

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 17-1466

DISTRICT COURT NO. LACV095926

TODD MORRIS

Plaintiff-Appellant,

v.

STEFFES GROUP, INC.

Defendant-Appellee.

COURT OF APPEALS DECISION FILED JUNE 20, 2018

PLAINTIFF/APPELLANT'S APPLICATION FOR FURTHER REVIEW

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QUESTION PRESENTED FOR REVIEW

1. Did the Court of Appeals Err in upholding the District Court Opinion finding that Chapter 555A, Door-to-Door Sales Act, was not applicable to the instant case and that Defendant/Appellee did not conduct a Door-to-Door Sale?

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STATEMENT SUPPORTING FURTHER REVIEW

Pursuant to Iowa Rule of Appellate Procedure 6.1103(1)(b)(1), the Court of Appeals made an error of law when refusing to apply Chapter 555A to the instant case and upholding summary judgment and dismissal, as the express language of Chapter 555A makes it applicable to the case at hand and violation of Chapter 555A gives rise to a private cause of action under Iowa Code section 714H.5. Further, under Iowa Rule of Appellate Procedure 6.1103(1)(b)(4), this case should have been retained by the Supreme Court as the interpretation of a statute is a matter of law for the Supreme Court to decide. *Clay County v. Public Employment Relations Bd.*, 784 N.W.2d 1, 4 (Iowa 2010).

STATEMENT OF THE CASE

A. Nature of the Case

This Application for Further Review arises from the August 18, 2017, District Court Order Regarding Summary Judgment issued by the Honorable Martha L. Mertz wherein Judge Mertz found Chapter 555A did not apply to the instant matter and dismissed the entirety of Plaintiff's Petition and the June 20, 2018 decision of the Appellate Court affirming the District Court Decision.

B. Course of Proceedings and Disposition

Plaintiff/Appellant, Todd Morris filed his Petition in the above captioned matter on or about April 29, 2016, asserting a claim for violation of Iowa Code Chapters 714H/555A and a claim for declaratory judgment. [App. pp. 007-013]. On August 18, 2017, the Honorable Martha L. Mertz entered her Order granting Defendant's Motion for Summary Judgment and dismissing Plaintiff's other claim and legal causes of action without prejudice. [App. pp. 109-10]. Plaintiff appealed the August 18, 2017 Order and on June 20, 2018, the Court of Appeals entered an Order affirming the District Court Decision finding Chapter 555A did not apply to the instant case and that summary judgment in favor of Defendant Steffes Group and dismissal without prejudice was appropriate. [June 20, 2018 Decision of the Court of Appeals, p. 3]

C. Statement of the Facts

In early February 2016, during the Iowa Power Farming Show in Des Moines, Iowa, Duane Norton, sales representative for Defendant, spoke with Plaintiff regarding the potential sale by auction of some of Plaintiff's agricultural equipment. [App. pp. 042-43 (Todd 7:11-11:14), p. 060 (Norton 20:16-20:22)]. During this conversation, Norton represented that there was an upcoming sale that could match what Plaintiff had, but that it was coming up quick. [App. p. 043 (Todd 10:10-10:18)]. Plaintiff left his phone number with Norton so Norton could contact him

and arrange a time to come to view the equipment at Plaintiff's property. [App. p. 043 (Todd 11:23-12:6)].

On February 5, 2016, a couple days after the Iowa Power Farming Show, Norton called Plaintiff to view the equipment; however, Plaintiff was out-of-town on a business trip. [App. p. 044 (Todd 14:6-14:14)]. Norton told Plaintiff that he just needed access to the equipment so he could view it, take some photos, and collect VIN numbers. [App. p. 045 (Todd 17:6-17:12)]. Based on this representation, Plaintiff arranged for his wife, Lacey Morris, to be home so she could open up the buildings for Norton to view the equipment on February 6, 2016. [App. p. 054 (Lacey 17:3-17:19)].

After Norton viewed the equipment, Norton sat down with Lacey Morris in the Morris' kitchen to fill out what Norton represented to be an "advertisement list or an asset list." [App. p. 054 (Lacey 20:14-20:24), p. 063 (Norton 28:14-28:18)].

The assets listed included:

- a. CIH JX75 w/ CIH LX132 Loader S/N HFJ031843
- b. King Kutter II Roto Tiller
- c. Country Line Box Scraper
- d. Land Pride Mower
- e. Vermeer 605 Super J S/N 10RA121R3AH004697
- f. Kelderman V-Rake KRC IIID 3184
- g. NH 492 Mower Conditioner S/N 861241
- h. Tandem disc 13'
- i. Brillon Cultipacker 8'
- j. Landoll Chisel Plow 8'
- k. Cosmo Fertilizer Spreader S-500-uk
- l. JD 475A Planter

m. Harrow Drag Bar

[App. p. 035].

