No. 22-929

In The
Supreme Court of the United States

BYD MOTORS INC.,

Petitioner,

v.

SODERHOLM SALES AND LEASING, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY BRIEF

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INTRODUCTION

This case involves a manifest failure by the Court of Appeals for the Ninth Circuit to follow *Salve Regina College v. Russell*, 499 U.S. 225, 111 S. Ct. 1217, 113 L. Ed. 2d 190 (1991) ("*Salve Regina*"), which requires courts of appeals to review *de novo* district courts' rulings on issues of state law. Here, the only issue raised by Petitioner BYD MOTORS INC. ("BYD") in its appeal below was the interpretation by the United States District Court for the District of Hawaii of Section 437-58(g) of the Hawaii Revised Statutes (HRS §437-58(g)).

In its Brief in Opposition ("Opposition"), the Respondent SODERHOLM SALES AND LEASING, INC. ("SSLI") argues that BYD's Petition should be denied because: (1) the point of Hawaii law addressed in the Petition was not argued below; (2) the court of appeals reviewed the award of statutory damages under the correct standard; and (3) there is no conflict of authority on an important issue of federal law that would warrant review before this Court. As discussed below, none of SSLI's arguments have merit.

I. BYD IS NOT RAISING A NEW POINT OF LAW IN ITS PETITION

A. BYD Explicitly Raised The Issue Of Statutory Valuation Dates In Its Appeal Below

SSLI's contention that BYD is now arguing a point as to the statutory valuation dates that was not raised below grossly misrepresents the record. As to the

statutory valuation dates, BYD's Opening Brief included the following statement in Section IV ("A Concise Statement of the Case") (*see* SSLI Appx. 18a):

> 8. The District Court did not determine the valuation dates under HRS §437-58(g), i.e., "the effective date of the termination or one day prior to the date of the notice."

and the following statement in Section III.A ("Issues Presented For Review") (*see* SSLI Appx. 8a):

> 3. . . . [T]he District Court failed to determine the valuation dates."

and the following statement in Section V.3 ("Summary of Argument") (*see* SSLI Appx. 20a):

> (b) HRS §437-58(g) allows recovery of the fair market value of property used for the purposes of the franchise as of the effective date of the termination or one day prior to the date of the notice, but (c) the District Court failed to determine the applicable valuation dates[.]

and the following statement in the Argument section VI.C.2 (*see* SSLI Appx. 33a):

> [HRS §437-58(g)] allows only recovery of the fair market value as of the greater of the two valuation dates specified in the statute. However, the District Court never determined the applicable valuation dates (i.e., whether these dates were to be based on the first, rescinded termination or the second, effective termination, or a combination thereof)[.]

It should be noted that HRS §437-58(g) does not provide different standards for the recovery of the value of the franchise and the value of the equipment purchased for the franchise. The only recovery allowed by the statute is that of the fair market value on one of the two valuation dates mandated by the statute.

> (g) In addition to the other compensation set forth in this section, upon the termination, discontinuation, cancellation, or failure to renew the franchise agreement by a manufacturer or distributor without good cause and good faith; or as a result of the discontinuation of a line make, the manufacturer or distributor shall compensate the dealer at the fair market value for the dealer's capital investment, which shall include the going business value of the business, goodwill, property, and improvement owned or leased by the dealer for the purpose of the franchise as of the effective date of the termination or one day prior to the date of the notice, whichever is greater.

There was no reason for BYD to state its argument separately as to the value of the franchise and the purchased equipment, when it applies equally to both.

B. BYD's Petition Is Not Limited To The Issue Of Statutory Valuation Dates

In its Opposition, SSLI disingenuously pretends that BYD's argument in its Petition is limited to the statutory valuation dates. Plainly, BYD's Petition

addresses the broader issue of the failure by the court of appeals to address the question of whether the district court's award of statutory damages under HRS §437-58(g) was consistent with and authorized by this statute. This is the same multi-faceted issue that was raised in BYD's appeal below, and that the court of appeals failed to meaningfully address in its Memorandum.

