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# Florida Court Refuses to Extend Protection of State U.C.C. Statute and Magnuson-Moss Warranty Act to Lessees of Defective Vehicle

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# FLORIDA COURT REFUSES TO EXTEND PROTECTION OF STATE U.C.C. STATUTE AND MAGNUSON-MOSS WARRANTY ACT TO LESSEES OF DEFECTIVE VEHICLE

In *Sellers v. Frank Griffin AMC Jeep, Inc.*, 526 So.2d 147 (Fla. Dist. Ct. App. 1988), the Florida District Court of Appeals for the First District held that neither § 672.608 of Florida's commercial code, Fla. Stat. § 672.608 (1983) (corresponding to § 2-608 of the Uniform Commercial Code), nor the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301-2308 (1982 and Supp. IV 1986), apply to a closed-end lease of a defective motor vehicle when there is no intent to transfer title. The court of appeals thus affirmed the trial court's summary judgment order in favor of the defendant.

**Background**

Pursuant to a December 28, 1983, "Retail Lease Agreement" ("the agreement") with Frank Griffin AMC Jeep, Inc. ("Frank Griffin"), Timothy and Kristi Sellers accepted possession of a new Jeep Cherokee. Frank Griffin subsequently assigned the lease agreement to American Credit Corporation ("AMCC"). Several days later, according to the Sellers, the motor exploded.The explosion sent portions of the Jeep's engine through the engine block and the Sellers were forced to take the Jeep in for repairs. Over the course of the following months, additional vehicle defects appeared, including leaks in the passenger compartment, inaccurate readings on certain gauges, "warm" air conditioning, and faulty brakes.

In November 1984, the Sellers attempted to return the defective Jeep to Frank Griffin. The dealer refused to accept it. The Sellers sued Frank Griffin and AMCC for a refund of their down payment, all monies paid to AMCC, consequential damages, and attorneys' fees. The couple also sought revocation of acceptance of the Jeep under § 672.608 of the Florida statute and under the Magnuson-Moss Warranty Act ("the Magnuson-Moss Act" or "the Act"). In essence, § 672.608 of the Florida statute allows a buyer to revoke acceptance of defective goods if a defect substantially impairs the value of the goods. The Magnuson-Moss Act mandates warranty protection for consumers acquiring goods from suppliers.

In their complaint, the Sellers alleged that the agreement was a "transaction in goods" within the definition of § 672.102 of the Florida statute. The Sellers further alleged that Frank Griffin failed to correct the vehicle's defects and that the value of the vehicle was thereby decreased. Finally, the Sellers alleged that Frank Griffin had breached both implied and express warranties in violation of the Magnuson-Moss Act.

The trial court rejected the Sellers' argument that either the Florida statute or the Magnuson-Moss Act applies to a closed-end lease of a vehicle in which the lessees have no option to purchase the vehicle. The court held that both the Florida statute and the Magnuson-Moss Act apply only to sales transactions, and that the agreement between the parties was not a sales transaction. In holding that the transaction was not a sale, the trial court relied primarily on the absence of an option to purchase in the agreement and the lack of passage of title. The court granted summary judgment for Frank Griffin without addressing the warranty issues presented in the complaint.

**Statutory Protection Extends Only to Sales**

The appellate court noted that chapter 672 of the Florida Statutes applies to transactions in goods "unless the context otherwise requires...." 526 So. 2d at 150. On appeal, the Sellers argued for a liberal construction of the statute, and contended that the lease of the vehicle was a "transaction in goods." In spite of Florida's strong public policy favoring a broad interpretation of the statute's sales provisions to provide meaningful remedies to purchasers of defective cars, the trial court had refused to extend coverage of § 672.608 to the transaction between the parties.

In affirming the trial court's decision, the appellate court first reasoned that § 672.608 refers explicitly to sales. Pursuant to § 672.401, a "sale" is defined as "the passing of title from the seller to the buyer for a price." 526 So.2d at 150. The court next observed that although Florida courts had not done so, courts in other jurisdictions

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treated certain lease transactions as subject to part 2 (Sales) of the Uniform Commercial Code when certain elements of a sale are present. In deciding whether a transaction is subject to part 2 of the Uniform Commercial Code, courts from other jurisdictions found the following factors relevant: whether the sum of the rental payments will amortize the value, with interest, of the goods being rented; whether the term of the lease covers the useful life of the goods; whether there is an option to purchase the goods at the end of the lease for a nominal price; whether the lessee is responsible for damage or loss, insurance coverage, repairs, and replacement of parts; and whether the lessee is required to pay a license fee, security deposit, or taxes.

The court examined the "Retail Buyer's Order" together with the agreement and concluded that the transaction between the Sellers and Frank Griffin possessed elements characteristic of both a sale and a lease. Like a sale, the sum of the Sellers' rental payments would amortize most of the Jeep's value, virtually matching the purchase price noted in the Retail Buyer's Order. In addition, the Sellers had paid all expenses related to vehicle ownership as if they had bought the vehicle outright. On the other hand, like a lease, the agreement contained no option for purchase, although the Sellers argued that the parties previously had agreed to an option for purchase at the end of the lease period. Ultimately, the court relied upon the clear, unambiguous language of the agreement which expressly stated and restated that the agreement was one of lease rather than sale. The court held that there had been no transfer of title and thus no "sale;" therefore, the agreement was not covered by § 672.608.

Next, the court addressed the Sellers' claim under the Magnuson-Moss Act. The court recognized that the Act was intended to provide broad protection to consumers, but noted that § 2301 of the Act expressly limits its application to a recognized sale and purchase transaction between a "supplier" and "a buyer...of any consumer product." 526 So. 2d at 156. The court reasoned that the Act therefore applies only to a sale of goods, or to a lease of goods that is substantially connected to a sale or purchase of goods. As the court had already determined, the transaction between Frank Griffin and the Sellers was a pure lease transaction. Extending the Act to pure lease transactions, cautioned the court, is an activity better left to the legislature. Accordingly, the court held that the warranty provisions of the Magnuson-Moss Act did not apply to the agreement.

**Elizabeth A. Mitchell**

## TRUTH-IN-ADVERTISING LAW PROHIBITS ANTI-ABORTION GROUP FROM ADVERTISING AS ABORTION INFORMATION SERVICE

In *Mother & Unborn Baby Care of North Texas, Inc. v. State of Texas*, 749 S.W.2d 533 (Tex. Ct. App. 1988), *cert. denied*, __ U.S. __, 109 S.Ct. 2431 (1989), the Texas Court of Appeals held that an anti-abortion organization violated the Texas Deceptive Trade Practices-Consumer Protection Act ("the Act"), Tex. Bus. & Com. Code Ann. §§ 17.41-17.826 (Vernon 1987), by advertising as an abortion information service and then subjecting its unwitting clients to graphic depictions of abortion procedures. The court held that even though the clinic did not actually sell medical services, it engaged in trade or commerce as defined by the Act.

### Background

From 1984 through 1986, Mother & Unborn Baby Care of North Texas, Inc., ("the Center") placed advertisements for free pregnancy testing under "Abortion Information & Services" and "Clinics—Medical" in the Yellow Pages of the telephone directory. The organization operated under other names, including the Problem Pregnancy Center and Abortion Action Affiliates Problem Pregnancy Center. A large number of women telephoned the Center requesting abortions. By giving evasive answers to requests for information, the Center misled the women into believing that it was an abortion clinic. Consequently, many of the women scheduled appointments.

After arriving at the Center, a woman typically gave the staff personal medical information and submitted a urine sample for a free pregnancy