

SUPREME COURT OF TEXAS

Amazon.com Incorporated v. Morgan McMillan, Individually and as Next of Friend of E.G., a Minor

Amazon.com, Inc. v. McMillan, No. 20-0979 (Tex. June 25, 2021) · No. No. 20-0979 · Decided June 25, 2021

SUMMARY

In this dissenting opinion, Justice Boyd, joined by Justice Devine, would have held that Amazon.com qualifies as a “seller” under the Texas Products Liability Act when it controls the transaction and delivery of a third-party product through its Fulfillment by Amazon program. The dissent emphasizes the statutory definition of “seller” and concludes that the definition does not require Amazon to hold title to the product.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Jeffrey S. Boyd; John P. Devine
JURISDICTION	Texas
DECIDED	June 25, 2021
DOCKET	No. 20-0979
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Texas considered a certified question from the United States Court of Appeals for the Fifth Circuit concerning whether Amazon.com is a seller under the Texas Products Liability Act when it does not hold title to a product but controls the transaction and delivery through its Fulfillment by Amazon program.
STANDARD OF REVIEW	De novo statutory interpretation in answering a certified question
PRECEDENTIAL VALUE	Dissenting opinion; the proposed interpretation is nonbinding.
PARTIES	Amazon.com Incorporated v. Morgan McMillan, individually and as next friend of E.G., a minor

TOPICS

[statutory interpretation](#)[legislative intent](#)[products liability](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Amazon.com is a seller under Texas Civil Practice and Remedies Code section 82.001(3) when it does not hold title to a product but controls the transaction and delivery through its Fulfillment by Amazon program.
2. Whether the statutory phrase "distributing or otherwise placing" a product in the stream of commerce requires the defendant to hold title to the product.

HOLDINGS

1. In the dissent's view, Amazon.com is a seller under section 82.001(3) because it physically conveys or transfers the product within the sales process and controls the transaction and delivery, regardless of whether it ever holds title. The majority held otherwise.

KEY QUOTATIONS

"Even if the term has a different meaning under the constitution or the common law, or even a different common, ordinary meaning, we must apply the meaning the statute expressly provides." (at 1)

"In short, Amazon.com does not merely transport the product on behalf of its seller, like a mail carrier or delivery service might do." (at 4)

"To retroactively impute a new common-law possession-of-title requirement is to improperly "judicially amend the statute to add an exception not implicitly contained in the language of the statute."" (at 9)

FACTUAL BACKGROUND

A third-party merchant provided a product to Amazon.com for sale through Amazon's Fulfillment by Amazon program. Amazon stored the product, listed and promoted it on its website, processed the customer's payment, retrieved and packaged the product, arranged delivery, and handled returns and refunds. Amazon did not hold title to the product, and the certified question asked whether Amazon nevertheless qualifies as a seller under the Texas Products Liability Act.

PROCEDURAL HISTORY

The case reached the Supreme Court of Texas on certification from the Fifth Circuit. The dissent states that the Court's majority answered the certified question negatively, holding that Amazon.com is not a statutory seller when it sells a product through its Fulfillment by Amazon program because Amazon.com never held title to the product. Justice Boyd disagreed and would have answered that Amazon.com qualifies as a seller.

DISPOSITION

other

CASES CITED

- *McMillan v. Amazon.com, Inc.*, 983 F.3d 194, 197, 200, 203 (5th Cir. 2020)
- *Youngkin v. Hines*, 546 S.W.3d 675, 680-81 (Tex. 2018)
- *Powell v. City of Houston*, No. 19-0689, 2021 WL 2273976, at *13 (Tex. June 4, 2021)
- *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009)
- *Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 894 (Tex. 2018)
- *In re Memorial Hermann Hospital System*, 464 S.W.3d 686, 701 (Tex. 2015)
- *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011)
- *Texas Lottery Commission v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010)
- *Texas Department of Transportation v. Needham*, 82 S.W.3d 314, 318 (Tex. 2002)
- *Texas State Board of Examiners of Marriage & Family Therapists v. Texas Medical Association*, 511 S.W.3d 28, 34-35 (Tex. 2017)
- *Sunstate Equipment Co., LLC v. Hegar*, 601 S.W.3d 685, 690 (Tex. 2020)
- *CenterPoint Builders GP, LLC v. Trussway, Ltd.*, 496 S.W.3d 33, 37, 39 n.5, 40 (Tex. 2016)
- *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011)
- *VIA Metropolitan Transit v. Meck*, 620 S.W.3d 356, 369 & n.15 (Tex. 2020)
- *Wisconsin Central Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018)
- *McKisson v. Sales Affiliates, Inc.*, 416 S.W.2d 787, 792 (Tex. 1967)
- *Rourke v. Garza*, 530 S.W.2d 794, 800 (Tex. 1975)
- *Armstrong Rubber Co. v. Urquidez*, 570 S.W.2d 374, 375-76 (Tex. 1978)
- *Ford Motor Co. v. Ledesma*, 242 S.W.3d 32 (Tex. 2007)
- *Torres v. Goodyear Tire & Rubber Co.*, 786 P.2d 939, 943 (Ariz. 1990)
- *Gonser v. Decker*, 814 P.2d 1056, 1057 (Okla. Civ. App. 1991)
- *New Texas Auto Auction Services, L.P. v. Gomez De Hernandez*, 249 S.W.3d 400, 402, 404 (Tex. 2008)
- *State Farm Fire & Casualty Co. v. Amazon.com, Inc.*, 835 F. App'x 213, 216 (9th Cir. 2020)
- *Erie Insurance Co. v. Amazon.com, Inc.*, 925 F.3d 135, 141 (4th Cir. 2019)
- *Smith v. Alza Corp.*, 948 A.2d 686, 693-94 (N.J. Super. Ct. App. Div. 2008)
- *Antone v. Greater Arizona Auto Auction*, 155 P.3d 1074, 1079 (Ariz. Ct. App. 2007)
- *Oberdorf v. Amazon.com Inc.*, 930 F.3d 136, 148 (3d Cir. 2019)
- *Kirby v. Smith & Nephew, Inc.*, No. 3:15-CV-2543-L, 2017 WL 661373, at *7 n.2 (N.D. Tex. Feb. 17, 2017)