No. S274625

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

EVERARDO RODRIGUEZ et al.
Plaintiffs and Appellants,

v.

FCA US, LLC,
Defendant and Respondent.

CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO, NO. E073766
APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, JACKSON LUCKY,
JUDGE CASE NO. RIC1807727

APPLICATION TO FILE AMICUS CURIAE BRIEF; AMICUS CURIAE BRIEF IN SUPPORT OF EVERARDO RODRIGUEZ et al.

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Certificate of Interested Entities or Persons

Pursuant to California Rule of Court 8.208, Amicus Curiae Stephen G. Barnes certifies that there are no interested entities or persons that must be listed in this certificate.

Dated: June 12, 2023

Stephen Barnes

Stephen G. Barnes

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Application for Leave to File *Amicus Curiae* Brief

Pursuant to California Rules of Court, rule 8.520(f), Amicus Curiae Stephen G. Barnes hereby applies for permission to file the attached Amicus Brief.

Statement of Interest

Amicus Curiae Stephen G. Barnes is a licensed attorney whose primary practice for the past thirty-two years has been representing consumers pursuant to the Song Beverly Consumer Warranty Act (hereinafter "Song-Beverly") During that time, Barnes has handled hundreds of claims involving the Act. Barnes was lead counsel in *Mitchell v. Blue Bird Body Co.* (2000) 80 Cal. App. 4th 32 which involved statutory interpretation of Section 1793.2(d)(2) of the Act. Barnes has represented numerous consumers in the past thirty-two years who purchased vehicles that were sold as "used" and successfully sought protection under Song-Beverly prior to the Court of Appeal's decision. I estimate in the past year I have been contacted by approximately fifty consumers who purchased used vehicles with the remainder the manufacturer's new car limited warranty and their vehicle turned out to be a "lemon" but the ability to enforce their rights under Song-Beverly was severely curtailed as a result of the decision below.

Involvement of Other Parties and/or Persons

Pursuant to California Rules of Court, Rule 8.200(c)(c)(3)(A), no party authored the proposed amicus brief in whole or part and no party made a monetary contribution intended to fund the preparation or submission of the brief.

This Brief Will Assist the Court

This brief will assist the Court by addressing issues that have not been fully discussed in the parties' briefing. This brief will provide the court examples of the impact the lower court's decision has had on

consumer's ability to protect themselves under Song-Beverly when they purchase a defective vehicle with the remainder of the manufacturer's limited warranty.

Table of Authorities

Cases

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Amicus Brief

Amicus Curiae Stephen G. Barnes submits the following amicus brief in support of Plaintiffs and Appellants Everardo Rodriguez et al.

Introduction

On April 7, 2022, the Court of Appeal issued a published Opinion concluding a vehicle which has been sold as used with a new car powertrain warranty from the manufacturer was not an "other motor vehicle sold with a manufacturer's new car warranty" under Civil Code Section 1793.22(e)(2). As a result, the Court of Appeal concluded the vehicle purchaser was not protected by the California Song-Beverly Consumer Warranty Act ("Song-Beverly").

The Court of Appeal's decision is incorrect. The decision misconstrues the plain language of Song-Beverly and conflicts with established precedent which had correctly interpreted this same language. Accordingly, this Court should reverse.

Statement of Facts

Plaintiffs Everardo Rodriguez and Judith Arellano purchased a two-year-old Dodge truck from a used car dealership. The truck had over 55,000 miles on it and, though the manufacturer's basic warranty had expired, the limited powertrain warranty had not. After experiencing electrical defects with the truck, plaintiffs sued the manufacturer, FCA US, LLC (Chrysler) for violation of the refund-or-replace provision. FCA moved for summary judgment, arguing the truck was not a "new motor vehicle," and the trial judge agreed. Rodriguez and Arrelano appealed.

The sole issue on appeal was whether the phrase "other motor vehicle sold with a manufacturer's new car warranty" covers sales of previously owned vehicles with some balance remaining on the

manufacturer's express warranty. The Court of Appeal concluded it does not and that the phrase functioned instead as a catchall for sales of essentially new vehicles where the applicable warranty was issued with the sale. (Typ. Op., pgs. 2, 3.)

Summary of Argument

In its' attempt to define the phrase "other motor vehicle sold with a manufacturer's new car warranty" the Court of Appeal has engaged in mental gymnastics and created an anomaly whereby the word "or" in the statute has been rendered meaningless.

In reaching its' conclusion that "or other motor vehicle sold with a manufacturer's new car warranty" does not include a used vehicle sold with the remainder of the warranty the Court of Appeal attempts to differentiate between "demonstrators" and "used" vehicles. In fact, a "demonstrator" as defined by the California Vehicle Code is a "used vehicle."

