

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

JANET CHOCHOROWSKI, Plaintiff/Appellant,)	No. ED92699
)	Appeal from the Circuit Court
v.)	of St. Louis County
)	Honorable James R. Hartenbach
HOME DEPOT U.S.A., INC., d/b/a THE HOME)	Date: September 22, 2009
DEPOT, Defendant/Respondent.)	

Plaintiff, a lessor of merchandise, appeals from a judgment dismissing her lawsuit against defendant, a lessee of merchandise, seeking damages under the Missouri Merchandising Practices Act (MMPA), section 407.020 RSMo (2000) for failure to state a claim. She asserts that she alleged sufficient facts to establish her claim that defendant violated the MMPA by deceiving plaintiff into believing a damage waiver was mandatory and by selling her a worthless damage waiver.

REVERSED AND REMANDED.

Division One Holds:

1. Defendant's motion to dismiss did not challenge the failure of the facts alleged to state a cause of action; rather it sought a determination of the merits.
2. A dismissal for failure to state a claim may not be based on a conclusion that the plaintiff is not entitled to relief on the merits of that claim.

Opinion by: Kathianne Knaup Crane, P.J.
Clifford H. Ahrens, J. and Nannette A. Baker, J., concur.

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