ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

BRENDA JOHNSON v. EARNHARDT'S GILBERT DODGE, INC.,
CV-05-0204-PR

PARTIES AND COUNSEL:

Petitioner: Earnhardt's Gilbert Dodge, Inc. ("Earnhardt"), represented by Mary LaRue Walker.

Respondent: Brenda Johnson, represented by Marshall Meyers of Krohn & Moss, Ltd.

Amici Curiae: Arizona Automobile Dealers Association and Arizona Recreational Vehicle Dealers Association (collectively, "Dealers' Associations"), represented by James W. Armstrong and Gaye L. Gould of Sacks Tierney P.A.; and DaimlerChrysler Corporation, represented by Negatu Molla and Abram Bowman of Bowman and Brooke LLP.

FACTS:

In May 2000, Johnson bought a used 1997 Kia Sportage from Earnhardt. The vehicle was sold "AS IS," for a cash price of $15,878.48, with the implied warranty of merchantability limited to fifteen days or 500 miles after delivery, whichever came first. At the same time, Earnhardt sold Johnson a six year/60,000 mile extended service contract with DaimlerChrysler, for an additional $1,235. The price of the service contract was shown on the purchase contract for the vehicle as an amount paid by Earnhardt to others on the buyer's behalf. Johnson and Earnhardt also signed a "DaimlerChrysler Service Contract Application." Under the service contract, DaimlerChrysler would authorize and pay for repairs, but the repairs would actually be performed by Earnhardt. The application stated that, by signing the application, Earnhardt agreed to make any repairs authorized by DaimlerChrysler, in accordance with the policies and procedures set out in the Daimler Chrysler Service Contracts Dealer Guide. Under the service contract, Johnson could request that repairs be made by a different DaimlerChrysler dealer if she could not return to the dealer who sold her the vehicle. Johnson asserts that, at the time of sale, she was told by Earnhardt that she was purchasing Earnhardt's extended warranty and that DaimlerChrysler was the "administrator" of the warranty.

Johnson took her car to Earnhardt for repairs at least once, and later took the vehicle to another dealer for repairs. On April 31, 2001, nearly a year after buying the car, and after driving the car approximately 9295 miles, Johnson attempted to revoke her acceptance of the vehicle. When Earnhardt refused to take the vehicle back, Johnson filed suit for breach of the implied warranty of merchantability under the Magnuson Moss Warranty Act, 15 U.S.C.A. §§ 2301 – 2312 (1998) and revocation of her purchase due to that breach. Earnhardt answered and moved for summary judgment. The trial court ruled for Earnhardt, finding that Earnhardt had not "entered into" the service contract within the meaning of 15 U.S.C.A. § 2308. Johnson appealed.

The court of appeals reversed, in a split decision. The majority ruled that Earnhardt had "entered into" the service contract, and that Earnhardt had made a "warranty" as defined in 15 U.S.C.A. § 2301(6) in connection with the sale.

ISSUES:

A. Whether the majority erroneously held that a seller of a third-party service contract that is not obligated to "pay for or sustain the cost of repairs" is a party to, or has "entered into," the service contract as a matter of law.

B. Whether the majority erroneously held, as a matter of law, that a statement contained in a service contract application is a written warranty for purposes of the Act.

C. Whether the Majority properly considered and ruled on Appellant's claim of revocation of acceptance.

RELEVANT STATUTES:

15 U.S.C.A. § 2306 provides:

> (6) The term "written warranty" means—
>
> > (A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or
> >
> > (B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,
>
> which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

15 U.S.C.A. § 2308(a) provides:

> No supplier may disclaim or modify (except as provided in subsection (b) of this section) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product

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