Supreme Court of Florida

No. SC08-808

EDMUND MADY,
Petitioner,

vs.

DAIMLERCHRYSLER CORPORATION,
Respondent.

March 24, 2011

LEWIS, J.

This case is before the Court for review of the decision of the Fourth District Court of Appeal in Mady v. DaimlerChrysler Corp., 976 So. 2d 1212 (Fla. 4th DCA 2008). The district court certified that its decision is in direct conflict with the decision of the Second District Court of Appeal in Dufresne v. DaimlerChrysler Corp., 975 So. 2d 555 (Fla. 2d DCA 2008). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const.

BACKGROUND

In May 2003, Edmund Mady leased a 2003 Dodge Viper manufactured by DaimlerChrysler Corporation. See Mady, 976 So. 2d at 1213. After experiencing

problems with the vehicle and being unable to resolve the dispute with the manufacturer, Mady ultimately filed an action against DaimlerChrysler for breach of written warranty pursuant to the Magnuson-Moss Warranty–Federal Trade Commission Improvement Act, 15 U.S.C. §§ 2301-2312 (2000) (MMWA). See 976 So. 2d at 1213.

In November 2005, DaimlerChrysler served an offer of judgment, pursuant to section 768.79, Florida Statutes (2005), and Florida Rule of Civil Procedure 1.442. See 976 So. 2d at 1213. In December 2005, DaimlerChrysler served a second offer of judgment along with a proposed release agreement. On December 29, 2005, the plaintiff accepted the later formal offer of judgment. See id.

Pursuant to the terms of the offer of judgment, DaimlerChrysler would pay the total sum of $8,500 exclusive of attorneys' fees. See id. It neither admitted liability nor conceded plaintiff's entitlement to attorneys' fees. See id. The agreement acknowledged that the plaintiff might seek attorneys' fees. See id. The settlement required the plaintiff to execute a complete release and voluntary dismissal with prejudice. See id. at 1213-14.

In June 2006, the plaintiff moved for attorneys' fees and costs. See id. at 1214. After a hearing, the trial court denied the motion, basing its denial on a finding that the plaintiff had not established he was a consumer who "finally prevail[ed]" under 15 U.S.C. § 2310(d)(2). See id.

The Fourth District affirmed the trial court, holding that "[t]here simply was no court-ordered change in the relationship of the parties in this case by the plaintiff's acceptance of DaimlerChrysler's proposal for settlement." Id. at 1215. The Fourth District found "that section 768.79(4)'s provision for enforcement is not the same as the required affirmative court action that either approves of the terms of a settlement or affirmatively retains jurisdiction for enforcement." Id.

In direct conflict, the Second District held in Dufrense that a settlement agreement entered into pursuant to section 768.79 entitles a consumer to attorneys' fees under the MMWA. See 975 So. 2d at 557. The Second District concluded that the agreement "is the functional equivalent of a consent decree and that Dufresne is not precluded from claiming entitlement to attorneys' fees under the MMWA simply because he accepted the proposal for settlement." Id. One month after Mady was issued, the Third District Court of Appeal in San Martin v. DaimlerChrysler Corp., 983 So. 2d 620, 625 (Fla. 3d DCA 2008), rejected the Mady decision, aligned itself with the Second District, and employed reasoning similar to that of the Second District in Dufrense.

ANALYSIS

A settlement produced pursuant to Florida's offer of judgment statute, section 768.79, Florida Statutes (2005), and Florida Rule of Civil Procedure 1.442

is under the auspices of the court in which the dispute is being processed and is tantamount to a consent judgment. Florida's offer of judgment statute provides:

> An offer shall be accepted by filing a written acceptance with the court within 30 days after service. Upon filing of both the offer and acceptance, the court has full jurisdiction to enforce the settlement agreement.