Defendant gave the Consignment Auction Contract to Lacey Morris and reassured her that it was just “an asset list, that this was more to get it into the advertisement because we were on such a short time frame.” [App. p. 056 (Lacey 26:6-26:12)]. Lacey was hesitant about the document, so she called Plaintiff. [App. pp. 055-56 (Lacey 24:8-24:12, 26:7)]. Plaintiff and Norton further discussed the equipment at this time; Plaintiff told Defendant that the CIH JX75 tractor had to sell for a certain amount due to a note being on it. Plaintiff was unsure what this amount was, so he told Norton that he would find out when he returned home and let him know. [App. p. 046 (Todd 24:4-24:21)]. Norton further represented that the document he was requesting Lacey sign was “strictly an asset list” that was “nothing binding.” [App. p. 045 (Todd 19:1-19:13)]. Based on this representation, Plaintiff told his wife she could sign the asset list in his name. [App. p. 045 (Todd 19:18-19:20)].

Contrary to Defendant’s representations, the asset list was actually a “Consignment Auction Contract.” [App. p. 035]. At the time of entering into the Consignment Auction Contract, Defendant did not furnish to Plaintiff a written “Notice of Cancellation” form. [App. p. 064 (Norton 35:5-35:10)]. Defendant also did not orally inform Plaintiff at the time of entering into the Consignment Auction

Contract of his right to cancel. [App. p. 064 (Norton 33:23-35:4)]. The Consignment Auction Contract does not include a written statement stating the buyer's right to cancel the contract at any time. [App. p. 035]. Rather, the Consignment Auction Contract states, "Item(s) may not be sold or withdrawn prior to the auction except by mutual agreement." *Id.*

On February 29, 2016 at 12:33 p.m., Plaintiff text messaged Norton asking, "When tractor sells I can approve or deny sale price onsite can't I?" Norton responded, "We can put a reserve on the tractor ahead of time. We'll protect it that way." Norton then asked, "Can I call u i',m driving." [App. pp. 039-40]. Plaintiff and Norton subsequently spoke on the phone. During this time, Norton told Plaintiff that he believed the tractor had a value of approximately \$21,000 to \$22,000. The parties then discussed the reserve process and Norton represented to Plaintiff that the reserve would not be advertised, but that Defendant would watch the bidding, and if the reserve was not going to be met, then Defendant would bid the reserve such that the tractor could be returned to Plaintiff. Accordingly, Plaintiff asked Norton to put a reserve on the tractor for \$20,000.00. [App. p. 047 (Todd 38:19-39:25)].

Plaintiff and his wife transported his equipment to the Boone sales site in the two weeks preceding the sale. [App. p. 048 (Todd 53:7-53:14), pp. 057-58 (Lacey 36:24-37:13)]. On the day before the sale, Plaintiff again reaffirmed to Norton that

the reserve on the tractor was \$20,000.00. [App. p. 048 (Todd 58:22), p. 058 (Lacey 38:9-38:21)]. In addition to the specific request for a reserve by Plaintiff, Defendant's standard operating procedure is to determine the payoff amount prior to an auction if they are informed of any liens on the equipment. [App. p. 067 (Meyer 14:4-15:6)].

Defendant was aware of a lien on Plaintiff's tractor with Union State Bank. [App. p. 035]. Defendant obtained a pay-off statement from Union State Bank showing the outstanding amount due on the tractor to be \$15,023.15. [App. p. 038]. However, Defendant failed to follow its standard operating procedure by inputting this amount as a reserve. Rather, after the auction was over, Defendant entered a reserve amount of \$15,000.00. [App. p. 036-37, 068 (Meyer 18:6-18:14), p. 071 (Burns 19:14-19:20)].

