

Summary of SC92594, Janet Chochorowski, Individually and as the representative of a class of similarly-situated persons v. Home Depot U.S.A., d/b/a The Home Depot

Appeal from the St. Louis County circuit court, Judge Maura B. McShane

Argued and submitted November 13, 2012; opinion issued July 30, 2013

Attorneys: Chochorowski was represented by Phillip A. Bock and James M. Smith of Bock & Hatch LLC in Chicago, (312) 658-5500, and Mark L. Brown of SL Chapman LLC in St. Louis, (314) 655-7452. Home Depot was represented by S. Stewart Haskins of King & Spaulding LLP in Atlanta, (404) 572-4600; John C. Holstein and Lauren E. Tucker McCubbin of Polsinelli Shughart PC in Kansas City, (816) 360-4116; and Russell K. Scott of Greensfelder, Hemker & Gale PC in Belleville, Ill., (618) 257-7308. The Pacific Legal Foundation, which filed a brief as a friend of the Court, was represented by Jason R. Scheiderer of SNR Denton US LLP in Kansas City, (816) 460-8418, and Deborah J. La Fetra of the foundation in Sacramento, (916) 419-7111.

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 woman serving as representative in a class action appeals a trial court's decision granting summary judgment to a corporation the class alleged automatically included a damage waiver fee in its tool rental contract in violation of the state's merchandising practices act. In a 5-0 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the judgment. The damage waiver was optional and benefited the woman, and undisputed facts show the corporation is entitled to judgment as a matter of law.

Facts: Janet Chochorowski signed a rental agreement to rent a garden tiller from a St. Louis County Home Depot store. The agreement contained a section regarding a \$2.50 damage waiver fee in addition to the per-day rental fee. Chochorowski initialed the section and paid the fee. Chochorowski filed a class action petition against Home Depot alleging it violated the state's merchandising practices act by deceiving her into believing the charge was not optional and by automatically charging the fee, which she believes is worthless. Ultimately, the circuit court granted Home Depot's motion for summary judgment (judgment on the pleadings). Chochorowski appeals.

AFFIRMED.

Court en banc holds: The undisputed material facts show that Home Depot did not engage in any unfair practice prohibited by the merchandising practices act and is entitled to judgment as a matter of law. The rental agreement required the customer to accept affirmatively the waiver's benefits by initialing in the box provided on the contract. Home Depot's written contract provided obvious and unambiguous notice to Chochorowski of the existence of the damage waiver, and she expressed intention to purchase the waiver by initialing and signing the rental agreement. She had the option to decline the waiver by not initialing the statement. Failure to read or understand a contract is not, without fraud or lack of capacity to contract, a defense to the contract. The damage waiver is not worthless because its plain language confers a real benefit on a customer who elects the waiver by relieving the customer of liability for accidental damage.