IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS SHUMAN, M.D., AND MELISSA SHUMAN, HUSBAND AND WIFE,
Appellants,
vs.
RENO DODGE SALES, INC., A NEVADA CORPORATION,
Respondent.

No. 45284

FILED

JAN 24 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a deceptive trade practices action. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellants Dennis and Melissa Shuman (Shumans) sued respondent Reno Dodge Sales, Inc., alleging that Reno Dodge violated the Nevada Deceptive Trade Practices Act (DTPA)[1] by failing to disclose its dealer participation[2] when Reno Dodge assisted the Shumans in obtaining financing for the lease of a car.[3] The Shumans asserted that dealer

[1]NRS Chapter 598.

[2]Dealer participation, as used herein, represents the difference between what a lender sets as a minimally acceptable rate for a loan and the amount a car dealership charges the lessee for the loan. In an agreement between the dealership and the lender, the dealer's rights and obligations under a lease are assigned to the lender.

[3]Reno Dodge had a pre-existing agreement with Wells Fargo Auto Finance, Inc., which provided financing to customers leasing cars from Reno Dodge. The Shumans originally named Wells Fargo as a co-respondent in this appeal, but the Shumans and Wells Fargo reached a settlement and, pursuant to NRAP 16, this court dismissed the appeal as to Wells Fargo.

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participation in the financing of a lease is a material term requiring disclosure under NRS 598.0923(2). The Shumans also made claims for other related common law torts. Reno Dodge moved for summary judgment on all claims. The district court held that, as a matter of law, nondisclosure of dealer participation does not constitute a fraudulent business practice because the method of allocating a customer's monthly payment, including the profit from dealer participation, is not a material term requiring disclosure under NRS 598.0923. Further, the district court ruled that the Shumans were not misled because they knew all the material terms of their lease: the price, the number of payments, and the terms of their payments. Accordingly, the district court granted summary judgment in favor of Reno Dodge on all claims. The Shumans timely appealed.

On appeal, the Shumans assert that whether dealer participation is material under NRS 598.0923(2) is a question of fact, not law.[4]

"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court."[5] Summary judgment is appropriate when the evidence shows that there

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[4]The Shumans also argued that the district court violated summary judgment standards by affording "great weight" to the Federal Reserve Board's decision not to require disclosure of dealer participation under the Truth in Lending Act, and that the district court erred in granting summary judgment to Reno Dodge for a number of derivative claims, including breach of the covenant of good faith and fair dealing, conversion, and civil conspiracy. Based on our conclusion as to the main issue, we need not reach these claims.

[5]Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

exists no genuine issue as to any material fact and "the moving party is entitled to judgment as a matter of law."[6] Questions of law, including statutory construction, are reviewed de novo by this court.[7]

NRS 598.0923(2)

The Shumans entered into a lease agreement with Reno Dodge on September 29, 1999. On that date, NRS 598.0923(2) provided that "[a] person engages in a 'deceptive trade practice' when in the course of his business or occupation he knowingly fails to disclose a material fact in connection with the sale of goods or services."[8] The statute was devoid of any language concerning a lease. In 1999, the Legislature amended the DTPA, specifically NRS 598.0923(2), to include lease transactions, recognizing the omission as a "major loophole."[9] NRS 598.0923(2), as amended, provides that "[a] person engages in a 'deceptive trade practice' when in the course of his business or occupation he knowingly . . .[f]ails to disclose a material fact in connection with the sale or lease of goods or services." (Emphasis added.) However, the Legislature expressly provided that the amendment would not become effective until October 1, 1999.[10] "Courts will not apply statutes retrospectively unless the statute clearly expresses a legislative intent that they do so."[11] Because the

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[6]Id. at 731, 121 P.3d at 1031.

[7]Matter of Halverson, 123 Nev. ___, ___, 169 P.3d 1161, 1172 (2007).

[8]1999 Nev. Stat., ch. 604, § 5, at 3282 (emphasis added).

[9]A.B. 431, 70th Leg. (Nev. 1999).

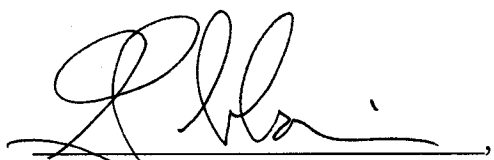
[10]1999 Nev. Stat., ch. 604, § 12, at 3286.

[11]Allstate Ins. Co. v. Furgerson, 104 Nev. 772, 776, 766 P.2d 904, 907 (1988).

Shumans entered into their lease on September 29, 1999, any non-disclosure of the material terms by Reno Dodge in regard to the Shumans' lease pursuant to NRS 598.0923(2) was not a deceptive trade practice. Therefore, Reno Dodge had no legal duty to disclose its dealer participation to the Shumans and it is irrelevant whether dealer participation was a material term requiring disclosure under the statute.

We conclude, as a matter of law, that NRS 598.0923(2), at the time the Shumans entered into their lease agreement, did not require Reno Dodge to disclose any material terms to a lessee. Accordingly, the district court did not err in granting summary judgment to Reno Dodge, and we

ORDER the judgment of the district court AFFIRMED.



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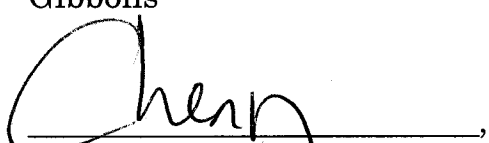

_____, J.
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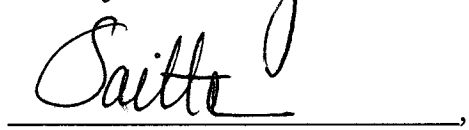

_____, J.
Saitta

cc: Hon. Brent T. Adams, District Judge
Carolyn Worrell, Settlement Judge
Bradley Drendel & Jeanney
Laxalt & Nomura, Ltd./Reno
Jones Vargas/Reno
Washoe District Court Clerk