

Summary of SC90601, *Ashlee Ruhl, on behalf of herself and all others similarly situated v. Lee's Summit Honda*

Appeal from the Jackson County circuit court, Judge Jack R. Grate

Argued and submitted May 19, 2010; opinion issued Aug. 31, 2010

Attorneys: The dealership was represented by Patric S. Linden, Kevin D. Case and David J. Roberts of Case & Roberts PC in Kansas City, (816) 448-3707; and Ruhl was represented by Mitchell L. Burgess and Keith C. Lamb of Burgess and Lamb PC in Kansas City, (816) 471-1700, and Ralph Phalen of the Phalen Law Firm in Kansas City, (816) 471-1700.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A car dealership appeals a trial court's judgment denying its motion to compel a woman who had sued it to arbitrate her individual claims against it. In a 4-3 decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the trial court's decision. Although her claim was within the scope of the arbitration agreement, the agreement's waiver regarding class actions is unconscionable and cannot be severed from the rest of the arbitration agreement. In a dissenting opinion, Chief Justice William Ray Price Jr. would not invalidate the entire arbitration agreement and would hold the parties may waive the class action procedures permitted by statute.

Facts: Ashlee Ruhl purchased and financed a new car from Lee's Summit Honda. The retail purchase agreement she signed described her total purchase price as including a cash price for the vehicle, other goods/services and a \$199.95 dealership administrative fee. She also signed an arbitration agreement that waived her opportunity to participate in class action. On behalf of herself and others who paid a fee as part of the purchase price, Ruhl sued the dealership and sought class certification. She alleged the dealership engaged in the unauthorized practice of law and engaged in unfair and deceptive merchandising practices. She also sought treble damages under section 484.020, RSMo, attorneys fees and costs, costs for class action and administration, and punitive damages under section 407.025, RSMo. The dealership moved to compel arbitration. The trial court overruled its motion, finding that the claim of unauthorized practice of law is not subject to arbitration and that the arbitration agreement was procedurally and substantively unconscionable. The dealership appeals.

AFFIRMED AND REMANDED.

Court en banc holds: The trial court correctly determined that Ruhl should not be required to submit to arbitration. Her claim that the dealership unlawfully is charging a fee to prepare legal documents – which is part of the total purchase price of the vehicle listed in the contract – is within the scope of the arbitration agreement because it constitutes a dispute about the purchase of the vehicle. The trial court did not err in concluding the arbitration clause, however, was unconscionable. Under *Stolt-Nielsen v. Animal-Feeds International Corp.*, 130 S.Ct. 1758, 1775 (2010), and *Brewer v. Missouri Title Loans, Inc.*, ___ S.W.3d ___ (Mo. banc 2010) (No. SC90647, also decided Aug. 31, 2010), a party cannot be subjected to class arbitration unless the

arbitration contract indicates consent to class arbitration. The waiver here, as in *Brewer*, makes it clear the dealership did not consent to class arbitration. Severing the class waiver would require Ruhl to pursue her claim under the very circumstances held to be unconscionable under Missouri law and effectively would immunize the dealership from individual consumer claims, likely brought without the assistance of counsel, and allow it to continue in its alleged deceptive practices against individuals purchasing a new car. Further, Missouri law grants consumers the right to bring a class action if they meet certain requirements under section 407.025.

Dissenting opinion by Chief Justice Price: The author would hold Missouri law requires a showing of both procedural and substantive unconscionability before a court will void a contract and would not invalidate the arbitration agreement here in its entirety for the reasons set out in his dissenting opinion in *Brewer*, also decided this day. The authorization of class actions in chapter 407 is permissive, not mandatory, and may be waived.