

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

10-3-2013

Summary of Newmar Corp. v. McCrary, 129 Nev. Adv. Op. 67

Shaina Plaksin
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Contracts Commons](#)

Recommended Citation

Plaksin, Shaina, "Summary of Newmar Corp. v. McCrary, 129 Nev. Adv. Op. 67" (2013). *Nevada Supreme Court Summaries*. 60.

<https://scholars.law.unlv.edu/nvscs/60>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

CONTRACTS: REVOCATION OF ACCEPTANCE

Summary

The Court determined whether a purchaser of a motor home may revoke acceptance and recover the purchase price from the motor home's manufacturer under the Uniform Commercial Code (UCC).

Disposition

A purchaser is entitled to revoke acceptance of the motor home against its manufacturer where privity exists between the manufacturer and the buyer because the manufacturer interjected itself in the sales process and had direct dealings with the buyer to ensure the completion of the transaction.

Factual and Procedural History

Newmar Corporation ("Newmar") manufactures luxury motor homes and provides a two-year warranty. Allison McCrary bought a Newmar motor home including the Newmar warranty through Wheeler's Las Vegas RV. Before McCrary took possession of it, she noticed certain problems, which Wheeler's tried to fix. The problems continued, and a Newmar representative got involved. The Newmar representative reassured McCrary that Newmar would take care of any problems through the warranty. McCrary then took possession of the motor home. The motor home continued to experience significant problems. Newmar made many more attempts at repair, but the continual difficulties prompted McCrary to try to revoke her acceptance of the motor home. Newmar rejected the revocation.

The district court held a bench trial and decided in McCrary's favor, requiring her to return the motor home, but awarding her its purchase price, incidental and consequential damages, along with attorney fees.

Discussion

Revoking acceptance from Newmar

Newmar argued that, as a manufacturer, the buyer could not revoke acceptance because that can only occur with a seller.² McCrary argued that Newmar was a "co-seller" because of their representative's involvement with the sales transaction, along with Newmar's warranty.

The Court looked to other jurisdictions and found a split on the issue of acceptance revocation against a manufacturer. The Court decided that choosing a side of the debate was unnecessary, however, because Newmar's direct interactions and

¹ By Shaina Plaksin

² NEV. REV. STAT. § 104.2608 (2013).

representations with McCrary created privity. The Court held that “[t]his resulting relationship is sufficient to include the manufacturer within the definition of ‘seller’ under NRS 104.2103(1)(c), and, as a result, allow for revocation of acceptance against the manufacturer.”

Award of incidental and consequential damages

Because the warranty failed to produce any actual remedy for McCrary, McCrary was denied the benefit of her bargain. In such circumstances, the UCC specifically allows for awards of incidental and consequential damages.³ As such, the district court acted within its discretion to award these damages.

Award of attorney fees

No rule or statutory provision⁴ allowed the district court to award attorney fees in this situation. Accordingly, the Court reversed the award because the district court abused its discretion.

Conclusion

Newmar, the manufacturer, got directly involved with the sales transaction with McCrary, the buyer. Through this involvement, Newmar created privity with McCrary, allowing her to revoke acceptance. The Court upheld the ruling of the district court except as to the award of attorney’s fees.

³ See NEV. REV. STAT. §§ 104.2719(2), 104.2715 (2013).

⁴ The Court examined the following statutes as rationale for not authorizing attorney fees: NEV. R. CIV. P. 68(f); NEV. REV. STAT. § 17.115(4); and NEV. REV. STAT. § 18.010.