

SUPREME COURT OF NEVADA

Newmar Corporation v. McCrary

Newmar Corp. v. McCrary, 129 Nev. 638 (2013) · No. Nos. 58174 and 59045 · Decided October 3, 2013

SUMMARY

The Nevada Supreme Court held that a motor-home purchaser could revoke acceptance against the manufacturer under the Uniform Commercial Code where the manufacturer directly participated in the sales process and made representations to the buyer, creating privity. The court upheld the award of the purchase price and incidental and consequential damages because the limited repair remedy failed of its essential purpose. It reversed the attorney-fee award, concluding that the fees were not authorized under the applicable statutes and rules.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Cherry, J.; Douglas, J.; Gibbons, J.; Hardesty, J.; Parraguirre, J.; Saitta, J.
JURISDICTION	Nevada
DECIDED	October 3, 2013
DOCKET	Nos. 58174 and 59045
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated appeals from a district court judgment awarding relief in a revocation-of-acceptance and breach-of-warranty action and from a postjudgment order awarding attorney fees.
STANDARD OF REVIEW	Purely legal questions are reviewed de novo; the attorney-fee award was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Newmar Corporation v. Allison McCrary

TOPICS

[uniform commercial code](#)[warranty](#)[breach of contract](#)[consequential damages](#)[remedies](#)

PRACTICE AREAS

[Commercial law](#)[Contract law](#)[Consumer protection](#)[Remedies](#)

QUESTIONS PRESENTED

1. Whether a purchaser may revoke acceptance of a motor home from its manufacturer under Nevada's Uniform Commercial Code when the manufacturer directly participated in the sales process and made representations to the buyer.
2. Whether the purchaser may recover incidental and consequential damages when the manufacturer's limited repair remedy failed of its essential purpose.
3. Whether the district court properly awarded attorney fees under Nevada's offer-of-judgment and attorney-fee statutes.

HOLDINGS

1. A purchaser may revoke acceptance from a manufacturer when the manufacturer interjects itself into the sales process and makes direct representations to the buyer, thereby creating sufficient privity to qualify as a seller under Nevada's UCC.
2. When an exclusive or limited repair remedy fails of its essential purpose, a purchaser who properly revokes acceptance may pursue UCC remedies, including incidental and consequential damages.
3. The district court abused its discretion by awarding attorney fees because the award was not authorized under the applicable offer-of-judgment and attorney-fee provisions.

KEY QUOTATIONS

“We hold that a purchaser is entitled to revoke acceptance of the motor home against its manufacturer where, as here, privity exists between the manufacturer and the buyer because the manufacturer interjected itself into the sales process and had direct dealings with the buyer to ensure the completion of the transaction.” (129 Nev. at 638)

“For the reasons articulated above, we conclude that when a vehicle has substantial, irreparable defects, a purchaser is entitled to revoke acceptance of the vehicle from the manufacturer when the manufacturer interjected itself into the sales process and made direct representations to the buyer, thereby creating privity.” (129 Nev. at 650)

FACTUAL BACKGROUND

Allison McCrary purchased a luxury motor home manufactured by Newmar Corporation from Wheeler's Las Vegas RV. Before taking possession, McCrary observed continuing problems and obtained assurances from a Newmar factory representative that Newmar would address the problems and provide a full warranty. The motor home thereafter developed significant electrical defects, underwent repeated unsuccessful repairs, and became unsafe to drive, after which McCrary attempted to revoke acceptance from Newmar.

PROCEDURAL HISTORY

McCrary sued Newmar after attempting to revoke acceptance of a defective motor home and asserting claims including revocation of acceptance, breach of contract, and breach of warranty. Following a bench trial, the district court awarded McCrary the purchase price, incidental and consequential damages, prejudgment interest,

and attorney fees. Newmar appealed the judgment and the postjudgment attorney-fee order; the Supreme Court of Nevada affirmed the judgment in part and reversed the attorney-fee award.

DISPOSITION

other

CASES CITED

- Waddell v. L.V.R.V., Inc., 122 Nev. 15, 125 P.3d 1160 (2006)
- Havas v. Love, 89 Nev. 458, 514 P.2d 1187 (1973)
- Wyeth v. Rowatt, 126 Nev. 446, 244 P.3d 765 (2010)
- Seekings v. Jimmy GMC of Tucson, Inc., 638 P.2d 210, 214 (Ariz. 1981)
- Griffith v. Latham Motors, Inc., 913 P.2d 572, 577 (Idaho 1996)
- Henderson v. Chrysler Corp., 477 N.W.2d 505, 507-08 (Mich. Ct. App. 1991)
- Neal v. SMC Corp., 99 S.W.3d 813, 816-18 (Tex. App. 2003)
- Gasque v. Mooers Motor Car Co., Inc., 313 S.E.2d 384, 390 (Va. 1984)
- Ford Motor Credit Co. v. Harper, 671 F.2d 1117, 1126 (8th Cir. 1982)
- Durfee v. Rod Baxter Imports, Inc., 262 N.W.2d 349, 357-58 (Minn. 1977)
- Volkswagen of America, Inc. v. Novak, 418 So. 2d 801, 803-04 (Miss. 1982)
- Fode v. Capital RV Center, Inc., 575 N.W.2d 682, 687-89 (N.D. 1998)
- Gochey v. Bombardier, Inc., 572 A.2d 921, 924 (Vt. 1990)
- Alberti v. Manufactured Homes, Inc., 407 S.E.2d 819, 824 n.4 (N.C. 1991)
- Cedars of Lebanon Hospital Corp. v. European X-Ray Distributors of America, Inc., 444 So. 2d 1068, 1072 & n.4 (Fla. Dist. Ct. App. 1984)
- Clark v. International Harvester Co., 581 P.2d 784, 797, 802 (Idaho 1978)
- Koperski v. Husker Dodge, Inc., 302 N.W.2d 655, 664, 666 (Neb. 1981)
- Ehlers v. Chrysler Motor Corp., 226 N.W.2d 157, 161 (S.D. 1975)
- McCarran International Airport v. Sisolak, 122 Nev. 645, 673, 137 P.3d 1110, 1129 (2006)