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STATE OF MICHIGAN

IN THE SUPREME COURT

HOME-OWNERS INSURANCE COMPANY and AUTO-OWNERS INSURANCE COMPANY,

Plaintiffs-Appellants/Cross-Appellees,

v

RICHARD JANKOWSKI and JANET JANKOWSKI,

Defendants-Appellees/Cross-Appellants.

Supreme Court No. 156240

Court of Appeals No. 331934

15-0025-CK
Honorable William E. Collette

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RICHARD AND JANET JANKOWSKI'S REPLY TO PLAINTIFFS' COMBINED ANSWER IN OBJECTION TO APPELLEES/CROSS-APPELLANTS' APPLICATION FOR LEAVE TO APPEAL

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INTRODUCTION

Defendants Richard and Janet Jankowski have brought the instant Application for Leave to Appeal requesting that this Court grant leave to answer one simple, but very important, question: Is Michigan vehicle registration required for out-of-state vehicles that are never driven or moved on Michigan streets or highways, and have absolutely no connection to the state of Michigan other than the fact that they are owned or leased by a Michigan resident?

For all of the reasons discussed at length in the Jankowskis' Application for Leave, the answer to this question is obviously no. It is universally understood that a vehicle registration fee is legally considered to be a form of taxation.[1] A state does not have the authority or power to levy a tax on property located outside its territorial borders unless the property (e.g., a motor vehicle) has some connection or *"minimum contact"* with the state seeking to impose the tax.[2] State and Federal cases expressly hold that mere ownership of the out-of-state property by an in-state resident is not sufficient, by itself, to satisfy the minimum contacts test.[3]

In the case at bar, there is no disagreement that the Jankowski Florida Lexus SUV was never driven or moved on Michigan streets or highways. The Jankowskis leased the Lexus from a Colorado lessor through a Florida Lexus dealer for exclusive use by the Jankowskis in the state of Florida. The Lexus was properly registered, titled, and insured in the state of Florida in full accordance with all applicable Florida laws. (See Court of Appeals Opinion, dated May 11, 2017,

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[1] *See* Jankowski Application for Leave, pp 20-21 (citing MCL 257.801; *American Trucking Ass'ns v Scheiner*, 483 US 266, 282-283 (1987); IRS Publication 7).

[2] *See* Jankowski Application for Leave, pp 20 (citing *Allied-Signal, Inc v Director, Div of Taxation*, 504 US 768, 778 (1992) *Pennoyer v Neff*, 95 US 714 (1877)(overruled in part on other grounds); *Sexton v Ryder Truck Rental, Inc,* 413 Mich 406, 434 (1982)).

[3] See Jankowski Application for Leave, pp 21-22 (citing *Allied-Signal, Inc v Director, Div of Taxation*, 504 US 768, 778 (1992); *Miller Bros Co v Maryland*, 347 US 340, 344-345 (1954); *Frick v Pennsylvania,* 268 US 473 (1925)).

pp 1-2)(confirming these facts). Given these undisputed facts, it should be without question that the *"minimum contacts"* required for the State of Michigan to impose a Michigan vehicle registration tax on the Jankowski Florida Lexus SUV are clearly lacking here.

In defending this Application, the Plaintiffs in this case have filed a 45 page brief in which they have not made any meaningful attempt to reconcile the foregoing longstanding federal constitutional limitations. In order to avoid these constitutional limitations, Plaintiffs contend that the Jankowskis' reliance on these principles was *"unpreserved"* for purposes of this appeal.[4] **Logical minds should not disagree that anytime a litigant attempts to avoid adverse legalities solely on grounds of preservation, it is a pretty good indication that the adversely affected litigant cannot otherwise prevail on the merits.** This is especially true in the context of appellate litigation in a state's highest court where litigants have an opportunity to file extensive briefing. But, so that there is no misunderstanding, a proper review of the record below in this case makes it clear that the Jankowskis did not fail to preserve their constitutional arguments.[5] Detailed citation to the record below where these arguments were made and preserved is set forth in **Section I** of this Reply.

Instead of reconciling the foregoing constitutional principles, the Plaintiffs in this case have attempted to support their position by offering an interpretation of the vehicle registration provisions of the Motor Vehicle Code that is favorable to their position.[6] As will be fully discussed in **Section II** of this Reply, however, the Plaintiffs' statutory interpretation of the vehicle registration provisions in the Michigan Motor Vehicle Code is overtly wrong. In particular, Plaintiff's interpretation is based on the preliminary conclusion that the Jankowski Florida Lexus

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[4] See Plaintiff's Answer, pp 24-26.
[5] See Trial Ct Tt, p 12: lines 3-13; p 14: lines 12-25; p 15 lines 1-5.
[6] See Plaintiff's Answer, pp 16-20.

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is a *"foreign vehicle"* as defined by MCL 257.18(1) of the Motor Vehicle Code. (See Plaintiffs' Answer, p 18). This conclusion is clearly wrong because in order for an out-of-state vehicle to constitute a *"foreign vehicle"* under that statutory definition, the out-of-state vehicle must be *"brought into the state"* of Michigan. See the plain language of MCL 257.18(1)(discussed in Section II below).

