of certiorari that can be entered in the trial court or on appeal. Rather, only when *exceptional* circumstances exist will the writ be issued. *See In re Breast Implant Prod. Liab.*, 331 S.C. 540, 543 n.2, 503 S.E.2d 445, 447 (1998) (emphasizing that only when novel questions of issues of significant public interest and judicial

economy are present is a writ of certiorari warranted).

Furthermore, "[f]ailure of a petitioner to present with accuracy, brevity, and clarity the information and arguments that are essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition." Petitioner's continued failure with this latest filing to present clear and accurate arguments is a sufficient reason alone to deny his petition. Respondents continuously struggle to ascertain what Petitioner is arguing and what relief he seeks, and undoubtedly the Court will as well. For this reason alone, the petition should be denied.

B. Petitioner's New Arguments Related to the Graves Amendment Are Not Properly Before this Court.

Once again, it is important to note that Petitioner's petition and the issues raised therein are not properly before this court and the petition should therefore be denied. Petitioner, as he has done repeatedly throughout this litigation, seeks to rely upon "facts" and "arguments" that were never presented to, nor considered by, the circuit court or Court of Appeals. This is improper.

The law is clear that only issues "fairly and properly raised to the lower court and passed upon by that court" can be appealed. *State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011) (internal quotations omitted). *See also Pye v. Estate of Fox*, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006). For this Court to have "a platform for meaningful appellate review," *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011), the circuit court must have had the opportunity *for each theory advanced by Petitioner* "to rule properly after it has considered all relevant facts, law, and arguments," *I'On, LLC v. Town of Mt. Pleasant,* 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). Where a party raises an issue, but the issue is never ruled on by the trial court, and the party fails to file a motion to alter or amend, the issue is not

preserved. *S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group*, 347 S.C. 333, 544 S.E.2d 870 (Ct. App. 2001).

Petitioner cannot keep "ace card[s] up [its] sleeve - intentionally or by chance - in the hope that an appellate court will accept th[ose] ace card[s] and, via a reversal, give [it] another opportunity to prove [its] case." *I'On,* 338 S.C. at 422, 526 S.E.2d at 724. However, that is exactly what Petitioner attempts to do in his petition to this Court. Petitioner never filed a motion to alter or amend the circuit court's order to assert this vastly different claim related to his vicariously liability claim, nor was it properly briefed before the Court of Appeals. Because this new argument is outside the scope of arguments presented to and considered by the circuit court or the Court of Appeals, they are not proper for this petition for Writ of Certiorari, and therefore, the petition should be denied.

C. Petitioner's New Arguments Related to Vicarious Liability and the Graves Amendment Are Direct, Not Vicarious Liability Questions, and the Court of Appeals Did Not Err in Affirming the Circuit Court's Grant of Summary Judgment on the Issues of Respondents' Direct Liability. Are Not Preserved for this Court's Review.

To the extent the Court addresses Petitioner's new theory, i.e. that Respondents are liable for "[Respondent] Rahal's admitted negligence and criminal wrongdoing," another bald assertion, Petitioner defeats his own vicarious liability claim. What Petitioner now attempts to assert is direct negligence and intentional infliction of emotional distress ("IIED") claims against Respondents, not vicarious liability.

In his memorandums to the circuit court, Petitioner failed to argue with any specificity that Respondents were negligent. Instead, Petitioner focused on his "vicarious liability" claims regarding the Morton defendants' actions. Generally, claims or defenses not presented in the pleadings will not be considered on appeal. *See McNeely v. S.C. Farm Bureau Mut. Ins. Co.*,

259 S.C. 39, 190 S.E.2d 499 (1972). Nevertheless, in an abundance of caution, Respondents' briefed arguments in opposition to negligence and IIED claims, and the circuit court ruled on those issues. The circuit court held that there was absolutely no credible evidence in the record supporting these claims, such that Petitioner could not, as a matter of law, prove essential elements of the causes of actions. Therefore, it found that the negligence and IIED claims failed as a matter of law, and summary judgment was proper.

tThe Court of Appeals affirmed the circuit court's findings, concluding that the circuit court did not err in granting summary judgment to Respondents. The circuit court concluded there was simply no evidence in the record to present a genuine issue of material fact sufficient for Plaintiff to survive summary judgment on these claims. The Court of Appeals' decision affirming this ruling is supported by sound legal precedent, no novel questions of law are presented with these claims of direct liability, there was no dissent, no conflict with the prior decisions or federal decisions, and no constitutional and federal questions implicated by the Court of Appeals' opinion. In short, Petitioner has offered no special and important reason why this Court should exercise its discretionary review on this new argument and his petition should be denied.

