

COURT OF APPEALS OF GEORGIA

Greenbriar Dodge, Inc. v. May, 155 Ga. App. 892

273 S.E.2d 186 (Ga. Ct. App. 1980) · No. 59936 · Decided September 5, 1980

SUMMARY

The Georgia Court of Appeals affirmed a \$6,000 verdict for automobile purchasers on their counterclaim under the Georgia Fair Business Practices Act. The court rejected challenges to jury instructions concerning deceit, the FBPA, the Uniform Commercial Code, damages, and the jury trial of the counterclaim. It also held that alleged charging errors and the reading of pleadings and exhibits did not constitute reversible error.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	McMurray, Presiding Judge; McMurray; Smith; Banke
JURISDICTION	Georgia
DECIDED	September 5, 1980
DOCKET	59936
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from the denial of its motion for judgment notwithstanding the verdict and, alternatively, for a new trial, following a jury verdict awarding defendants \$6,000 on their Georgia Fair Business Practices Act counterclaim.
STANDARD OF REVIEW	Alleged jury-charge errors and post-trial rulings were reviewed for harmful error; the trial court's decision to permit a jury trial on a claim not triable of right by jury was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published and precedential Georgia Court of Appeals opinion
PARTIES	Greenbriar Dodge, Inc. v. Russell May, Irene May

TOPICS

consumer protection deceptive trade practices uniform commercial code damages appellate procedure

PRACTICE AREAS

consumer protection consumer sales contracts civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred in denying Greenbriar Dodge's motion for judgment notwithstanding the verdict or, alternatively, for a new trial.
2. Whether alleged verbal inaccuracies and other asserted errors in the jury charge, including the reading of pleadings and submission of exhibits, constituted reversible error.
3. Whether the evidence authorized jury instructions concerning deceit and the Georgia Fair Business Practices Act.
4. Whether the evidence supported submitting damages up to \$7,200 and whether the jury, rather than the court, could determine damages and attorney fees under the Georgia Fair Business Practices Act.
5. Whether the trial court erred by instructing the jury on Uniform Commercial Code provisions concerning rejection of nonconforming goods, revocation of acceptance, and foreclosure.
6. Whether the constitutional issues concerning the Georgia Fair Business Practices Act were properly before the Court of Appeals after transfer from the Supreme Court of Georgia.

HOLDINGS

1. Verbal inaccuracies that were harmless slips of the tongue and could not reasonably have confused or misled the jury did not constitute reversible error. Reading the parties' pleadings was also not error where the court instructed the jury that pleadings were not evidence.
2. The trial court did not err in giving the requested charges on deceit and the Georgia Fair Business Practices Act because the evidence supported a bait-and-switch theory, pressure to purchase, and misrepresentations concerning material characteristics of the vehicle.
3. The evidence supported a damages instruction permitting a verdict from one dollar to \$7,200, and the \$6,000 lump-sum verdict was not so excessive that it could not be upheld. A jury may determine damages in an FBPA action when the trial court orders a jury trial, and the trial court did not abuse its discretion in doing so.
4. The trial court did not err in charging the jury on Uniform Commercial Code provisions concerning rejection of nonconforming goods, revocation of acceptance, and foreclosure because those issues were at least peripherally raised by the trial evidence.

KEY QUOTATIONS

"A statement made in a complained-of charge which is nothing more than a mere verbal inaccuracy and which results from a palpable slip of the tongue and clearly could not have misled the jury is harmless." (155 Ga. App. at 893)

"Now, these pleadings are not evidence. They are not to be considered by you as evidence. They are merely the written contentions of the parties whereby each party in the case has set out in writing what they contend to be the truth of the matter and they form the issue which you will have to determine." (155 Ga. App. at 893)

"Any person who suffers injury or damages as a result of consumer acts or practices in violation of this Chapter ... may bring an action individually, but not in a representative capacity, against the person or

persons engaged in such unlawful consumer acts or practices under the Rules of Civil Procedure to seek equitable injunctive relief and to recover his general and exemplary damages sustained as a consequence thereof ...” (155 Ga. App. at 895)

FACTUAL BACKGROUND

Russell and Irene May purchased a 1978 Dodge Diplomat demonstrator from Greenbriar Dodge after visiting the dealership to buy a particular make and model. They claimed that Greenbriar used a bait-and-switch sales routine, pressured them into purchasing a different and more expensive vehicle, and misrepresented important characteristics of the automobile. The Mays attempted to rescind the transaction the next day, and the traded-in Dodge Aspen was repossessed and sold, resulting in loss of the Mays' equity.

PROCEDURAL HISTORY

Greenbriar Dodge sued Russell May for damages and attorney fees arising from his attempt to rescind an automobile purchase; Irene May was later added as a defendant. The defendants counterclaimed under the Georgia Fair Business Practices Act. After a jury returned a \$6,000 verdict for the defendants, the trial court entered judgment and denied Greenbriar's post-trial motion. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- C. F. I. Const. Co. v. Board of Regents, 145 Ga. App. 471 (1), 243 S.E.2d 700 (1978)
- Ramsey v. State, 145 Ga. App. 60, 63 (7), 243 S.E.2d 555 (1978)
- Siegel v. State, 206 Ga. 252 (2), 56 S.E.2d 512 (1949)
- Attaway v. Tom's Auto Sales, 144 Ga. App. 813, 242 S.E.2d 740 (1977)
- Haughton v. Judsen, 116 Ga. App. 308, 310, 157 S.E.2d 297 (1967)
- Peoples Bank v. Northwest Ga. Bank, 139 Ga. App. 264, 266, 228 S.E.2d 181 (1976)
- Superior Paving v. Citadel Cement Corp., 145 Ga. App. 6, 7 (1), 243 S.E.2d 287 (1978)

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