Ultimately, when the language of the Motor Vehicle Code governing the registration of "*foreign vehicles"* is properly applied as written, it ***decisively clarifies that a Michigan vehicle registration requirement does NOT attach to an out-of-state motor vehicle until that vehicle is brought into the state of Michigan—which is exactly what the Legislative intent identified in the preamble to the motor vehicle code says, and exactly what the Michigan Secretary of State's website advises the public.***[7]

All things considered, ***this more narrow interpretation of the Motor Vehicle Code's registration requirements is the only interpretation that comports with both the language of the Motor Vehicle Code and the Federal Constitution. Moreover, it is the only interpretation that is harmonious with both the preamble of the Michigan Motor Vehicle Code and the Secretary of State's interpretation the code's vehicle registration provisions.*** If this Court were to render a contrary interpretation of the Motor Vehicle Code that requires Michigan vehicle registration for vehicles located and operated exclusively in another state, it would needlessly disrupt this harmony in the law.

Moreover, given the number of people in Michigan that this issue affects,[8] ***it should stand***

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[7] See the Jankowskis' Application for Leave to Appeal, pp 17-19 (citing MCL 257.216; 949 PA 300, Ch II, § 216).

[8] See the Jankowskis' Application for Leave to Appeal, pp 17-19 (referencing *Viewpoint: Those Michigan residents facing a tax on pensions may vote with their feet* (May 24, 2011) (Attached as ***Exhibit 1***); Lawlor, *Snowbirds Flock Together for Winter*, NEW YORK TIMES (February 2, 2007)

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to reason that it will only be a matter of time before a federal constitutional challenge to such an interpretation is raised by an aggrieved person or organization. None of the remaining arguments offered by the Plaintiffs in this case offer any legitimate basis for reaching a contrary conclusion on the vehicle registration question.

Thus, this Court should simply issue a Peremptory Order declaring that the Jankowski Florida Lexus SUV is NOT required to be registered in Michigan. Alternatively, given the importance of this question, this Court should GRANT leave and conduct further review of this issue after considering additional briefing by the parties and other interested organizations.

<u>LAW AND ARGUMENT</u>

I. The Jankowski's constitutional arguments were properly raised and decided below and were therefore preserved.

It is well settled that an issue is properly preserved for review when it is *"raised, addressed, and decided in the trial court."* *Dell v Citizens Ins Co of America*, 312 Mich App 734, 758; 880 NW2d 280 (2015). *See also Mouzon v Achievable Visions*, 308 Mich App 415, 419; 864 NW2d 606 (2014). A close review of the record below directly confirms that the Jankowski's expressly ***"raised"*** the constitutional issue in the trial court; that the issue was ***"addressed"*** in the Jankowski's briefing and during oral arguments; and that the constitutional issue was effectively ***"decided"*** by the trial court below when the trial court issued its written Opinion and Order against the Jankowskis.

Specifically, a copy of the Jankowski's lower court brief is attached hereto as ***Exhibit 3*** (without its exhibits). On page 14 of their trial court brief, the Jankowskis specifically argue that interpreting the motor vehicle code to require vehicle registration for vehicles in another state *"is*

(Attached as ***Exhibit 2***)).

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fraught with jurisdictional and constitutional complications and would easily constitute an ultra vires state law that exceeds the power and sovereignty of the state of Michigan."

Consistent with this argument, Counsel for the Jankowskis vigorously asserted during the trial court oral argument of this matter that constitutional limitations prohibit the State of Michigan from requiring Michigan vehicle registration for a vehicle located and operated exclusively in another state. Specifically, counsel argued that:

> *What [Home-Owners is] asking you to rule, Your Honor, is that the motor vehicle code has jurisdiction over any vehicle in America that's owned by a Michigan resident. That's a pretty dicey proposition. That has all kinds of constitutional implications to it. It exceeds the jurisdiction of the state of Michigan to say that the Jankowskis, when they are down in Florida under the jurisdiction of Florida laws, abiding by those laws—and by the way, for the record, they did abide by Florida statute . . . which requires their vehicle to be registered in the state of Florida.*

(Trial Ct Tt, p 12: lines 3-13)(Attached hereto as ***Exhibit 4***).

Counsel further made it clear that constitutional limitations prevent the state of Michigan from requiring Michigan registration, and that constitutional limitations were not considered in prior case law relied on by HOIC. In this regard, counsel argued:

> *And the other thing I point out about with the Wilson case, because they want to say they have this court of appeals case that you must follow. It's obvious in the Wilson case that the arguments were limited. The arguments did not include the arguments we are making to you today about the jurisdictional, constitutional issues of applying the motor vehicle code down in Florida. That argument is totally not in the opinion. All it does, is it says that the person cited 257.216, and as I said before, that part of the motor vehicle code doesn't say street or highway in this state, and that's the only issue they are addressing.*
>
> *They weren't addressing the preamble of the motor vehicle code. They weren't addressing tine misdemeanor argument I am giving you today. They weren't addressing the constitutional power argument I have given you today all to lead to the common sense conclusion that of course, the Michigan Motor Vehicle Code does not have governance over Florida vehicles that are purchased in Florida and used only in Florida.*

(***Exhibit 4***; Trial Ct Tt, p 14: lines 12-25; p 15 lines 1-5.)