On March 24, 2016, Defendant held its auction sale at the Farm Progress site in Boone, Iowa, whereat Plaintiff's equipment was sold for:

a. CIH JX75 w/ CIH LX132 Loader S/N HFJ031843	\$14,500.00
b. King Kutter II Roto Tiller	\$1,300.00
c. Country Line Box Scraper	\$225.00
d. Land Pride Mower	\$600.00
e. Vermeer 605 Super J S/N 10RA121R3AH004697	\$1,400.00
f. Kelderman V-Rake KRC IID 3184	\$1,000.00
g. NH 492 Mower Conditioner S/N 861241	\$1,850.00
h. Tandem disc 13'	\$400.00
i. Brillon Cultipacker 8'	\$325.00
j. Landoll Chisel Plow 8'	\$150.00
k. Cosmo Fertilizer Spreader S-500-uk	\$350.00
l. JD 475A Planter	\$60.00

m. Harrow Drag Bar

\$50.00

[App. p. 036-37]. During the auction, Plaintiff received a FaceTime call from his wife informing him that the CIH JX75 tractor sold for under the reserve amount. [App. p. 050 (Todd 61:9-61:10); p. 059 (Lacey 42:25)]. Plaintiff told her not to worry based on Norton's prior representations. [App. p. 050 (Todd 62:15-62:20), p. 059 (Lacey 44:8-44:14)].

Later in the evening after the auction, Plaintiff called Norton to discuss the tractor. However, Norton did not answer or call him back. [App. p. 050 (Todd 61:25-62:5)]. The following day, Norton still did not answer or call Plaintiff back; therefore, Plaintiff went to the auction site and discovered the tractor was gone. [App. p. 050 (Todd 62:5-62:11)]. Plaintiff then spoke with one of Defendant's yard personnel, who allowed Plaintiff to use his cell phone to call Norton. [App. pp. 050-51 (Todd 64:23-66:5)]. When Norton answered, Plaintiff confronted him regarding the reserve. Norton denied that a reserve ever existed, but offered to "make this right." [App. pp. 050-51 (Todd 64:23-66:5)]. Plaintiff demanded the return of his property, and notified Defendant of the cancellation of the Consignment Auction Contract. [App. p. 008; Petition ¶ 14]. To date, Plaintiff's property has not been returned. [App. p. 008 Petition ¶ 15].

ARGUMENT

QUESTION ONE: Did the Court of Appeals Err in upholding the District Court Opinion finding that Chapter 555A, Door-to-Door Sales Act, was not applicable to the instant case and that Defendant/Appellee did not conduct a Door-to-Door Sale?

Despite the express language of Chapter 555A, the Court of Appeals found Chapter 555A of the Iowa Code does not apply to a contract for auctions services or more specifically, the contract for auction services at issue in the above captioned matter. [June 20, 2018 Decision of the Court of Appeals, p. 3].

The Court's goal when we interpreting a statute is to ascertain the legislature's intent. *State v. Pub. Employment Relations Bd.*, 744 N.W.2d 357, 360 (Iowa 2008). In doing so, the Court seeks to find a "reasonable interpretation that will best effect the purpose of the statute." *Id.* at 361 (quoting *IBP, Inc. v. Harker*, 633 N.W.2d 322, 325 (Iowa 2001)). The Court must seek to ascertain and give effect to the intent of the drafters and "construe it liberally 'to promote its objects and assist the parties in obtaining justice.'" *Rodgers v. Baughman*, 342 N.W.2d 801, 805 (Iowa 1983) (quoting Iowa Code § 4.2 (1983)). The Court's obligation is to interpret the statute based on the language used by our legislature. *See Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004) ("We determine legislative intent from the words chosen by the legislature, not what it should or might have said.").

Iowa Code Chapter 555A, known as the "Door-to-Door Sales Law", requires a seller in a door-to-door sale of consumer goods or services to: (1) furnish two

copies of a notice of cancellation to the buyer, (2) have a written statement in the contract or on the receipt stating the buyer's right to cancel the contract at any time, (3) orally inform the buyer, at the time of entering into the contract, of the buyer's right to cancel, and (4) not misrepresent in any manner the buyer's right to cancel.

Id. § 555A.2-4.

A “door-to-door sale” means:

a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or the seller's representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller.

Id. § 555A.1(3)(a).

“Consumer goods or services” are “goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including course of instruction or training regardless of the purpose for which they are taken.” *Id.* § 555A.1(2). Although the items at issue in this matter can be considered agricultural equipment, Morris used it primarily for personal, family or household purposes. Specifically, Todd Morris used the equipment to “[p]lay around my farm, hunting purposes, food plots, maintaining my house, maintaining – we live on a private lane,

maintaining my property.” [App. p. 046 (Todd 24:24-25:40)] This fact is not disputed by the parties.

