

## SUPREME COURT OF WISCONSIN

# Tammy Kolupar v. Wilde Pontiac Cadillac, Inc. and Randall Thompson

303 Wis. 2d 258 (Wis. 2007) · No. 2005AP935 · Decided July 12, 2007

### SUMMARY

The Supreme Court of Wisconsin held that Wis. Stat. § 218.0163(2) authorizes a prevailing retail buyer to recover reasonable costs, including reasonable attorney fees, beyond the taxable costs enumerated in Wis. Stat. § 814.04. The court concluded that the circuit court applied the wrong legal standard when it limited Tammy Kolupar's award to taxable costs. It reversed and remanded for determination of reasonable costs and fees, including those incurred on appeal.

### CASE DETAILS

|                       |                                                                                                                                                                                                                  |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Wisconsin                                                                                                                                                                                       |
| WRITING FOR THE COURT | Louis B. Butler, Jr.                                                                                                                                                                                             |
| JURISDICTION          | Wisconsin                                                                                                                                                                                                        |
| DECIDED               | July 12, 2007                                                                                                                                                                                                    |
| DOCKET                | 2005AP935                                                                                                                                                                                                        |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Review of a published court of appeals decision affirming a circuit court's award of taxable costs after a prior remand concerning costs and attorney fees.                                                      |
| STANDARD OF REVIEW    | Statutory interpretation is reviewed de novo. The amount of a cost award is reviewed for erroneous exercise of discretion, requiring a reasoned application of the correct legal standard to the relevant facts. |
| PRECEDENTIAL VALUE    | Published Wisconsin Supreme Court opinion; precedential                                                                                                                                                          |
| PARTIES               | Tammy Kolupar v. Wilde Pontiac Cadillac, Inc., Randall Thompson                                                                                                                                                  |

### TOPICS

consumer protection

statutory interpretation

remedies

appellate procedure

standard of review

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether costs recoverable by a retail buyer under Wisconsin Statutes section 218.0163(2) are limited to costs enumerated in section 814.04 or include other reasonable litigation costs.
2. Whether the circuit court properly exercised its discretion when it awarded costs under section 814.04 without applying the reasonable-cost standard under section 218.0163(2).
3. Whether a prevailing retail buyer under section 218.0163(2) may recover reasonable attorney fees and costs incurred in appellate proceedings.
4. Whether Kolupar was judicially estopped from seeking reasonable costs beyond section 814.04 enumerated costs.

## HOLDINGS

1. A retail buyer who prevails on a claim under Wisconsin Statutes section 218.0116 may recover reasonable litigation costs under section 218.0163(2), in addition to costs enumerated in section 814.04, but may not obtain a double recovery of the same cost items.
2. The circuit court erroneously exercised its discretion because it applied the incorrect legal standard by treating Kolupar's recovery as limited to section 814.04 taxable costs and failed to explain why some nonenumerated expenses were reasonable while others were denied.
3. A retail buyer prevailing on a section 218.0116 claim is entitled to reasonable attorney fees and reasonable costs incurred in appellate proceedings, with the amount to be determined by the circuit court.
4. Wilde was not entitled to judicially estop Kolupar from seeking reasonable costs beyond section 814.04 enumerated costs.

## KEY QUOTATIONS

*“We conclude that Wis. Stat. § 218.0163(2) provides for the award of reasonable costs.”* (¶ 3)

*“We therefore conclude that Wis. Stat. § 218.0163(2) authorizes recovery of reasonable costs, as well as reasonable attorney fees, to retail purchasers who prevail on claims under Wis. Stat. § 218.0116.”* (¶ 37)

*“Because the record does not show that the determination of the amount of the award was based on a reasoned application of the appropriate legal standard, we conclude the circuit court erroneously exercised its discretion in calculating the amount of the award.”* (¶ 48)

## FACTUAL BACKGROUND

Tammy Kolupar purchased a used 1985 Mercedes-Benz from Wilde Pontiac Cadillac's sales manager, Randall Thompson, trading in her 1993 Pontiac Sunbird. She alleged that Thompson represented the Mercedes as mechanically sound, but she soon discovered faulty brakes, a broken odometer, and that Thompson personally—

not Wilde—owned the vehicle. The litigation resulted in a settlement with Wilde and subsequent disputes over the attorney fees and costs recoverable under Wisconsin's motor vehicle dealership statute.

