

SUPREME COURT OF NORTH CAROLINA

Surgeon v. TKO Shelby, LLC

Surgeon · No. 198A22-2 · Decided May 22, 2026

SUMMARY

The Supreme Court of North Carolina vacated a trial court order certifying a class in a dispute involving a dealership promotional event. The Court held that the trial court’s class definitions and analysis were internally inconsistent and that the proposed class was not ascertainable because identifying members would require individualized fact determinations that would predominate over common issues. The case was remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Justice Richard Dietz
JURISDICTION	Supreme Court of North Carolina
DECIDED	May 22, 2026
DOCKET	198A22-2
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendants appealed under N.C.G.S. § 7A-27(a)(4) from an order granting plaintiffs' motion for class certification.
STANDARD OF REVIEW	The legal analysis of class-certification criteria is reviewed de novo; corresponding factual findings are reviewed for competent evidence; and the ultimate determination that class treatment is the superior method of adjudication is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	TKO Shelby, LLC, trading as Nissan of Shelby, Integrity Automotive Promotions, LLC, A to Z Staffed Events, Inc., Brian Leachman, Michael Smith, Travis K. Ostrom d/b/a The TKO Group v. Gary A. Surgeon, Marla Lepley-Starr

TOPICS

- class actions
- appellate procedure
- appellate jurisdiction
- standard of review
- civil procedure

PRACTICE AREAS

class actions

civil procedure

appellate procedure

contracts

consumer protection

QUESTIONS PRESENTED

1. Whether the trial court's class-certification order was internally inconsistent because its class definition and analysis used different requirements concerning receipt of the flyer, calling the hotline, and visiting the dealership.
2. Whether the proposed class satisfied the ascertainability requirement when identifying class members would require individualized determinations of which hotline callers visited the dealership.
3. Whether the proposed class could satisfy the predominance requirement when class-member identification would devolve into individualized mini-trials.

HOLDINGS

1. The trial court's conflicting class definitions and analysis prevented meaningful appellate review, requiring vacatur of the class-certification order.
2. On the current record, the proposed class was not ascertainable because there was no feasible, objective way to identify the 927 dealership visitors from the available records.
3. The proposed class failed the predominance requirement because identifying class members would require individualized mini-trials that would overwhelm the common issues.

KEY QUOTATIONS

“To ensure that class members receive the required notice, the trial court must confirm that there is a feasible, objective way to identify who those class members are.” (at 8)

“if class members cannot be identified without separate evidence for each class member and then separate resolution by a factfinder, the ascertainability requirement would not be satisfied because the identification process would devolve into a series of mini-trials that would dwarf the adjudication of the common issues.” (at 8-9)

“VACATED AND REMANDED.” (at 11)

FACTUAL BACKGROUND

In 2018, plaintiffs received promotional flyers for a Nissan of Shelby tent-sale event promising chances to win major prizes. Plaintiffs alleged that the scratch-off portion misleadingly indicated that recipients had won a Nissan Sentra or \$20,000, while defendants treated a separate activation code as controlling and awarded known contestants \$2. Records showed that 2,118 people called the promotional hotline and that 927 people visited the dealership, but no records identified which hotline callers were among the dealership visitors.

PROCEDURAL HISTORY

Plaintiffs brought breach-of-contract and unfair-and-deceptive-trade-practices claims arising from a dealership promotional event. The trial court certified a class in 2021, and the Supreme Court vacated that order and

remanded because of a mismatch between the class definition and the analysis. On remand, the trial court again certified a class by order entered 15 November 2024. The Supreme Court again vacated the certification order, concluding that the trial court's analysis remained internally inconsistent and that the proposed class was not ascertainable on the current record.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The class-certification order is vacated and the case is remanded for further proceedings. The court left to the trial court any appropriate consideration of plaintiffs' potential spoliation or destruction-of-evidence claims and any resulting sanction.

CASES CITED

- Surgeon v. TKO Shelby, LLC, 385 N.C. 772, 778, 781-82 (2024)
- Armistead v. County of Carteret, 926 S.E.2d 886, 889-91 (N.C. 2026)
- Wardson Construction, Inc. v. City of Raleigh, 926 S.E.2d 903, 908 (N.C. 2026)
- Jackson v. Home Depot U.S.A., Inc., 388 N.C. 109, 113 (2025)
- Surgeon v. TKO Shelby, LLC, No. 18 CVS 3983, 2021 WL 9772618, at *5 (N.C. Super. Ct. Dec. 13, 2021)