

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

MERCEDES-BENZ USA, LLC,
Appellant,

v.

DAVID POPHAM,
Appellee.

No. 4D09-3300

[May 18, 2011]

TOWBIN SINGER, MICHELE, Associate Judge.

Mercedes-Benz USA, LLC (“MBUSA”) appeals the trial court’s order awarding attorney’s fees to David Popham (“Popham”), pursuant to section 681.112, Florida Statutes (2010). The underlying facts are as follows: Popham had purchased a new Mercedes-Benz from MBUSA. The car was subsequently declared a “lemon” by the Florida Motor Vehicle Arbitration Board. Neither party appealed the board’s decision and Popham received a refund. Popham’s lawyer (who had represented Popham during the arbitration proceedings) then filed a lawsuit in circuit court seeking recovery of the attorney’s fees pursuant to section 681.112, Florida Statutes. The trial court granted summary judgment in favor of Popham, ordering MBUSA to pay Popham’s arbitration hearing attorney’s fees.

The issue in this case is whether Florida’s “Lemon Law” authorizes an award of attorney’s fees incurred during arbitration of the refund option. This exact issue was recently addressed and decided in *General Motors, LLC v. Bowie*, No. 4D10-387 (Fla. 4th DCA Apr. 20, 2011). The answer is no, “‘damages’ under section 681.112 do not include attorney’s fees incurred in pursuing the refund option through arbitration.” *Bowie* at *2.

Accordingly, we reverse and remand the final judgment in its entirety and direct the trial court to undertake further proceedings consistent with this opinion.

Reversed and Remanded for proceedings consistent with this opinion.

TAYLOR and CIKLIN, JJ., concur.

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Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Robin L. Rosenberg, Judge; L.T. Case No. 502007CA002879XXXXMB.

Robert F. McLaughlin of Hinshaw & Culbertson, L.L.P., Tampa, for appellant.

David B. Shelton, Charles P. Mitchell and Steven I. Klein of Rumberger, Kirk & Caldwell, P.A., Orlando, for Amicus Curiae Alliance of Automobile Manufacturers, Inc.

Patrick St. George Cousins of Cousins Law Firm, P.A., West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.