In this case, Defendant/Appellee’s sales representative personally solicited Todd Morris to provide consignment services and the sale of Plaintiff’s equipment on February 6, 2016. [App. pp. 042-45, 054, 060, 063]. The solicitation occurred in the kitchen of Mr. Morris’ residence. [App. pp. 054, 063]. The consignment services and equipment had a purchase price of \$25 or more; as an example, the CIH JX75 tractor had a purchase price of \$14,500.00 with a commission amount of \$1,160.00. [App. pp. 036-37]. Further, Defendant/Appellee’s consignment services and the sale of Morris’ equipment was induced by Defendant/Appellee’s representations that a reserve would be put on the CIH JX75 tractor to ensure that a loan on it could be paid off. *See* [App. pp. 035-40, 046-48, 058, 067-68, 071]. Accordingly, based on the plain language of the statute, Iowa Code Chapter 555A applies to this case.

Furthermore, there was and is no genuine issue of material fact that Iowa Code Chapter 555A has been breached in this case. At the solicitation, Defendant did not provide or furnish to Plaintiff a written “Notice of Cancellation” form. [App. p. 064] Defendant did not orally inform Plaintiff at the time of entering into the Consignment Auction Contract of his right to cancel. *Id.* The Consignment Auction Contract also did not include a written statement stating the buyer’s right to cancel

the contract at any time. [App. p. 035]. To the contrary, the Consignment Auction Contract provided, “Item(s) may not be sold or withdrawn prior to the auction except by mutual agreement.” *Id.* Accordingly, Defendant failed to comply with the requirements of Iowa Code Chapter sections 555A.2, 555A.3, and 555A.4. Iowa Code §§ 555A.2-555A.4.

For these reasons, despite the fact that Iowa Code Chapter 555A is entitled “Door-to-Door Sales,” the conduct of Defendant clearly falls under the provisions and requirements of Chapter 555A and Defendant violated Chapter 555A and conducted prohibited practices and acts. Accordingly, the Court of Appeals erred as a matter of law in finding that Chapter 555A did not apply to the instant matter and in affirming the District Court’s Order granting Defendant’s Motion for Summary Judgment Motion finding Chapter 555A did not apply and dismissing Plaintiff’s Petition without prejudice.

Under Iowa Code section 714H.5, a consumer who suffers an ascertainable loss of money or property as the result of a prohibited practice or act may bring an action at law to recover actual damages, and the Court may order such equitable relief as it deems necessary to protect the public from further violation, including temporary and permanent injunctive relief. Iowa Code § 714H.5(1). Prohibited practices and acts include violations of Iowa Code chapter 555A. *See id.* § 714H.3(2)(d). Accordingly, Defendant’s violation of Chapter 555A allows for

recovery under Iowa Code section 714H.5(1) for damages, including injunction, which are established in the record. [App. pp. 008; 036-37; 050 (Todd 61:9-61:10, 62:5-62:11); p. 059 (Lacey 42:25)] Defendant/Appellee must be held responsible for its prohibited practices and acts under Iowa Code section 714H.5. The Court of Appeals erred, as a matter of law, in affirming the District Court's Order granting Defendant's Motion for Summary Judgment Motion finding Chapter 555A did not apply and dismissing Plaintiff's Petition without prejudice. Plaintiff requests the Court reverse the August 18, 2017 Order of the Honorable Judge Martha L. Mertz and find Plaintiff is entitled to Partial Summary Judgment on Count I of his Petition relating to violation of Iowa Code Chapter 555A and subsequently Iowa Code section 714H.5.

CONCLUSION

For the reasons set forth above, the June 20, 2018 Decision of the Court of Appeals affirming the August 18, 2017 Order of the Honorable Judge Martha L. Mertz should be reversed, with the Court finding that Iowa Code Chapter 555A applies to the instant case and Defendant/Appellee has, in fact, violated Chapter 555A.

Respectfully submitted,

BRICK GENTRY, P.C.

By: /s/ Billy J. Mallory

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ATTORNEY FOR PLAINTIFF-APPELLANT

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that I have filed the attached Plaintiff-Appellant's Application for Further Review with the Clerk of the Iowa Supreme Court through the electronic document management system on July 2, 2018.

/s/ Billy J. Mallory
Billy J. Mallory
Attorney for Plaintiff -Appellant

CERTIFICATE OF SERVICE

I hereby certify that on 2nd day of July, 2018, I served the attached Plaintiff-Appellant's Application for Further Review through the electronic document management system upon the following attorneys:

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/s/ Billy J. Mallory
Billy J. Mallory
Attorney for Plaintiff -Appellant

CERTIFICATE OF COMPLIANCE

1. This Application complies with the type-volume limitation of Iowa R. App. Pro. 6.903(1)(g)(1) and 6.1103(4), because this Brief contains 2,706 words, excluding the parts of the Brief exempted by Iowa R. App. Pro. 6.903(1)(g)(1).

