

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY BENKO, a Nevada resident,
et al.,

Appellants,

vs.

QUALITY LOAN SERVICE
CORPORATION, a California
Corporation, et al.,

Respondents.

Case No. 73484

Eighth Judicial District Court

Case No. A-11-6498757-C

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Elizabeth A. Brown
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**RESPONDENTS' JOINT NOTICE
OF SUPPLEMENTAL AUTHORITY**

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Pursuant to NRAP 31(e), Respondents California Reconveyance Company, Quality Loan Service Corporation, MTC Financial Inc. dba Trustee Corps, and National Default Servicing Corporation (collectively, “Respondents”) respectfully submit the following supplemental authority.

After briefing in this appeal concluded, this Court decided *Fairway Chevrolet Co. v. Kelley*, No. 72444, 429 P.3d 663, 2018 WL 5906906 (Nev. Nov. 9, 2018) (unpublished disposition), holding that, based on the plain language of NRS 41.600, individuals who have not sustained “some sort of harm” inflicted by a defendant are not “victims” of consumer fraud, as required to assert a claim for a violation of NRS 41.600. A copy of the *Fairway* opinion is attached as Exhibit A.

Fairway relates to the appeal and supplements the following briefing: Appellants’ Opening Brief at 24; Respondent California Reconveyance Company’s Answering Brief at 48-49, 52-53; Appellants’ Reply Brief to Respondent MTC Financial Inc. dba Trustee Corps’ Answering Brief at 21-26; and Appellants’ Reply Brief to Respondent California Reconveyance Company’s Answering Brief at 16-17.

DATED this 29th day of August, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that, on August 29, 2019, I served a true and correct copy of the foregoing **Respondent's Joint Notice of Supplemental Authority** on counsel by e-mail transmission to the persons listed below:

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EXHIBIT A

EXHIBIT A

429 P.3d 663 (Table)

Unpublished Disposition

This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing. Supreme Court of Nevada.

FAIRWAY CHEVROLET COMPANY,

a Nevada Corporation, Appellant,

v.

Allen KELLEY, Individually, and on Behalf of Others Similarly Situated, Respondent.

No. 72444

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FILED NOVEMBER 9, 2018

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ORDER OF REVERSAL AND REMAND

*1 This is an appeal from a final judgment, permanent injunction, and order awarding attorney fees in a consumer fraud action.¹ Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

[NRS 41.600\(1\)](#) provides that “[a]n action may be brought by any person who is a *victim* of consumer fraud.” (Emphasis

added.) The undisputed facts of this case demonstrate that respondent was not a “victim” of consumer fraud under any sensible definition of that term, as the definition of “victim” connotes some sort of harm being inflicted on the “victim.” See, e.g., *Victim*, Black’s Law Dictionary (10th ed. 2014) (defining “victim” as “[a] person harmed by a crime, tort, or other wrong”); *Merriam-Webster’s Collegiate Dictionary* 1394 (11th ed. 2007) (defining “victim” as “one that is injured, destroyed, or sacrificed under any of various conditions” and “one that is tricked or duped”).

Because respondent knew he would not and could not (and more importantly, did not) suffer any harm at the hands of appellant, he was not a “victim” authorized to bring a consumer fraud action under [NRS 41.600](#). *Harris Assocs. v. Clark Cty. Sch. Dist.*, 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003) (“When the words of the statute have a definite and ordinary meaning, this court will not look beyond the plain language of the statute, unless it is clear that this meaning was not intended.” (internal quotation marks and footnotes omitted)).² Accordingly, the district court erred in denying appellant’s motion for summary judgment.³ It necessarily follows that the ensuing challenged orders must be reversed. We therefore

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

All Citations

429 P.3d 663 (Table), 2018 WL 5906906

Footnotes

- ¹ Pursuant to [NRAP 34\(f\)\(1\)](#), we have determined that oral argument is not warranted in this appeal.
- ² Because [NRS 41.600\(1\)](#) is unambiguous, we need not resort to legislative history. See *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986) (“Where a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature’s intent.”).
- ³ This order should not be construed as condoning appellant’s advertisement.