

When The Matter Must Stay In California: Court Of Appeal Rules That Claims Subject To Song-Beverly (Lemon Law Act) Cannot Be Litigated In A Foreign Jurisdiction, Per Contract-And The California Supreme Court Just Granted Review

By: Edward F. Morrison, Jr., Esq.
Larry A. Schwartz, Esq.

California's Song-Beverly Act is one of the strongest Lemon Laws in the country insofar as protection of consumer rights. Very often, car dealers, supported by manufacturers, will require purchasers to enter into agreements which not only have a waiver of jury trial, but also call for any disputes to be decided in a foreign jurisdiction - including alleged breach of expressed warranty and applied warranties. Many consumer rights advocates have argued that this tramples on the rights of California consumers.

This issue was addressed in Kenneth W. Lathrop v. Thor Motor Coach, Inc. (2024) 105 Cal.App.5th 808 (“Lathrop case). In the Lathrop case, purchasers, the Lathrops, bought a new Thor Motorhome for \$212,391.78 from Mike Thompson RV in Santa Fe Springs, California in May 2021. The Lathrops signed a two-page Thor Motor Coach Product Warranty Registration Form, which included, in bold and caps, that they understood that the Forum Selection Clause and Choice Law Clause set forth in the Thor Motor Coach Limited Warranty and the Thor Motor Cause Structural Limited Warranty would apply. The Thor Motor Coach Limited Warranty expressed that the purchaser understood that the exclusive jurisdiction for deciding legal disputes would be the State of Indiana.

In December 2022, the Lathrops filed suit against Thor, Mike Thompson RV, and the lender, alleging violations of the Song-Beverly Act by not performing necessary repairs to correct defects in the motorhome within a reasonable time or a reasonable number of attempts, and by not returning the Lathrops’ money or replacing the motorhome. The Lathrops also alleged that Thor violated the Song-Beverly Act by inserting an unconscionable provision in the Limited Warranty by not providing the Limited Warranty at the time of sale.

Thor and the other Defendants then filed a Motion in the Trial Court under Code of Civil Procedure § 410.30 to Stay the Action on the ground of inconvenient forum. Thor argued that the Forum Selection Clause in the Limited Warranty requires the Lathrops to file any action for breach of warranty in Indiana. Thor also offered "to allay any concerns" by Stipulating that the Defendants would be subject to the substantive provisions of the Song-Beverly Consumer Warranty Act in any matter filed in the foreign jurisdiction. The Lathrops opposed the Motion, arguing that the Forum Selection Clause was unenforceable as they did not freely and voluntarily agree to it, and that it was unconscionable. The Lathrops refused to accept the Stipulation of Thor, as well. The Trial Court granted the Motion to Stay.

On Appeal, the Court of Appeal reversed.

The Court of Appeal noted that California favors contractual forum selection clauses, so long as they are entered into freely and voluntarily, citing Verdugo v. Alliant Group, LP (2015) 237 Cal.App.4th 141, but then expressed that the California courts will refuse to defer to the selected forum if to do so would substantially diminish the rights of California residents in a way that violates State public policy. The Court of Appeal noted that the Lathrops argued that the Trial Court erred in requiring them to demonstrate that enforcement of the clause would be unreasonable, rather than requiring Thor to show litigating in Indiana would not diminish their rights. In that regard, the Court of Appeal ruled that, in cases brought under the Song-Beverly Act, the party seeking to enforce a forum selection clause has the burden to show litigating in a different forum will not diminish the Plaintiff's unwaivable rights. The Court of Appeal noted that, rather than analyzing whether Thor met that burden, the Trial Court applied the rules applicable to enforcing a forum selection involving waivable statutory rights. The Court of Appeal then ruled that the Trial Court had erred and further ruled that Thor failed to show litigating in Indiana would not substantially diminish the Lathrops' unwaivable statutory rights, insofar as forum selection. The Court of Appeal further ruled that Thor's offer to Stipulate did not cure the problem insofar as forum selection, either. The Court also ruled that, even if the proposed Stipulation did not violate public policy, that it was insufficient.

The defendants have since petitioned to the California Supreme Court. On January 15, 2025, the California Supreme Court granted the Petition in Lathrop v. Thor Motor Coach (2025) Westlaw 209300. The Lathrop case has now effectively been put on hold. A ruling from the California Supreme Court, which will be issued this year, will hopefully put to rest the question of whether forum selection for claims under the Song-Beverly Consumer Warranty Act and the Consumer Legal Remedies Act are waivable.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at morrisonlawgroup.com.

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