## PROCEDURAL HISTORY

Kolupar sued Wilde and Thompson over the sale of a deficient used automobile, alleging fraud, odometer-law violations, warranty claims, and violations of Wisconsin's motor vehicle dealership statute. After a settlement with Wilde, the circuit court awarded \$15,000 in attorney fees but failed to separately resolve costs. In *Kolupar I*, the Wisconsin Supreme Court affirmed the attorney-fee award and remanded for a determination of costs. On remand, the circuit court awarded \$3,523.46 in costs limited principally to those enumerated in Wisconsin Statutes section 814.04. The court of appeals affirmed, and the Wisconsin Supreme Court reversed and remanded.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The circuit court must award section 814.04 enumerated costs and exercise its discretion under section 218.0163(2) to determine Kolupar's reasonable costs beyond those enumerated costs. It must also determine and award reasonable attorney fees and reasonable costs for the appeal.

## CASES CITED

- *Kolupar v. Wilde Pontiac Cadillac, Inc.*, 2004 WI 112, 275 Wis. 2d 1, 683 N.W.2d 58
- *Kolupar v. Wilde Pontiac Cadillac, Inc.*, 2006 WI App 85, 293 Wis. 2d 265, 716 N.W.2d 547
- *Village of Cross Plains v. Haanstad*, 2006 WI 16, 288 Wis. 2d 573, 709 N.W.2d 447
- *Anderson v. MSI Preferred Insurance Co.*, 2005 WI 62, 281 Wis. 2d 66, 697 N.W.2d 73
- *State v. Van Camp*, 213 Wis. 2d 131, 569 N.W.2d 577 (1997)
- *Mrozek v. Intra Financial Corp.*, 2005 WI 73, 281 Wis. 2d 448, 699 N.W.2d 54
- *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110
- *Watkins v. LIRC*, 117 Wis. 2d 753, 345 N.W.2d 482 (1984)
- *Providence Catholic School v. Bristol School District*, 231 Wis. 2d 159, 605 N.W.2d 238 (2000)
- *Shands v. Castrovinci*, 115 Wis. 2d 352, 340 N.W.2d 506 (1983)
- *Hughes v. Chrysler Motors Corp.*, 197 Wis. 2d 973, 542 N.W.2d 148 (1996)
- *Hartlaub v. Coachmen Industries, Inc.*, 143 Wis. 2d 791, 422 N.W.2d 869 (Ct. App. 1988)
- *State ex rel. Hodge v. Town of Turtle Lake*, 180 Wis. 2d 62, 508 N.W.2d 603 (1993)
- *Chmill v. Friendly Ford-Mercury of Janesville*, 154 Wis. 2d 407, 453 N.W.2d 197 (Ct. App. 1990)
- *Chmill v. Friendly Ford-Mercury of Janesville*, 144 Wis. 2d 796, 424 N.W.2d 747 (Ct. App. 1988)
- *Nelson v. McLaughlin*, 211 Wis. 2d 487, 565 N.W.2d 123 (1997)
- *State v. Denis L.R.*, 2005 WI 110, 283 Wis. 2d 358, 699 N.W.2d 154

- Bob Willow Motors, Inc. v. General Motors Corp., 872 F.2d 788 (7th Cir. 1989)
- Daanen & Janssen, Inc. v. Cedarapids, Inc., 216 Wis. 2d 395, 573 N.W.2d 842 (1997)
- Franke v. Franke, 2004 WI 8, 268 Wis. 2d 360, 674 N.W.2d 832

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