In its appeal below, and then again in its Petition, BYD has argued, *inter alia*, that:

(a) Statutory damages for bad faith termination under §437-58(g) could not be awarded when the district court expressly found that there was no effective termination in bad faith. *See*, *e.g.*, BYD's Opening Brief, Section III.A.1 (SSLI's App. 7a), BYD's Petition at 7, point (3);

(b) The language of §437-58(g) authorizing the award of "going business value of the business, goodwill, property, and improvement owned or leased by the dealer for the purpose of ***the*** franchise" (emphasis added) could not support the award of SSLI's actual income from its 17 other franchises unrelated to BYD. *See*, *e.g.*, BYD's Opening Brief, Section III.A.2 (SSLI's App. 7a-8a), BYD's Petition at 7-8, point (4);

(c) The language of §437-58(g) authorizing compensation of the dealer "at the fair market value for the dealer's capital investment, which shall include the going business value of the business, goodwill, property, and improvement owned or leased by the dealer for the purpose of the franchise as of the

effective date of the termination or one day prior to the date of the notice, whichever is greater" could not support the award of the purchase price of the equipment long before any termination or notice, and without SSLI having even attempted to prove a fair market value on either of the statutory valuation dates. *See*, *e.g.*, BYD's Opening Brief, Section III.A.2 (SSLI's App. 8a), BYD's Petition at 7, point (2).

Each of these arguments called for a *de novo* interpretation of HRS §437-58(g) by the court of appeals. Moreover, in its Petition, BYD explained that the statutory interpretation issues it raised in its appeal below are interrelated, and that, had the court of appeals engaged in a *de novo* review of the district's court's conclusions regarding its purported application of HRS § 437-58(g), it could not have avoided the issue of how statutory damages can be awarded, consistent with the language of HRS § 437-58(g), without conducting the valuation on either of the two valuation dates mandated by the statute, i.e., "the effective date of the termination or one day prior to the date of the notice." *Id*. at 12.

For example, BYD noted in its Petition that, without an effective termination in bad faith, which the district court in its Finding of Fact 25, BYD's App. 35, and Conclusions of Law19-21, BYD's App. 49–50, held did not happen, there can be no "effective date of termination," and with the notice of termination having been rescinded and as such found by the district court, in its Finding of Fact 24 (*see* BYD's App. 35), to be void and of no legal effect, there is no "one day prior to the date

of notice" either. *Id*. However, the court of appeals in its Memorandum did not discuss any of these issues. *Id*.

In sum, SSLI's contention that BYD's Petition pursues a new point of law that was not previously raised below and is limited to this purportedly new point, is disingenuous and wholly without merit.

II. THE COURT OF APPEALS DID NOT COMPLY WITH THE STANDARD OF REVIEW MANDATED BY *SALVE REGINA*

SSLI contends that the court of appeals complied with the required standard of review. However, it is safe to say that a *de novo* review under *Salve Regina* requires the reviewing court to reconcile the district court's statutory interpretation with the language of the statute. *See*, *e.g.*, *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685, 105 S.Ct. 2297, 85 L.Ed. 2d 692 (1985) (It is axiomatic that "[t]he starting point in every case involving construction of a statute is the language itself") (citations omitted); *Wright v. Home Depot U.S.A.*, 111 Haw. 401, 410, 142 P.3d 265, 274 (Haw. 2006) (it is the cardinal rule of statutory construction that a statute ought upon the whole be so constructed that, if it can be prevented, no clause, sentence or word shall be superfluous, void, or insignificant) (citation omitted).

The panel majority never attempted to do so. Instead, the panel majority simply deferred to the district court's interpretation of HRS § 437-58(g). Accordingly, the panel majority never began to comply

with the standard of review mandated by *Salve Regina*.

III. THIS CASE INVOLVES A FLAGRANT DISREGARD OF *SALVE REGINA* BY THE COURT OF APPEALS

SSLI contends that this is not a case of an inter-circuit conflict on an issue of federal law. This is true of any case raising *Salve Regina*, and beside the point. There is no doubt as to what *Salve Regina* requires. Here, the court of appeals plainly disregarded its duty under *Salve Regina* to meaningfully review *de novo* the district court's interpretation of state law, instead of rubber-stamping it. Unless this Court is willing to enforce its ruling in *Salve Regina*, *Salve Regina* will be a dead letter and courts of appeals will be free to revert to a pre-*Salve Regina* deferential review of state law determinations by district courts.

CONCLUSION

This case involves a flagrant disregard of *Salve Regina* by the court of appeals. The Petition should be granted in order to enforce compliance by courts of appeals with the *Salve Regina* requirement of a meaningful *de novo* review of state law rulings by district courts.

Respectfully submitted,

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