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In ruling against the Jankowskis below the trial court effectively rejected the Jankowski's constitutional arguments and held that the case *Wilson v League General*, 195 Mich App 705 (1992) was controlling of the Michigan registration question, and that the *Wilson* was dispositive in Plaintiff HOIC's favor (See Trial Court Opinion and Order dated January 4, 2016, pp 3-4)(***Exhibit 5***).

Thus, the foregoing makes it clear that the Jankowskis expressly ***"raised"*** the constitutional issue in the trial court; that the issue was ***"addressed"*** below in both the briefing and during oral arguments; and that the constitutional issue was ***"decided"*** by the trial court below when it effectively rejected the Jankowski's constitutional arguments by relying instead on the *Wilson* case. Thus, the Jankowskis clearly satisfy preservation standards set forth in *Dell* and *Mouzon, supra.*

II. Plaintiffs' interpretation of the Motor Vehicle Code is based on the incorrect conclusion that the Jankowski Florida Lexus was required to be registered as a *"foreign vehicle"* under MCL 257.218.

While the Plaintiffs correctly state on page 18 of their Answer that Michigan vehicle registration for is required under MCL 257.218 for out-of-state vehicles that satisfy the statutory definition of a "*foreign vehicle"* in MCL 257.18(1) of the Motor Vehicle Code, the Plaintiff's incorrectly conclude that the Jankowski's Florida Lexus constitutes such a *"foreign vehicle"* under that definition. MCL 257.18(1) defines a *"foreign vehicle"* as follows:

> *(1) "Foreign vehicle" means a vehicle of a type required to be registered under this act and* ***brought into this state from another state****, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer, and not registered in this state.*

Accordingly, the definitional language in § 18(1) makes it clear that in order for an out-of-state vehicle to be considered a *"foreign vehicle"* subject to the Michigan Motor Vehicle Code, two separate and distinct requirements must be met: (1) the vehicle must be *"a vehicle of a type*

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required to be registered under this Act"; **and** (2) the vehicle must be ***"brought into this state from another state, territory, or country . . . ."*** When the general vehicle registration requirements in MCL 257.216 are considered, the first of these two requirements must be interpreted to mean *"a vehicle driven or moved on a street or highway."* While such vehicles would include vehicles driven or moved out-of-state, the second requirement in § 18(1) expressly limits which vehicles can properly be characterized as "foreign vehicles" for purposes of the Motor vehicle code to only those vehicles ***"brought into this state from another state."*** Thus, under the clear language of the Motor Vehicle Code, an out-of-state vehicle is only required to be registered in Michigan as a foreign vehicle if it is brought into the state of Michigan.

This conclusion is directly consistent with the preamble of the Motor Vehicle Code—which as discussed in the Jankowski's principle Application, expressly states that the provisions of the Motor Vehicle Code are only intended to apply to vehicles in Michigan (See Jankowski Application, p 18). ***Furthermore, and very significantly, the Michigan Secretary of State explicitly instructs the public at large on its website that only vehicles driven in Michigan are required to be registered in Michigan.*** (See Jankowski Application, p 4). While the Plaintiffs in this case have correctly identified the general proposition that administrative interpretations are non-binding***, the Plaintiffs have failed to reconcile the fact that it is well-settled that deference should nevertheless be given to such an interpretation under the Doctrine of Respectful Consideration so long that interpretation does depart from the statutory language.***[9]

In the case at bar, there is no factual disagreement that the Jankowski's Florida Lexus was

[9] See *SBC Health Midwest, Inc. v. City of Kentwood*, ___ Mich ___; 894 NW2d 535, 538 (Issued May 1, 2017), recognizing that *"Court will generally defer to the Tax Tribunal's interpretation of a statute that it is delegated to administer, that deference will not extend to cases in which the tribunal makes a legal error. Thus, agency interpretations are entitled to respectful consideration but cannot control in the face of contradictory statutory text."*

never driven or moved in the state of Michigan. Therefore, there can be no legitimate question that the Jankowski Florida vehicle was not a "*foreign vehicle*" under the meaning of § 18(1) (i.e., because it was never "brought to this state"). Thus, it clearly was not subject to the mandatory vehicle registration provisions in MCL 257.218 because those mandatory registration provisions narrowly applies to out-of-state vehicles meeting the statutory definition of a *foreign vehicles."*

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, for these reasons, and for the reasons stated in the Jankowski's principle Application for Leave, Defendant-Appellees/Cross-Appellants Richard and Janet Jankowski respectfully request a peremptory order declaring that their Florida Lexus was not required to be registered in Michigan at the time of their Florida accident, and declaring that they are therefore not disqualified from receiving PIP benefits by § 3113(b) of the No-Fault Act. Alternatively, the Jankowskis request that this Court otherwise grant this Application for Leave and conduct further review of the Court of Appeals May 11, 2017 decision.

Respectfully submitted:

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Dated: September 29, 2017

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