"A 'used vehicle' is a vehicle that has been sold, or has been registered with the department, or has been sold and operated upon the highways, or has been registered with the appropriate agency of authority, of any other state, District of Columbia, territory or possession of the United States or foreign state, province or country, or unregistered vehicles regularly used or operated as **demonstrator**s in the sales work of a dealer or unregistered vehicles regularly used or operated by a manufacturer in the sales or distribution work of such manufacturer."(*California Vehicle Code Section 665* [emphasis added])

Discussion

I.
The Court of Appeal Incorrectly Interpreted Song-Beverly's Plain Meaning

The Court of Appeal's Opinion should be reversed because they incorrectly interpret the pertinent statutory language and create an anomaly by rendering the word "or" in Civil Code Section

1793.22(e)(2) meaningless.

As this court previously held, "[i]n construing a statute, our task is to ascertain the intent of the Legislature so as to effectuate the purpose of the enactment. (*Citation omitted*.) We look first to the words of the statute, which are the most reliable indications of the Legislature's intent. (*Citation omitted*.) We construe the words of a statute in context, and harmonize the various parts of an enactment by considering the provision at issue in the context of the statutory framework as a whole. (*Citations omitted*) … The language employed throughout section 1793.2 strongly suggests that no single subdivision can be read independently of the others. Each subsequent subdivision employs language that can be fully understood only by reference to previous subdivisions. ..." (*Cummins, Inc. v. Superior Ct.*, (2005) 36 Cal. 4th 478, 487.) Where possible, significance should be given to each word in a statute with its parts harmonized by considering each of them in the context of the entire statutory framework. (*Citations Omitted*.) (*Mitchell v. Blue Bird Body Co.*, (2000) 80 Cal.App.4th 32, 36.)

The Court of Appeal opined the phrase "other motor vehicle sold with a manufacturer's new car warranty" does not include previously owned vehicles with some balance remaining on the manufacturer's express warranty. (Typ. Op. p. 3)

The definition of "new motor vehicles" is contained in Civil Code section 1793.22, subdivision (e)(2), which provides:

"New motor vehicle" means a new motor vehicle that is bought or used primarily for personal, family, or household purposes. "New motor vehicle" also means … a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty … . A demonstrator is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model

and type. (Civ. Code, § 1793.22, subd. (e)(2).)

In reaching its' conclusion that "or other motor vehicle sold with a manufacturer's new car warranty" does not include a used vehicle sold with the remainder of the warranty the Court of Appeal attempts to differentiate between "demonstrators" and "used" vehicles. The lower Court's interpretation is not supported by the definition of a "demonstrator" or the practical reality of what occurs in the market. The Court of Appeal concluded "demonstrators and dealer-owned vehicles comprise a narrow category of basically new vehicles-they have never been previously sold to a consumer and they come with full express warranties." (Typ. Op. p. 11) This definition of a demonstrator is inaccurate. A "demonstrator" as defined by the California Vehicle Code is a used vehicle.

"A 'used vehicle' is a vehicle that has been sold, or has been registered with the department, or has been sold and operated upon the highways, or has been registered with the appropriate agency of authority, of any other state, District of Columbia, territory or possession of the United States or foreign state, province or country, or unregistered vehicles regularly used or operated as **demonstrator**s in the sales work of a dealer or unregistered vehicles regularly used or operated by a manufacturer in the sales or distribution work of such manufacturer."(*California Vehicle Code Section 665* [emphasis added])

When a consumer purchases a "demonstrator" they do not receive a "full express warranty" as opined by the Court of Appeal. (Typ. Op. p. 11) Rather, they receive the remainder of the new vehicle limited warranty just as any purchaser of a "used" vehicle. The warranty for a demonstrator begins on the date the demonstrator was placed in service by the manufacturer or dealer for demonstration purposes and is limited by the mileage existing on the vehicle at the

time it is sold to the consumer. There is absolutely no difference in the warranty coverage between a demonstrator and a used vehicle, despite the Court's attempt to make such a distinction.

As this court previously held "[a] 'new motor vehicle' is just one type of "consumer goods." The statute treats the special provisions applicable to new motor vehicles in subdivision (d)(2) as an exception to the general provision applicable to all consumer goods in subdivision (d)(1)… . " (*Cummins, Inc. v. Superior Ct.*, (2005) 36 Cal. 4th 478, 490–91)

The Court of Appeal seeks to explain why some used consumer goods are covered by the Act but not "used" motor vehicles. (Typ. Op. pgs. 6, 7, 8.) The Court starts its' analysis by misstating the actual language of the Act opining "the Act requires that where a manufacturer **sells** "consumer goods" accompanied by an express warranty … .(Typ. Op. p. 6 [emphasis added]) The Court further misapplies this language in determining "a hallmark of the Act is that the consumer protections apply against the party who **sold** the product to the buyer and **issued** the express warranty.(Typ. Op. p. 8.[emphasis added]) The actual language of the statute is:

"(a**) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:** … . (Civil Code Section 1793.2 [emphasis added])

The plain language of the statute is clear. For Song-Beverly to apply the manufacturer must have "**made**" an express warranty. The definition of "made" is the "*past tense and past participle of make*." (*Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/made.)

"**Issue**" as used by the Court of Appeal is a verb which implies the warranty is something that must be specifically provided by the party who "sold" the product. The difference between the language

utilized by the Court of Appeal in its analysis and the actual statutory language is significant.