§ 768.79(4), Fla. Stat. (emphasis supplied). A consumer who has exhausted all non-judicial remedies as a condition required by the MMWA and later secures a favorable formal settlement offer of judgment from a defendant which is accepted in a Florida legal action filed under the MMWA, 15 U.S.C. § 2310, "finally prevails" and may be entitled to recover costs, expenses, and attorneys' fees under the MMWA.

The MMWA was designed to "encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms." 15 U.S.C. § 2310(a)(1). To advance that goal, the MMWA requires warrantors to establish an "informal dispute settlement procedure" that adheres to minimum requirements prescribed by the Federal Trade Commission. See 15 U.S.C. § 2310(a)(2). Participation in these procedures is mandatory for consumers seeking relief under the MMWA, as the act states that consumers "may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to [the warrantor's informal settlement procedure]." 15 U.S.C. § 2310(a)(3). It was the intent of Congress to

provide consumers with an efficient and affordable mechanism to resolve warranty disputes that would not require consumers to incur substantial costs and expenses.

To ensure meritorious warranty claims are resolved in informal non-judicial proceedings, the MMWA provides protection to consumers with regard to warrantors who fail to resolve warranty claims that are later determined to be meritorious. Subsection (d)(1) of the MMWA provides:

> Subject to subsections (a)(3) and (e) of this section, a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—
>
> > (A) in any court of competent jurisdiction in any State or the District of Columbia; or
> >
> > (B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(Emphasis supplied.) Reading subsection (d)(1) in unison with subsection (a)(3), it becomes apparent that an individual consumer can proceed with an MMWA action in court only after "he initially resorts to [the warrantor's informal settlement procedure]." 15 U.S.C. § 2310(a)(3). To encourage warrantors to resolve disputes without the expense of judicial resources, subsection (d)(2) of the MMWA provides:

> If a consumer finally prevails in any action brought [pursuant to this subsection], he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined

> by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

15 U.S.C. § 2310(d)(2) (emphasis supplied).

Subsection (d)(2)'s fee-shifting provision is consistent with the MMWA's overarching concern to provide consumer protection at the lowest cost possible. In enacting the MMWA, Congress designed a process intended to encourage warrantors to resolve claims quickly, efficiently, and informally without the necessity of forcing consumers to file legal actions. See 15 U.S.C. § 2310(a)(1). If a warrantor waits to resolve a meritorious claim until after the consumer is forced to involve the courts, the MMWA provides a remedy and method of shifting costs to the warrantor which at times may be associated with a more extensive resolution process in our courts when the outcome acknowledges the validity of the warranty claim. See 15 U.S.C. § 2310(d)(2). The critical issue, therefore, is whether the resolution of a claim filed pursuant to subsection (d)(1) of the MMWA by a monetary settlement pursuant to an offer of judgment statute applicable to the proceeding bears the imprimatur of a court.

Unlike a settlement before an action is filed, any offer made and accepted pursuant to Florida's offer of judgment statute is, as illustrated by the very name of the statute, under the auspices of the court in which the offer is made and accepted. A resolution reached pursuant to the offer of judgment statute, as opposed to an

extrajudicial settlement agreement that is not subject to judicial enforcement, bears the imprimatur of the court because a party that fails to accept that resolution is subject to judicial penalty and sanctions. See § 768.79(4), Fla. Stat. Further, a settlement produced pursuant to Florida's offer of judgment statute is subject to that court's full continuing jurisdiction thereafter. The offer of judgment statute would actually provide a basis to further penalize the consumer if this were not the end result. Consequently, a settlement produced under Florida's offer of judgment statute necessarily carries judicial implications.

Here, Mady's action could be filed only after informal dispute settlement procedures failed to achieve a resolution. See 15 U.S.C. § 2310(a)(3). After failing to resolve the dispute, Mady, acting pursuant to subsection (d)(1) of the MMWA, was forced to file an action under the MMWA in state court. The statutory offer pursuant to the offer of judgment statute "neither admitted liability nor conceded plaintiff's entitlement to attorney's fees, but specifically acknowledged that the plaintiff might seek attorney's fees." Mady v. DaimlerChrysler Corp., 976 So. 2d 1212, 1213 (Fla. 4th DCA 2008).