2. This Application complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. Pro. 6.903(1)(f), because the Brief has been prepared in a proportionally spaced typeface using Times New Roman font and utilizing the 2008 edition of Microsoft Word in 14-point font plain style.

/s/ Billy J. Mallory
Billy J. Mallory
Attorney for Plaintiff -Appellant

CERTIFICATE OF ATTORNEY'S COSTS

I hereby certify that the cost of printing the foregoing Plaintiff-Appellant's Application for Further Review was \$0.00 (exclusive of sales tax, postage and delivery).

/s/ Billy J. Mallory
Billy J. Mallory
Attorney for Plaintiff -Appellant

IN THE COURT OF APPEALS OF IOWA

No. 17-1466
Filed June 20, 2018

TODD MORRIS,
Plaintiff-Appellant,

vs.

STEFFES GROUP, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Marion County, Martha L. Mertz,
Judge.

Todd Morris appeals from a finding that Iowa Code chapter 555A (2016) did
not apply to the auction services he purchased. **AFFIRMED.**

Billy J. Mallory of Brick Gentry, P.C., West Des Moines, for appellant.

Collin M. Davison of Heiny, McManigal, Duffy, Stambaugh & Anderson,
P.L.C., Mason City, for appellee.

Considered by Vogel, P.J., and Doyle and Bower, JJ.

VOGEL, Presiding Judge.

Todd Morris appeals the district court's granting of summary judgment in favor of Steffes Group, Inc. (Steffes). Morris argues the district court erred in finding Iowa Code chapter 555A (2016) did not apply to his purchase of auction services from Steffes. Morris also argues the district court erred in dismissing his petition as to all other theories. We agree with the district court that Iowa Code chapter 555A does not apply to these facts and conclude the district court did not err in dismissing Morris's petition in its entirety, without prejudice. Therefore, we affirm.

In February 2016, Morris attended a farm show in Des Moines, where he approached a sales representative for Steffes. Steffes provides farm auctions and other services related to the liquidation and management of agricultural assets. Morris briefly told the sales representative at the show that he had some equipment he may be interested in selling, and the two agreed to meet again to discuss using Steffes to sell Morris's equipment at auction. Morris left his contact information, and a few days later the sales representative visited Morris's home to gather information about the equipment. At this time, Morris's wife signed a form entitled, "Consignment Auction Contract" with Steffes to sell the equipment—including a tractor—at auction. Morris testified he used the tractor to "[p]lay around my farm, hunting purposes, food plots, [and] maintaining my house [and] property." Steffes sold the tractor and other equipment at auction on March 24.

Displeased with how the sale went, Morris filed suit under Iowa Code section 714H.3(2)(d), which provides a private right of action for a violation of Iowa Code chapter 555A. He claims Steffes conducts door-to-door sales of consumer

services under chapter 555A, and it failed to provide him with a written notice of cancellation and otherwise failed to notify him of his right to cancel the contract as required in chapter 555A. The district court found chapter 555A does not apply to the sale of auction services at issue, and it granted summary judgment in favor of Steffes and dismissed Morris's petition without prejudice. Morris does not assert that an issue of material fact exists so as to preclude summary judgment, only that the district court erred in determining Iowa Code chapter 555A does not apply to this situation. "We review summary judgment motions for corrections of errors at law." *Linn v. Montgomery*, 903 N.W.2d 337, 342 (Iowa 2017).

Iowa Code chapter 555A "imposes numerous requirements on door-to-door sales." *State ex rel. Miller v. Vertrue*, 834 N.W.2d 12, 21 (Iowa 2013).

"Door-to-door sale" means a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or the seller's representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller.

Iowa Code § 555A.1(3)(a). "Consumer goods or services" are "goods or services purchased, leased, or rented primarily for personal, family, or household purposes." *Id.* § 555A.1(2).

After reviewing the record and arguments by both parties, we agree with the district court that Iowa Code chapter 555A does not apply to these facts. Steffes did not conduct a door-to-door sale of consumer goods or services, and we affirm the district court's decision without further opinion pursuant to Iowa Court Rule 21.26(1)(b), (d), and (e). Because chapter 555A does not apply here, we also find the district court did not err in dismissing Morris's petition without prejudice. See

[4]

Windus v. Great Plains Gas, 254 Iowa 114, 124, 116 N.W.2d 410, 415 (Iowa 1962)

(“A dismissal without prejudice leave the parties as if no action had been instituted.”).

AFFIRMED.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number
17-1466

Case Title
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Electronically signed on 2018-06-20 08:39:23