If a warranty has been "**made**" by a manufacturer and a product with that warranty in effect is "**sold**" in this state, Song-Beverly applies. [*emphasis added*]

The Court's misapplication of the language of the Act is further evident by the Court's conclusion "that the consumer protections apply against the party who **sold** the product to the buyer." (Typ. Op p. 8 [emphasis added]) The word "**sold**" as used in the statute is a modifier of the where the sale of "consumer goods" must occur, not who specifically sold them. (*Cummins*, supra, at 491.)

This misinterpretation is amplified by the Court's misplaced reliance on *Johnson v. Nissan North America, Inc.*, (N.D. Cal. 2017) 272 F. Supp. 3d 1168. The Court of Appeal mistakenly implies that for a manufacturer to be liable under the Act the manufacturer must not only "issue" a warranty but they must do so at the time the consumer good is sold by manufacturer or through its authorized dealership. The Court further compounds this error by attempting to distinguish *Jensen v. BMW of North America, Inc.*, (1995) 35 Cal. App. 4th 112 on similar grounds. (Typ. Op. pgs. 16, 17, 18.) The court opined "*Jensen* involved a lease by a *manufacturer-affiliated dealer* who issued a full new car warranty with the lease." (Typ. Op. p. 16) There is nothing in Song-Beverly that requires the vehicle to be sold by the manufacturer or a manufacturer-affiliated dealer. And there is no discussion in *Jensen* about a "full" new car warranty being issued.

Song-Beverly applies to a manufacturer of goods that are "sold" in this state with a manufacturer's warranty, regardless of who sells them. The Court's opinion is incorrect in its misplaced reasoning that the sale of a used vehicle with the remainder of the manufacturer's warranty by a non-manufacturer dealership is not

covered by Song-Beverly.

2.

Enormous Negative Impact on California Consumers

The result of the Court of Appeal's decision has been to deprive purchasers of defective used vehicles which are covered by the manufacturer's limited warranty with much needed protection. This decision negatively impacts not only those consumers but others in the state as well. As result of the Court of Appeal's decision the incentive to properly repair these defective vehicles has been removed. No longer is there a concern by the manufacturer that if they do not repair the vehicle, they might have to repurchase it and brand title.

With no recourse under Song-Beverly, many consumers who have purchased these defective used vehicles with the reminder of the manufacturer's warranty are left with the untenable choice of keeping the defective vehicle or selling it. If they keep it, they must continue to endure the constant back and forth to the dealership for attempted repairs. In many cases they would be placing their safety at risk.

If they sell or trade it in, then there is no requirement of branding. If they try to sell the car and fully disclose the problems to the next purchaser the likelihood of obtaining market value or even making the sale is minimal. If it is traded to a dealer then the next purchaser will have to rely on that dealer to make these disclosures. If the dealer does not disclose known problems this could result in additional litigation.

Having spoken with many consumers in this situation over the past year because of the Court of Appeal's decision, they are unwittingly placed in this catch twenty-two through no fault of their own. If Song-Beverly remains enforceable for used car purchases with the remainder of the factory warranty the burden is on the

manufacturer, where it should be, to repair the vehicle or repurchase it and properly brand the title.

Conclusion

The Court of Appeal misinterpreted the language of Song-Beverly by misconstruing the definition of a "demonstrator" vehicle and imposing a non-existent requirement that Song-Beverly's consumer protections apply only against the party who **sold** the product to the buyer and **issued** the express warranty. I respectfully request the Supreme Court reverse the Court of Appeal's decision.

Dated: June 12, 2023

BARNES LAW FIRM

By: Stephen Barnes
Stephen G. Barnes
Amicus Curiae

Certificate of Word Count

I, Stephen G. Barnes, hereby certify as follows:

I am submitting this brief as Amicus Curiae. According to the word processing program I used to prepare this brief, the brief (excluding tables, this certificate, and any attachments) is 3095 words.

Dated: June 12, 2023

Stephen Barnes
Stephen G. Barnes

Proof of Service

I, Stephen Barnes, am over the age of 18 and not a party to this action. My business address is 23046 Avenida De La Carlota, Suite 600, Laguna Hills, CA 92653. My electronic service address is sbarnes@lemonlaw4california.com.

ELECTRONICALLY: For recipients listed with an email address listed, on the date and time indicated below, I served the document electronically by sending it by electronic mail to the email address indicated below. The transmission was reported complete and without error by my e-mail provider.

BY MAIL: For recipients listed below without an email address, on the date indicated below, I placed true copies of the document described below in a sealed envelope addressed as stated below and left the envelope in the area in our office designated for outgoing mail. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. Under that practice and in the ordinary course of business, it would be deposited with the U.S. postal service on the same day with postage thereon fully prepaid in Laguna Hills, California.

Document(s) Served:

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I declare under penalty of perjury under the laws of the State of California and of my own personal knowledge that the above is true and correct.

Signature: Stephen Barnes