IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL HOHL VALUCAR, A/K/A VAL-U-CAR, INC., A NEVADA CORPORATION D/B/A MICHAEL HOHL RV CENTER,
Appellant,
vs.
COACHMEN RECREATIONAL VEHICLE COMPANY, A FOREIGN CORPORATION,
Respondent.

No. 50555

FILED

SEP 16 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court final judgment in a contract action. First Judicial District Court, Carson City; William A. Maddox, Judge. This case arises from the sale of a recreational vehicle (RV), which respondent Coachmen Recreational Vehicle Company (Coachmen) manufactured. Appellant Michael Hohl Valucar d.b.a Michael Hohl RV Center (Hohl) sold the RV to Leo Chaffin, an employee of Hohl, but the RV contained a vibration defect. After repeated attempts to repair the defect, Chaffin sued both Coachmen and Hohl for, among other things, breach of an express or implied warranty of merchantability. A jury found that both Coachmen and Hohl breached the warranty. Based upon the jury verdict, the district court then rescinded the sales contract, required Hohl to pay all of Chaffin's losses, attorney fees, and costs, and denied Hohl's motion for judgment notwithstanding the verdict. Hohl also filed a post-verdict motion for summary judgment, arguing that it is entitled to contractual or equitable indemnity. The district court denied this motion.

On appeal, Hohl asserts the following: the district court erred in denying (1) Hohl's motion for judgment notwithstanding the verdict and

(2) Hohl's motion for summary judgment for contractual or equitable indemnity.

We conclude the following: (1) the district court erred in denying Hohl's motion for judgment notwithstanding the verdict because Hohl effectively disclaimed all warranties and (2) the district court erred in denying Hohl's motion for summary judgment regarding contractual indemnity.

The parties are familiar with the facts, and we do not recount them here except as necessary to our disposition.

I. The district court erred when it held that Hohl did not disclaim all warranties

Hohl argues that it expressly disclaimed any and all warranties in both the sales contract and other documents related to the RV sale. Based on these disclaimers, Hohl argues that it could not have breached any express or implied warranty of merchantability, and therefore the jury verdict is invalid. We agree.

This court reviews a district court's denial of judgment notwithstanding the verdict de novo because it is a question of law. Dudley v. Prima, 84 Nev. 549, 551, 445 P.2d 31, 32 (1968). A motion for judgment notwithstanding the verdict is essentially a challenge to the jury verdict, and therefore we review the record for any substantial evidence to support the jury verdict. Id. A judgment notwithstanding the verdict is improper where there is a conflicting question of fact that the jury could decide either way. Id. However, this court will reverse the denial of a judgment notwithstanding the verdict "if the final judgment is unwarranted as a matter of law." University System v. Farmer, 113 Nev. 90, 95, 930 P.2d 730, 734 (1997).

Whether Hohl disclaimed a warranty is a matter of contract interpretation, which this court reviews de novo. Musser v. Bank of

America, 114 Nev. 945, 947, 964 P.2d 51, 52 (1998). In reviewing a contract, this court looks to the plain meaning of the contract terms, and it applies meaning to all the contract's provisions. Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (2005); Phillips v. Mercer, 94 Nev. 279, 282, 579 P.2d 174, 176 (1978). Finally, all documents related to the same transaction should be interpreted together. See 11 Richard A. Lord, Williston on Contracts § 30:25 (4th ed. 1999).

In this case, Hohl relies on three documents to support its disclaimer argument: the sales contract, the buyer information sheet, and the truth in lending disclosure. First, the sales contract provided the following disclaimer:

> THE SELLER, MICHAEL HOHL AUTOMOTIVE, HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND MICHAEL HOHL AUTOMOTIVE NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF THE VEHICLE.

Second, Hohl's buyer information sheet states the following:

> The Manufacturer's warranty constitutes all of the warranty with respect to the sale of this vehicle. Michael Hohl Motor Company hereby disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and Michael Hohl Motor Company neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this vehicle.

