MASSACHUSETTS SUPREME JUDICIAL COURT

Hershenow v. Enterprise Rent-A-Car Co.

445 Mass. 790 (2005) · Decided January 17, 2006

SUMMARY

The Massachusetts Supreme Judicial Court held that consumers who purchased collision damage waivers containing allegedly unlawful exclusions did not establish an actionable injury under Massachusetts General Laws chapter 93A because their rental vehicles were not damaged and they suffered no loss. The court concluded that a statutory or per se deceptive act must still cause a cognizable loss to support recovery under chapter 93A. It affirmed summary judgment for Enterprise Rent-A-Car, while holding that chapter 90, § 32E 1/2, did not displace chapter 93A remedies.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Marshall, C.J.; Cowin, J.; Greaney, J.
JURISDICTION	Massachusetts
DECIDED	January 17, 2006
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consumers appealed from an amended judgment granting the defendants judgment on the pleadings and summary judgment in an action alleging that Enterprise's collision damage waiver provision violated Massachusetts consumer-protection law. The Supreme Judicial Court transferred the case on its own motion.
STANDARD OF REVIEW	The court considered the entire record because the Superior Court considered materials outside the pleadings, and sustained judgment for the defendants on any ground established in the record. Summary judgment was reviewed under Mass. R. Civ. P. 56.
PRECEDENTIAL VALUE	Published precedential opinion of the Massachusetts Supreme Judicial Court
PARTIES	Barry Hershenow, Dana Beaumier v. Enterprise Rent-A-Car Company of Boston, Inc., Enterprise Rent-A-Car Company

TOPICS

consumer protection · statutory interpretation · contracts · damages · remedies

PRACTICE AREAS

consumer protection · consumer contracts · statutory interpretation · summary judgment · remedies

QUESTIONS PRESENTED

1. Whether G. L. c. 90, § 32E 1/2, foreclosed private relief under G. L. c. 93A for allegedly noncompliant collision damage waiver provisions.
2. Whether an allegedly per se unfair or deceptive consumer-contract provision establishes an injury under G. L. c. 93A, § 9, without proof that the deception caused a loss.
3. Whether the plaintiffs could recover under G. L. c. 93A when the challenged collision damage waiver terms did not affect them and they suffered no loss.

HOLDINGS

1. The enactment of G. L. c. 90, § 32E 1/2, did not displace existing private remedies under G. L. c. 93A for deceptive practices concerning collision damage waivers.
2. A plaintiff seeking relief under G. L. c. 93A, § 9, must prove that the unfair or deceptive act caused a loss; an act may be per se deceptive under § 2 without being per se an injury under § 9.
3. The plaintiffs could not recover because the allegedly noncompliant CDW terms caused them no economic, noneconomic, or legally cognizable loss.

KEY QUOTATIONS

> *"proving a causal connection between a deceptive act and a loss to the consumer is an essential predicate for recovery under our consumer protection statute."* (445 Mass. at 790)

> *"A consumer is not, however, entitled to redress under G. L. c. 93A, where no loss has occurred."* (445 Mass. at 802)

FACTUAL BACKGROUND

Barry Hershenow and Dana Beaumier rented automobiles from Enterprise and purchased optional collision damage waiver protection. Enterprise's form contract purported to invalidate the waiver for any violation of any contract provision, including restrictions broader than those permitted by G. L. c. 90, § 32E 1/2. Neither plaintiff's rental vehicle was damaged, Enterprise never sought recovery from either plaintiff, and neither plaintiff identified an economic or noneconomic loss resulting from the challenged terms.

PROCEDURAL HISTORY

The plaintiffs filed a putative class action under G. L. c. 93A, § 9, challenging collision damage waiver exclusions in Enterprise's rental contracts. The Superior Court entered judgment on the pleadings and summary judgment for Enterprise, concluding that the plaintiffs had no private right of action under G. L. c. 90, § 32E 1/2, or G. L. c. 93A. The Supreme Judicial Court considered the entire record and affirmed on the alternative ground that the plaintiffs suffered no loss caused by the allegedly deceptive provision.

DISPOSITION

affirmed

CASES CITED

- Aetna Cas. & Sur. Co. v. Continental Cas. Co., 413 Mass. 730, 734-735 (1992)
- Dodd v. Commercial Union Ins. Co., 373 Mass. 72, 77 (1977)
- Ciardi v. F. Hoffmann-La Roche, Ltd., 436 Mass. 53 (2002)
- Cabot Corp. v. Baddour, 394 Mass. 720, 722-723, 725 (1985)
- Reiter Oldsmobile, Inc. v. General Motors Corp., 378 Mass. 707, 711 (1979)
- Sullivan v. Liberty Mut. Ins. Co., 444 Mass. 34, 35 n.1 (2005)
- Kohl v. Silver Lake Motors, Inc., 369 Mass. 795, 801 (1976)
- Slaney v. Westwood Auto, Inc., 366 Mass. 688, 693-698, 703 (1975)
- Baldassari v. Public Fin. Trust, 369 Mass. 33, 44-46 (1975)
- Leardi v. Brown, 394 Mass. 151, 152, 154, 156-160 (1985)
- Haddad v. Gonzalez, 410 Mass. 855, 865-866 (1991)
- Maillet v. ATF-Davidson Co., 407 Mass. 185, 192 (1990)
- Aspinall v. Philip Morris Cos., 442 Mass. 381, 394, 401-402 (2004)
- Purity Supreme, Inc. v. Attorney Gen., 380 Mass. 762, 777 (1980)
- Heller Fin. v. Insurance Co. of N. Am., 410 Mass. 400, 409 (1991)
- Ciardi v. F. Hoffmann-La Roche, Ltd., 436 Mass. 53, 66-67 n.20 (2002)