

SUPREME COURT OF THE STATE OF WASHINGTON

Money Mailer, LLC v. Brewer, 195 Wn. 2d 1

455 P.3d 129 (2019) · No. No. 96304-5 · Decided September 19, 2019

SUMMARY

The Washington Supreme Court answered two certified questions concerning the meaning of “fair and reasonable price” under the Franchise Investment Protection Act, RCW 19.100.180(2)(d). The court held that whether a price is fair and reasonable is a fact question informed by market forces and that the franchisor’s acquisition price does not alone establish the fair price. It further held that charging a franchisee twice the amount paid for a product or service does not violate the statute as a matter of law.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	Wiggins, J.
JURISDICTION	Washington
DECIDED	September 19, 2019
DOCKET	No. 96304-5
DISPOSITION	other
PROCEDURAL POSTURE	The United States District Court for the Western District of Washington certified two questions of Washington law to the Washington Supreme Court concerning the meaning of a "fair and reasonable price" under the Franchise Investment Protection Act.
STANDARD OF REVIEW	Certified questions from federal courts are reviewed de novo. Questions of statutory interpretation are also reviewed de novo.
PRECEDENTIAL VALUE	Published en banc opinion of the Washington Supreme Court; precedential.
PARTIES	Money Mailer, LLC v. Wade G. Brewer

TOPICS

[statutory interpretation](#)[legislative history](#)[consumer protection](#)[commercial litigation](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the price at which a franchisor obtains a product or service inherently establishes the fair and reasonable price under RCW 19.100.180(2)(d).
2. Whether a franchisor violates RCW 19.100.180(2)(d) as a matter of law by charging a franchisee twice what the franchisor paid for a product or service.

HOLDINGS

1. Whether a price is fair and reasonable is a question of fact concerning what prudent franchisors and franchisees in similar circumstances would regard as an appropriate price, with attention to market forces.
2. The price at which a franchisor obtains a product or service is not inherently the fair and reasonable price, although it is one factor the fact finder may consider.
3. A franchisor does not violate RCW 19.100.180(2)(d) as a matter of law merely by charging a franchisee twice what the franchisor paid for a product or service.

KEY QUOTATIONS

“We first define “fair and reasonable price” as a question of fact regarding what prudent franchisors and franchisees in similar circumstances would consider an appropriate price.” (at 7)

“We hold that a “fair and reasonable price” in RCW 19.100.180(2)(d) is a question of fact involving what prudent franchisors and franchisees in similar circumstances would regard as an appropriate price.” (at 21)

“The price at which the franchisor obtains a good or service is not inherently the fair and reasonable price.” (at 17)

“No such per se rule exists because what is “fair and reasonable” is a question of fact.” (at 18)

FACTUAL BACKGROUND

Money Mailer and Wade Brewer entered a 10-year franchisor-franchisee relationship in 2011. Money Mailer provided printing and related advertising-envelope services to Brewer and charged him prices that the district court found were twice the prices Money Mailer paid or incurred to obtain or produce the services. Brewer alleged that the markup violated RCW 19.100.180(2)(d), while Money Mailer contended that the markup was not unlawful as a matter of law.

PROCEDURAL HISTORY

Money Mailer sued Brewer in federal district court for breach of contract and damages. Brewer counterclaimed, alleging that Money Mailer violated the Franchise Investment Protection Act by charging more than a fair and reasonable price for products and services. The district court granted Brewer partial summary judgment after determining that a 100 percent markup violated the statute as a matter of law, then certified two statutory-

interpretation questions to the Washington Supreme Court. The Supreme Court answered both questions in the negative and left the factual question of whether the prices were fair and reasonable for the district court.

DISPOSITION

other

REMAND INSTRUCTIONS

The court answered both certified questions in the negative. It did not decide whether summary judgment was proper or whether Money Mailer actually violated the Franchise Investment Protection Act; those factual matters remained for the federal district court.

CASES CITED

- Allen v. Dameron, 187 Wn. 2d 692, 389 P.3d 487 (2017)
- Danny v. Laidlaw Transit Servs., Inc., 165 Wn. 2d 200, 193 P.3d 128 (2008)
- Broughton Lumber Co. v. BNSF Ry. Co., 174 Wn. 2d 619, 624, 278 P.3d 173 (2012)
- Bradburn v. N. Cent. Reg'l Library Dist., 168 Wn. 2d 789, 799, 231 P.3d 166 (2010)
- Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn. 2d 1, 9-12, 43 P.3d 4 (2002)
- Nelson v. Nat'l Fund Raising Consultants, Inc., 120 Wn. 2d 382, 842 P.2d 473 (1992)
- Wuthrich v. King County, 185 Wn. 2d 19, 27, 366 P.3d 926 (2016)
- Bodin v. City of Stanwood, 130 Wn. 2d 726, 735-36, 927 P.2d 240 (1996)
- Gordon v. Deer Park Sch. Dist. No. 414, 71 Wn. 2d 119, 122, 426 P.2d 824 (1967)
- Wood v. City of Seattle, 57 Wn. 2d 469, 471-72, 358 P.2d 140 (1960)
- West v. Mount Vernon Sand & Gravel, Inc., 56 Wn. 2d 752, 355 P.2d 795 (1960)
- Chadwick v. Ek, 1 Wn. 2d 117, 129, 95 P.2d 398 (1939)
- Scott v. Pac. Power & Light Co., 178 Wash. 647, 35 P.2d 749 (1934)
- N. Coast Power Co. v. Cowlitz, Chehalis & Cascade Ry., 108 Wash. 591, 185 P. 615 (1919)
- Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 551 U.S. 877, 886, 127 S. Ct. 2705, 168 L. Ed. 2d 623 (2007)
- Harvey v. County of Snohomish, 157 Wn. 2d 33, 43, 134 P.3d 216 (2006)
- Hartley v. State, 103 Wn. 2d 768, 775, 698 P.2d 77 (1985)
- Minn. Lawyers Mut. Ins. Co. v. Comm'r, 285 F.3d 1086, 1092 (8th Cir. 2002)
- Hanover Ins. Co. v. Comm'r, 598 P.2d 1211, 1220 (1st Cir. 1979)
- Porter v. Toledo Wimsett Fin. & Thrift Co., 13 Ohio L. Abs. 509, 510 (Ohio Ct. App. 1933)
- Huff v. Wolfe, 48 Ill. App. 589, 591-92 (1893)
- Kent v. Phelps, 2 Day 483, 483 (Conn. 1807)