Third, Hohl's truth in lending disclosure twice disclaimed all warranties when it stated the following:

> NO WARRANTIES: WE MAKE NO REPRESENTATIONS, PROMISES OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF THE COLLATERAL OR WHETHER THE COLLATERAL IS SUITABLE OR FIT FOR THE PARTICULAR PURPOSE INTENDED UNLESS WE HAVE DONE SO IN THIS CONTRACT OR IN A SEPARATE WRITTEN AGREEMENT SIGNED BY US AS ORIGINAL SELLER OF THE COLLATERAL, OR UNLESS THE MANUFACTURER HAS SPECIFICALLY PROVIDED THE WARRANTY IN WRITING. HOWEVER, IF WE MAKE AN EXPRESS WARRANTY IN THIS CONTRACT OR IN A SEPARATE WRITTEN AGREEMENT SIGNED BY US OR WITHIN 90 DAYS AFTER THE DATE OF THIS CONTRACT, WE ENTER INTO A SERVICE CONTRACT WITH THE BUYER THAT APPLIES TO THE COLLATERAL, THE EXCLUSION OF IMPLIED WARRANTIES SET FORTH IN THIS PARAGRAPGH DOES NOT EXCLUDE ANY IMPLIED WARRANTIES THAT MAY EXIST WITH RESPECT TO THE COLLATERAL DURING THE TERM OF THE CONTRACT OR AGREEEMNT IN WHICH THE EXPRESS WARRANTY IS MADE.

The sales contract and buyer information sheet contain language that excludes all warranties, including any express or implied warranty of merchantability. See NRS 104.2316 (allowing the exclusion of express or implied warranties); Sierra Creek Ranch v. J. I. Case, 97 Nev. 457, 458-59, 634 P.2d 458, 459-60 (1981) (holding that a similar disclaimer effectively excluded warranties outside the contract).

The issue, however, is whether the language contained in the truth in lending disclosure, preserving the manufacturer's warranties, is

sufficient to override the two previous disclaimers. Coachmen provided Hohl a Buckstopper Limited Warranty,[1] which is Coachmen's warranty of merchantability and fitness for a particular purpose. However, we conclude that, when reading the three documents together, the district court erred in finding that Hohl adopted Coachmen's warranty.

The district court's order denying Hohl's partial summary judgment motion regarding its disclaimer correctly recognizes that NAC 97.140 mandates the disclosure found in Hohl's federal truth in lending disclosure. However, a plain interpretation of this language suggests that the meaning of the relevant portion is that the retail seller makes no express or implied warranties unless expressly stated in a written document. But the manufacturer may still provide a separate express warranty which covers the product. In other words, the retail seller's disclaimers do not invalidate a manufacturer's express or implied warranties.

An examination of all applicable statutes and code provisions supports this conclusion. The language in NAC 97.140 is established under NRS 97.299, which addresses financing statements such as "forms

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[1]Specifically, the warranty states that Coachmen "will make any repairs to both the 'recreational vehicle' and certain 'automotive' portions of the product." Certain automotive portions are later described as "those portions of the motorized product (if applicable) which were installed by Coachmen and which may include: cockpit, driver and passenger door, windshield, driver and passenger window, windshield wipers, dash air conditioner heater, dash gauges and controls, exterior automotive lights and mirrors." However, the Buckstopper Limited Warranty expressly limits its application to "materials and components originally built or installed by Coachmen. It does not cover the automotive chassis' components or tires, batteries, generators or televisions which are warranted separately by their manufacturers."

for contracts and applications for credit." Further, NRS Chapter 97 addresses "Retail Installment Sales of Goods and Services," as opposed to NRS Chapters 104 and 104A, which contain the Uniform Commercial Code. According to NRS 104.2316, a retail seller can expressly disclaim any express or implied warranty. Thus, our interpretation of the administrative language harmonizes NAC 97.140, NRS 97.299, and NRS 104.2316, and gives each statute or code provision effect.

Finally, from a policy perspective, it is illogical to conclude that the administrative language invalidates portions of the Uniform Commercial Code by preventing a retail seller from ever disclaiming any manufacturer's warranty when a product is purchased by a retail installment contract. Such a conclusion would make the manufacturer's warranties binding upon retail sellers.

