

U.S. Appeals Court Says Manufactured Homes Aren't Consumer Product

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New York (October 30, 2014, 6:49 PM ET) -- The 6th U.S. Circuit Court of Appeals on Oct. 30, 2014, ruled that manufactured homes are not consumer products covered by a major federal warranty act.

The court overturned a lower court's decision that CMH Homes Inc. violated federal warranty law by improperly installing a customer's pre-made home, saying that a manufactured home is not a consumer product covered by federal regulation.

In a published opinion, the U.S. 6th Circuit Court of Appeals ruled that plaintiffs Dan and Karen Bennett's home is not covered by the federal Magnuson-Moss Warranty Act, since houses are permanent structures and not "tangible personal property" regulated by the act. The court's decision was issued by a three-judge panel, with one partial dissent.

Enacted in 1975, the act is the federal statute that governs warranties on consumer products.

The court cited the act's legislative history in its opinion, noting that one of the bill's sponsors said in a Senate hearing that a house would not fall under the definition of a consumer product since a house is not tangible personal property.

"Here the house is not a house-trailer or a mobile home designed to be moved," said Circuit Judge Gilbert S. Merritt, who wrote the majority opinion. "Once it is constructed on the site, it is permanent. ... The plaintiffs' home is more like a house than 'tangible personal property,' and thus is not a 'consumer product' as was intended to be regulated by the Magnuson-Moss Warranty Act."

The panel's decision returned the case to the district court to decide if it would exercise its supplemental jurisdiction over the Bennetts' state-law claims.

The Bennetts filed suit in 2008 claiming that CMH Homes improperly installed their home three years previously, according to the ruling. The Bennetts' home in Tennessee burned in 2004 and they replaced it with a \$160,000 manufactured house from CMH Homes, the judge said.

The Bennetts said they first began noticing defects suggesting that the house was not level before they closed on their home, according to the opinion, and CMH Homes assured them that the defects would be repaired. After several years of inspections and repairs, CMH never leveled the house to the Bennett's satisfaction, according to the ruling.

The Bennetts' complaint alleged breach of contract and federal breach of warranty under the Magnuson-Moss Act, the judge said.

The case eventually went to bench trial in a Tennessee federal court, which found that CMH homes breached both the contract and its warranties by failing to properly install the house, according to the circuit court. The district court also found that it violated Tennessee state law by using crew members who weren't licensed to install homes.

The federal judge awarded the Bennetts about \$40,000 in damages, according to the opinion.

The Bennetts appealed the amount of the damages, according to the circuit panel. During oral argument, the circuit judges raised the question of whether a manufactured home was a consumer product, according to the opinion.

The Sixth Circuit's ruling also included a dissent from Circuit Judge Jane Branstetter Stranch, who noted that manufactured homes were generally called "mobile homes" until the 1970s, and their mobility is defined by the fact such houses are built at a factory and transported to a property.

"In response to a negative stigma against 'mobile homes,' the industry responded by coining the term 'manufactured home' that — though naming the same product — was intended to impart a better impression," Judge Stranch said. "The 'manufactured-home' terminology has thoroughly replaced 'mobile home' in federal and Tennessee law."

The Federal Trade Commission — which administers the Magnuson-Moss Act — specifically defines mobile homes as a consumer product under the act, Judge Stranch said.

CMH Homes is represented by William S. Rutchow and Jennifer S. Rusie of Ogletree Deakins Nash Smoak & Stewart PC.

The case is Dan Bennett et al. v. CMH Homes Inc., case number 13-5423, in the U.S. Court of Appeals for the Sixth Circuit.