D. The Court of Appeals Properly Held that Petitioner's Original Argument Regarding Vicarious Liability Failed as a Matter of Law

To the extent the Court wishes to consider Petitioner's original vicarious liability argument, the only one that has arguably been presented properly, this Court should refuse to exercise its discretionary review. The vicarious liability argument that was presented to the circuit court, i.e., that Respondents were vicariously liable for the negligent actions of the Morton defendants, does not present a novel question of law as Petitioner would suggest. Moreover, the argument was properly considered and denied by the circuit court and Court of

Appeals.

This Court has stated that it will not generally accept matters on a Writ of Certiorari that can be entered in the trial court or on appeal. Rather, only when exceptional circumstances exist will the writ be issued. *See In re Breast Implant Prod. Liab.*, 331 S.C. 540, 543 n.2, 503 S.E.2d 445, 447 (1998) ("We reiterate that this Court will not issue a writ of certiorari merely to relieve a circuit court's burden of deciding difficult issues in high profile cases" and noting that a writ is appropriate where "novel questions of law concerning issues of significant public interest are involved" and where "a decision by this Court would serve the interests of judicial economy by eliminating numerous inevitable appeals"); *see also* Jean H. Toal, Shahin Vafai & Robert A. Muckenfuss, *Appellate Practice in South Carolina*, 2d Ed. 277 (2002).

Petitioner's request for certiorari is premised on bald assertions and an incorrect view of the Court of Appeals' holding. By contending that the Court of Appeals failed to address his arguments, Petitioner ignores preservation rules and the Court of Appeals' opinion and citations, wherein it reiterated that summary judgment is warranted when the pleadings, depositions, affidavits, and discovery show there is no genuine issue of material fact and that the non-moving party cannot simply rest on the mere allegations or denials contained in his pleadings. *See* Opinion, p. 2. Necessarily embedded within the Court of Appeals' decision are implicit findings that there was no genuine issue of material fact regarding the elements of Petitioner's vicarious liability claim, as originally, not newly, pled.

The circuit court correctly determined that the Graves Amendment, 49 U.S.C. § 30106 (2015), bars Petitioner's claims under the theory of vicarious liability as a matter of law, and the Court of Appeals properly affirmed the grant of summary judgment. Congress enacted the Graves Amendment, 49 U.S.C. § 30106 (2015), for the explicit purpose of abolishing vicarious

liability for those engaged in the business of renting and leasing motor vehicles based on mere ownership or leasing of a vehicle. The Congressional mandate of 49 U.S.C. § 30106 is clear and unambiguous. The affiliate of the owner of a leased vehicle "shall not be liable under the law of any state . . . by reason of being the owner of the vehicle for harm to persons or property that arises out of the use, operation or possession of the vehicle during the period of the rental or the lease..."

Simply because South Carolina has not addressed the Graves Amendment does not elevate this issue to a novel question of law as Petitioner seemingly suggests.[2] Rather, it is standard interpretation and application of a federal statute. The Graves Amendment extinguishes any doubt of South Carolina's stance and expressly preempts the imposition of vicarious liability on vehicle rental companies. Although South Carolina courts have not addressed the Graves Amendment, South Carolina recognizes the doctrine of preemption. *See Priester v. Cromer*, 401 S.C. 38, 43, 736 S.E.2d 249, 252 (2012) ("The preemption doctrine is