In sum, Hohl effectively disclaimed all warranties, including any express or implied warranties, without invalidating Coachmen's Buckstopper Limited Warranty. Therefore, the district court erred in submitting the claim of breach of warranty to the jury as it applied to Hohl. Because Hohl is not liable for Coachmen's Buckstopper Limited Warranty, there was no issue of fact for the jury to decide regarding whether Hohl breached that warranty. As a result, the district court erred in denying Hohl's motion for judgment notwithstanding the verdict.

II. Contractual indemnity

Since we conclude that Hohl effectively disclaimed all warranties, we now analyze the contractual indemnity provision of the Hohl-Coachmen dealer agreement. The terms and conditions of the Hohl-Coachmen dealer agreement contain a clause titled "Indemnity." This clause states that "[e]ach of the parties to this [a]greement agree to indemnify the other against any loss, claim or liability which arises from

either party's sole negligence or failure to abide by all applicable laws." We conclude that Coachmen is the party that violated applicable laws and must indemnify Hohl because the jury found it liable for breaching an express or implied warranty of merchantability.

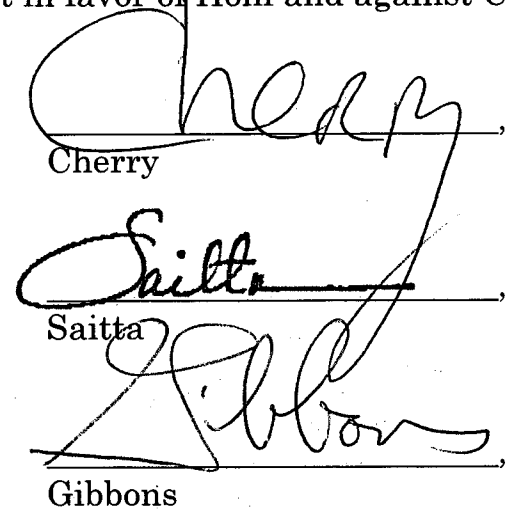
Hohl argues that the district court erred when it found that the pertinent contractual indemnity provision did not apply to this case because it claims Coachmen violated applicable laws, which triggered the provision. We agree.

"Contractual indemnity is where, pursuant to a contractual provision, two parties agree that one party will reimburse the other party for liability resulting from the former's work." Medallion Dev. v. Converse Consultants, 113 Nev. 27, 33, 930 P.2d 115, 119 (1997), superseded by statute on other grounds as stated in Doctors Company v. Vincent, 120 Nev. 644, 654, 98 P.3d 681, 688 (2004). The scope of a contractual indemnity clause is determined by the contract and not "the independent doctrine of equitable indemnity." Rossmoor Sanitation, Inc. v. Pylon, Inc., 532 P.2d 97, 100 (Cal. 1975).

Here, the contractual indemnity clause states "[e]ach of the parties to this [a]greement agree to indemnify the other against any loss, claim or liability which arises from either party's sole negligence or failure to abide by all applicable laws." Although the verdict did not address negligence liability, the jury found there was a breach of warranty by Hohl and Coachmen. Since a breach of warranty is a legal claim, we conclude that a breach of warranty may constitute a failure to abide by all applicable laws. See, e.g., NRS 104.2714 (discussing damages from a breach of warranty); Sierra Creek Ranch v. J. I. Case, 97 Nev. 457, 634 P.2d 458 (1981) (discussing a lawsuit brought for breach of express and implied warranties allegedly made on sale of a used wheel loader).

Because we conclude that Hohl disclaimed all warranties, the jury verdict should apply to Coachmen only. Since Hohl has already settled with Chaffin and paid Chaffin's damages, it is entitled to contractual indemnity from Coachmen. Thus, the district court erred in denying Hohl's motion for summary judgment regarding indemnity. As a result, we reverse the district court's denial of Hohl's motion for judgment notwithstanding the verdict and the denial of Hohl's motion for summary judgment regarding contractual indemnity. Accordingly, we

ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order and to enter judgment in favor of Hohl and against Coachmen.[2]



_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: First Judicial District Court Dept. 2, District Judge
Jonathan L. Andrews, Settlement Judge
Burton Bartlett & Glogovac, Ltd.
Michael A. Rosenauer
Carson City Clerk

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[2]In view of our holding, we do not address the other issues raised by the parties.