

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

SHERITA FUGATE,

Appellant

v.

JACKSON HEWITT, INC.,

Respondent

DOCKET NUMBER WD72353

DATE: March 1, 2011

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Peggy Stevens McGraw, Judge

Appellate Judges:

Division Three
Cynthia L. Martin, P.J., James Edward Welsh, and Gary D. Witt, JJ.

Attorneys:

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Co-Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**SHERITA FUGATE, Appellant, v.
JACKSON HEWITT, INC., Respondent**

WD72353

Jackson County

Before Division Three Judges: Cynthia L. Martin, P.J., James Edward Welsh, and Gary D. Witt, JJ.

Sherita Fugate appeals the circuit court's judgment dismissing her petition for a class action complaint against Jackson Hewitt, Inc. Fugate had alleged in her petition that, in obtaining an income tax refund anticipation loan ("RAL") for her, Jackson Hewitt failed to comply with statutory requirements for credit services organizations and that Jackson Hewitt's noncompliance violated the Missouri Merchandising Practices Act. The circuit court dismissed Fugate's petition on the basis that Jackson Hewitt was not a credit services organization and, therefore, was not subject to the statutory requirements for credit services organizations. Alternatively, the court concluded that dismissal was appropriate because, even if Jackson Hewitt were a credit services organization, Fugate failed to allege any actual damages. Fugate challenges these conclusions on appeal.

REVERSED AND REMANDED.

Division Three holds:

The circuit court erred in dismissing on the basis that Jackson Hewitt was not subject to the statutory requirements for credit services organizations. Pursuant to the plain and ordinary meaning of section 407.637, RSMo 2000, Fugate's allegations that Jackson Hewitt obtained an RAL for her and that she indirectly paid Jackson Hewitt for doing so were sufficient to plead that Jackson Hewitt was a "credit services organization" subject to the provisions of sections 407.635 to 407.644, RSMo 2000.

The circuit court erred in dismissing on the basis that Fugate failed to allege any actual injury that she suffered due to Jackson Hewitt's noncompliance with the credit services organization statutes. A reasonable inference from the allegations in Fugate's petition is that she was injured by Jackson Hewitt's violations because she paid for its services without receiving the protections, documents, and disclosures that a credit services organization is statutorily required to provide to a buyer.

Opinion by: James Edward Welsh, Judge

March 1, 2011

Dissenting Opinion by Judge Cynthia L. Martin:

The author would hold that the plain, ordinary and usual meaning of the undefined terms "purchase" and "in return for payment" employed in the statutory definition of the term "buyer" anticipate a direct transaction between the buyer of a product or service and the seller of that product or service. As a result, Fugate's allegation in her petition that she "indirectly" paid

Jackson Hewitt by paying the bank which actually loaned her money is insufficient to establish that Jackson Hewitt is a credit services organization under section 407.637.1.

Assuming, *arguendo*, that the terms "purchase" and "in return for payment" permit inconsistent, but equally plausible interpretations, section 407.637.1 would be rendered ambiguous. In such a case, the rules of statutory construction would require construction of all passages within section 407.637.1 in context, and would require construction of section 407.637.1 *in pari materia* with other statutes within the Credit Services Organization Act.

Read in context, the phrase "in return for the payment of money or other valuable consideration" must be read as qualified by the phrase "from a buyer" just as every other phrase in the introductory passages of section 407.637.1 are necessarily read as qualified by the phrase "for or to a buyer".

Read *in pari materia*, section 407.637.1 necessarily requires a direct payment transaction between the buyer and the purported credit services organization. Section 407.638, which defines the prohibited activities of a credit services organization, expressly describes activities wherein a charge is made to a buyer or received from a buyer--a direct payment transaction. Interpreting section 407.637.1 to include within the definition of credit services organization a class of persons broader than the class of persons subject to the restrictions set forth in section 407.638 produces an absurd result.

It is immaterial that tax preparers are not listed as "exempt" under section 407.637.2. An exemption is only relevant if the underlying provision, section 407.637.1, is demonstrated to be applicable.

Fugate did not sufficiently plead that she was a "buyer" or that Jackson Hewitt was a "credit services organization" under section 407.637.1.

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