

Summary of SC89361, *James Huch and Ryan Carstens v. Charter Communications, Inc.*
Appeal from the St. Louis County circuit court, Judge Mark D. Seigel

Attorneys: Huch and Carstens were represented by John E. Campbell, Erich Vieth and Amy Collignon Gunn of The Simon Law Firm PC in St. Louis, (314) 241-2929; and Charter was represented by James W. Erwin and Roman P. Wuller of Thompson Coburn LLP in St. Louis, (314) 552-6000. The attorney general, who filed a brief as a friend of the Court, was represented by James R. Layton and Peter Lyskiowski of the attorney general's office in Jefferson City, (573) 751-3321. Gateway Legal Services Inc., the National Consumer Law Center and the National Association of Consumer Advocates – which also filed a brief as friends of the Court – were represented by Alicia Campbell, Michael Ferry and Philip Senturia of Gateway Legal Services in St. Louis, (314) 534-0404.

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: Customers sued a cable television company under the state's merchandising practices act, alleging the company sent them unsolicited channel guides and then charged them for it in their monthly bills. The trial court dismissed the suit, holding it was barred by the "voluntary payment doctrine." In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case to the trial court so it can proceed. If proven, the company's conduct is an unfair practice prohibited by the act, and to allow it to use the voluntary payment doctrine to avoid liability would nullify the act's protections and contravene the legislature's intent.

Facts: Charter Communications, which provides cable television and other services to customers in Missouri and elsewhere, sent an unsolicited paper television-channel guide to its customers and then charged them for it in their monthly bills. James Huch and Ryan Carstens sued Charter under sections of the state's merchandising practices act, alleging the company failed to give customers the option of whether to receive the channel guide – merchandise that is not included in the monthly rate; sent the guide to customers even though they did not request it; failed to tell customers that charges would be added to their bills for the guide; and charged each customer about \$3 per month for the guide. Huch and Carstens asked the trial court to certify a class of customers who did not request, but who received and were charged for, the guide. On behalf of themselves and the class, they sought monetary and punitive damages as well as a permanent injunction prohibiting Charter from engaging in unfair or deceptive trade practices. Charter moved to dismiss the suit, asserting it is barred by the affirmative defense of the voluntary payment doctrine. The trial court sustained the motion, dismissing the suit with prejudice (so they could not refile it). Huch and Carstens appeal.

REVERSED AND REMANDED.

Court en banc holds: In light of the legislative purpose of the merchandising practices act, the voluntary payment doctrine is not available as a defense to a violation of the act. The fundamental purpose of the act is to protect consumers. The act prohibits specified unlawful practices and imposes criminal penalties and civil liability on those who engage in unlawful conduct. In addition, the act – in section 407.025.1, RSMo 2000 – authorizes class action lawsuits when the unlawful conduct has caused similar injury to “numerous other persons” and permits the court to order damages, injunction or other equitable relief, and attorney’s fees. Although the legislature did not define deceptive practices, it gave the attorney general authority to promulgate rules to administer and enforce the act, including the authority to promulgate rules setting out the scope and meaning of the act. Because of the act’s broad scope and the legislature’s clear policy to protect consumers, certain legal principles are not available to defeat claims the act authorizes. Unless there is fraud or duress, the voluntary payment doctrine prohibits a person who voluntarily pays money with full knowledge of the facts from recovering that money, even if payment is made without sufficient consideration and under protest. This Court previously has held the voluntary payment doctrine is not available as a defense in all situations, including against customers who paid fees for document preparation that constituted the unauthorized practice of law. *Eisel v. Midwest BankCentre*, 230 S.W.3d 335 (Mo. banc 2007). *Eisel*’s reasoning that the voluntary payment doctrine is based on waiver and consent that is not always available when its application would be contrary to public policy equally applies in context of the merchandising practices act. Here, Huch and Carstens allege that Charter provided unsolicited merchandise to customers in the form of a channel guide and then billed and collected, or attempted to collect, payment for the unordered merchandise. If proven, this conduct is an unfair practice prohibited by the act, and to allow Charter to use the voluntary payment doctrine to avoid liability would nullify the act’s protections and contravene the legislature’s intent.