IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTINE KELLEY AND RICHARD KELLEY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE JENNIFER TOGLIATTI, DISTRICT JUDGE,
Respondents,
and
FLETCHER JONES EAST SAHARA LTD, LLC, A NEVADA LIMITED LIABILITY COMPANY D/B/A FLETCHER JONES TOYOTA,
Real Party in Interest.

No. 56189

FILED

APR 28 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of mandamus challenging a district court order that granted, in part, a motion to certify a class.

After purchasing a Scion from respondent Fletcher Jones Toyota, petitioners Christine and Richard Kelley filed a class action lawsuit against Fletcher Jones, contending that Fletcher Jones had charged its customers for certain preloaded products without disclosing the charges and without itemizing the charges in writing.[1] The Kelleys

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

moved to certify a class of Fletcher Jones customers that included both those who had purchased Scions and those who had purchased Toyotas. The district court granted the Kelleys' motion for class certification with regard to Scion purchasers but denied it with regard to Toyota purchasers. For the reasons stated below, we conclude that substantial evidence supported the district court's decision, and we therefore deny the Kelleys' writ petition.

Standard of review

"This court may issue a writ of mandamus to control a district court's arbitrary or capricious exercise of discretion." Meyer v. District Court, 110 Nev. 1357, 1361, 885 P.2d 622, 625 (1994). When a district court's decision is supported by substantial evidence, it has not acted arbitrarily or capriciously. Stratosphere Gaming Corp. v. Las Vegas, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004). Substantial evidence is "that which a reasonable mind might accept as adequate to support a conclusion." Id. (internal quotations omitted).

Writ relief is not warranted because the district court properly exercised its discretion

A party seeking class certification must establish that, with respect to the putative class members, common questions of law or fact predominate over individualized questions. Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 850-51, 124 P.3d 530, 540 (2005) (citing NRCP 23(b)(3)). Common questions "predominate" over individualized questions if "their resolution 'can be achieved through generalized proof.'" Id. at 851, 124 P.3d at 540 (quoting Moore v. PaineWebber, Inc., 306 F.3d 1247, 1252 (2d Cir. 2002)).

"In analyzing whether it should certify a class, the court should generally accept the allegations of the complaint as true." Meyer,

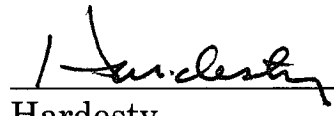
110 Nev. at 1363-64, 885 P.2d at 626. Here, the Kelleys' complaint alleged that Fletcher Jones both failed to itemize in writing the charges for the preloaded products and failed to disclose the existence of the charges. Based upon the differences between Fletcher Jones' "no-haggle" Scion sales policy and its more traditional Toyota sales policy, the district court foresaw too many logistical difficulties in adjudicating the Kelleys' failure-to-disclose allegation with regard to each individual Toyota customer. In other words, the district court found that resolution of this allegation could not be achieved through generalized proof.

Substantial evidence in the record supports the district court's finding. Whereas each Scion customer simply paid the non-negotiable manufacturer's suggested retail price for his or her car, each Toyota customer negotiated a price for his or her car that may have been above, at, or below the manufacturer's suggested retail price. This would necessarily affect the amount of money that Fletcher Jones may have "charged" that particular customer for some or all of the preloaded products. Moreover, since different salespersons orally negotiated the Toyota deals with each individual Toyota customer, the evidence necessary to establish what was or was not disclosed would require both customer and salesperson to testify regarding the details of what was discussed between them at the time of purchase. See Garcia v. Medved Chevrolet, Inc., 240 P.3d 371, 381 (Colo. Ct. App. 2009) (concluding that the doctrine of presumed reliance was insufficient to render certifiable a putative class representative's failure-to-disclose allegation on the basis that applying the doctrine would still leave unanswered the individualized questions of what was represented to each putative class member and whether each putative class member actually suffered an injury).

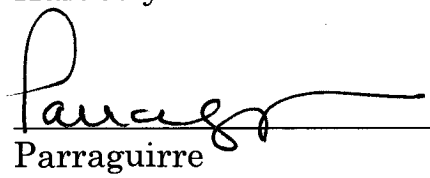
Thus, it is clear from the record that the district court properly accepted the allegations in the Kelleys' complaint as true and based its class-certification decision on its belief that including Toyota customers in the class would require the adjudication of multiple individualized issues for hundreds of customers. Because the district court's decision was supported by substantial evidence, we conclude that the district court did not act arbitrarily or capriciously in excluding Toyota customers from the certified class, and we therefore

ORDER the petition DENIED.

_____, J.
Saitta



_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Jennifer Togliatti, District Judge
David S. Ladwig, Esq.
George O. West, III
Pyatt Silvestri & Hanlon
Eighth District Court Clerk