



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**AMERICAN POWER PRODUCTS, INC. /LFMG/APP, LLC v. CSK  
AUTO, INC. CV-16-0133-PR**

**PARTIES:**

*Petitioner:* CSK Auto, Inc. (“CSK”)

*Respondent:* American Power Products, Inc. and LFMG/App. LLC (“American”)

**FACTS:**

American and CSK entered into a Master Vendor Agreement (“MVA”) under which American agreed to sell items to CSK on an open account. The MVA mandated an award of attorneys’ fees to the prevailing party, without specifying how the superior court was to determine the prevailing party. However, it provided that Arizona law “shall be deemed to govern the . . . interpretation of the MVA and the rights and remedies of the parties.”

American sued CSK for breach of contract and negligent misrepresentation, seeking more than \$5,000,000 in damages. CSK answered, asserting various affirmative defenses and counterclaims and seeking damages of \$950,000.

Several months prior to trial, CSK served American with a \$1,000,001 offer of judgment under [Rule 68, Arizona Rules of Civil Procedure](#), “inclusive of all damages, taxable court costs, interest and attorneys’ fees.” On the sixth day of trial, the parties entered into a stipulation that resolved certain disputed items. Pursuant to this stipulation, the superior court informed the jury that the parties’ agreement resulted in “an agreed-upon net balance starting point” in the amount of \$10,733 in favor of American. The jury returned a verdict for American but awarded it only \$10,733.

After trial, both parties sought attorneys’ fees and costs, each asserting it was the prevailing party under the MVA’s attorneys’ fees provision. The superior court found that American was the prevailing party and awarded it \$775,000 in attorneys’ fees. The trial court dismissed CSK’s counterclaims with prejudice, and entered judgment in American’s favor for \$858,403.29 (comprised of the judgment, taxable costs, and attorneys’ fees).

On appeal, CSK argued that its settlement offer under [Rule 68](#) triggered the second sentence of [A.R.S. § 12-341.01\(A\)](#) (if judgment obtained is equal to or more favorable to the offeror than an offer of judgment, the offeror is deemed to be the successful party from the date of the offer), making it the prevailing party entitled to attorneys’ fees.

The Court of Appeals disagreed, affirming the award of attorneys' fees to American. It rejected CSK's argument that, even if American obtained a verdict, CSK's offer of judgment triggered the second sentence of [A.R.S. § 12-341.01\(A\)](#) because the offer of judgment, which American rejected, was more favorable than the judgment awarded.

The Court of Appeals reasoned that the statute did not control because, when attorneys' fees are based on a contract, the contract controls to the exclusion of [A.R.S. § 12-341.01\(A\)](#). See [A.R.S. § 12-341.01\(A\)](#) (“This section shall not be construed as altering, prohibiting or restricting present or future contracts . . . that may provide for attorney fees.”); see also [Geller v. Lesk](#), 230 Ariz. 624, 627 ¶ 9, 285 P.3d 972, 975 (App. 2012) (when a contract includes an attorneys' fees provision, it controls to the exclusion of [A.R.S. § 12-341.01\(A\)](#)); [Lisa v. Strom](#), 183 Ariz. 415, 418 n. 2, 904 P.2d 1239, 1242 n. 2 (App. 1995).

The Arizona Supreme Court granted CSK's Petition for Review.

## **ISSUES:**

“The trial judge found that American Power Products was the ‘prevailing party’ at trial for having obtained a \$10,733.00 jury verdict, despite American having asked the jury to award it \$10,848,661.00. The trial judge then awarded American \$775,000.00 in attorneys' fees and \$73,670.29 in costs, and interest on the verdict for a total judgment of \$858,403.29. Several months prior to trial, CSK made a written offer to settle the case for a judgment in American's favor of \$1,000,001.00. In affirming the trial court, the Court of Appeals specifically rejected that part of [A.R.S. § 12-341.01\(A\)](#) that defines a ‘successful party’ as one whose pre-trial written settlement offer is rejected, but was better than the ultimate verdict.”

(1) “Was it error for the Court of Appeals to ignore the statutorily mandated definition of ‘successful party’ in the context of a rejected settlement offer by not finding that CSK was the successful party from the date of its rejected offer?”

(2) “Was it error for the Court of Appeals to not apply the statutorily mandated definition of ‘successful party’ in the context of a rejected settlement offer where the parties agreed that their contract was controlled by Arizona law?”

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