[2] Other state courts across the country have affirmed that the Graves Amendment abolishes vicarious liability for vehicle rental companies. *See Vargas v. Enter. Leasing Co.*, 60 So. 3d 1037, 1041 (Fla. 2011) *cert. denied,* 132 S. Ct. 769 (U.S. 2011) ("[W]e conclude that the present case falls into the third category [where a state law conflicts with a federal law] and agree with the district court that section 324.021(9)(b) 2, Florida Statutes (2007) conflicts with and thus is preempted by the Graves Amendment"); *Lazaridis v. Progressive N. Ins. Co.*, FSTCV116011100S, 2012 WL 5936218 (Conn. Super. Ct. Nov. 7, 2012) (holding that Graves Amendment precluded Hertz Corporation from being vicariously liable for the alleged negligence of driver); *Fuller v. Enter. Rent-a-Car Co. of Kentucky, LLC*, 2011-CA-001301-MR, 2012 WL 4839550 (Ky. Ct. App. Oct. 12, 2012), review denied (Aug. 21, 2013) (acknowledging that "Congress in 2005 enacted a law (the Graves Amendment) which exempts car rental companies from tort liability"); *Esposito v. Kiessling Transit, Inc.*, 060883A, 2007 WL 3014703 (Mass. Super. Sept. 6, 2007) ("The clear language of this Federal statute indicates that, when applicable, it expressly preempts State law that imposes liability on owners of motor vehicles engaged in business of leasing or renting such vehicles simply due to ownership."); *Meyer v. Nwokedi*, 777 N.W.2d 218, 223 (Minn. 2010) ("It is undisputed that's vicarious liability claim fits within the scope of the express preemption clause of the Graves Amendment. Specifically, Enterprise is engaged in the business of renting motor vehicles, and did not engage in negligence or criminal wrongdoing").

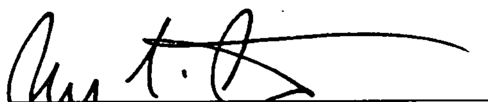
rooted in the Supremacy Clause of the United States Constitution and provides that any state law that conflicts with federal law is "without effect."). This is not a case of difficult interpretation of the various preemption doctrines nor does the Court of Appeals' opinion conflict with a decision of the United States Supreme Court—rather, this is a clear federal law that expressly rejects *vicarious* liability for vehicle rental companies during the period of the vehicle's lease.

CONCLUSION

Petitioner has simply failed to meet his burden of demonstrating that any one of the factors that weigh in favor of the granting of a Writ of Certiorari is present in this case. Rather, as he has done time and time again, Petitioner relies on bald assertions as facts and newfound arguments to attempt to advance his meritless claim. However, a writ of certiorari is an extraordinary measure, reserved only for those cases of great public interest, contradictory law, or substantial constitutional issues exist. This is not such a case. As such, Petitioner's request for a writ should be denied.

Respectfully submitted,

GALLIVAN WHITE & BOYD, P.A.

By: 

Gray T. Culbreath
James E. Brogdon, III
Jessica A. Waller
GALLIVAN, WHITE & BOYD, P.A.
1201 Main Street, Suite 1200
Post Office Box 7368(29202)
Columbia, South Carolina 29201
(803) 779-1833 (t)
(803) 779-1767 (f)

Randy J. Soriano *(pro hac vice)*
Julia Fenwick Ost *(pro hac vice)*
Bryan Cave, LLP
211 N. Broadway #3600
St. Louis, Missouri 63102
(314) 259-2000 (t)

ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina
October 18, 2017.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court Of Common Pleas

The Honorable George C. James, Jr., Judicial Circuit Court Judge
Case No.: 2012-CP-08-1801

Opinion No. 2017-UP-249 (S.C. Ct. App. Filed June 21, 2017)

Appellate Case No. 2017-001890

Charles Taylor..Petitioner,

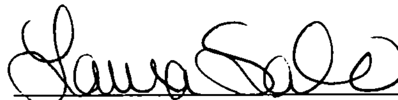
v.

Stop "N' Save, Inc., d/b/a El Cheapo Plus #7 and
Roy Rahal. ....Respondents.

PROOF OF SERVICE

I, Laura Sabo, the undersigned employee of Gallivan, White & Boyd, P.A., attorneys for Respondents, hereby certify that on October 18, 2017, I served a copy of RETURN TO PETITION FOR CERTIORARI, United States Mail, postage prepaid to the following:

Charles Taylor
332 Myrtle Beach Highway
Sumter, SC 29153
Pro Se Appellant



October 18, 2017 Laura Sabo