Although the trial court may not have needed to actually enter a final judgment document, Mady achieved the same result with a monetary settlement only after being forced to bear all of the costs and expenses associated with litigation and facing the statutory penalty if the offer of judgment had not been

accepted. DaimlerChrysler could have resolved this dispute during the "informal dispute settlement" phase, but instead waited until after Mady was forced to commence this action and incur the expenses of this litigation. Litigation had commenced, an offer was produced pursuant to the offer of judgment statute and corresponding rule of procedure, and the result necessarily falls under the auspices of a court, which is exactly the design of the MMWA. This interpretation is the only method through which subsection (d)(2) of that act is implemented to afford the designed remedy. Further, this Court has long and consistently held that when a defendant settles a disputed case only after litigation has developed, the corresponding payment is tantamount to a final judgment when considering prevailing party type attorney fee assessments. See, e.g., Pepper's Steel & Alloys, Inc. v. United States, 850 So. 2d 462, 465 (Fla. 2003); Ivey v. Allstate Ins. Co., 774 So. 2d 679, 684 (Fla. 2000); Wollard v. Lloyd's & Companies of Lloyd's, 439 So. 2d 217, 218 (Fla. 1983). Accordingly, Mady should recover the costs, expenses, and attorneys' fees as allowed by subsection (d)(2) of the MMWA because DaimlerChrysler ultimately agreed to pay pursuant to a statutorily recognized offer of judgment after the commencement of litigation and also while the consumer faced monetary sanctions pursuant to the offer of judgment concept which could have penalized Mady if the offer had not been accepted.

This result is also consistent with federal authority. The United States Supreme Court has held that settlement agreements enforced through a consent decree may serve as a basis for an award of attorneys' fees. See Maher v. Gagne, 448 U.S. 122, 129-30 (1980). Although there is no actual consent decree present here, the Eleventh Circuit Court of Appeals has stated:

> [E]ven where there has been no formal entry of a consent decree following a settlement agreement, a district court may still award attorney's fees to the prevailing party as long as: (1) it has incorporated the terms of the settlement into the final order of dismissal or (2) it has explicitly retained jurisdiction to enforce the terms of the settlement. American Disability Ass'n v. Chmielarz, 289 F.3d 1315, 1320 (11th Cir. 2002). Under either option, the district court "clearly establishes 'judicially sanctioned change in the legal relationship of the parties,' as required by Buckhannon [Bd. & Care Home v. W. Va. Dep't of Health & Human Res., 532 U.S. 598 (2001)], because the plaintiff thereafter may return to court to have the settlement enforced." Id. A formal consent decree is unnecessary because the incorporation of the settlement into a court order or the explicit retention of jurisdiction over the terms of the settlement are the "functional equivalent of an entry of a consent decree." Id.

Smalbein v. City of Daytona Beach, 353 F.3d 901, 905 (11th Cir. 2003) (emphasis supplied). Florida's offer of judgment statute explicitly states that "the court has full jurisdiction to enforce the settlement agreement." § 768.79(4), Fla. Stat. The resolution under the offer of judgment statute and rule before us today is the "functional equivalent of a consent decree," and under Smalbein, Mady is a prevailing party under subsection (d)(2) of the MMWA even if Buckhannon Board

& Care Home v. West Virgina Department of Health & Human Resources, 532 U.S. 598 (2001), is applied as argued by the dissent.

The dissent incorrectly relies on the United States Supreme Court's decision in Buckhannon, which is completely distinguishable from the facts before us today. In Buckhannon, plaintiffs did not seek relief under the MMWA and instead pursued claims under the Fair Housing Amendments Act of 1988 (FHAA) and the Americans with Disabilities Act of 1990 (ADA). See 532 U.S. at 601. Further, there was no resolution within the legal action such as the settlement here. In Buckhannon the case was terminated due to legislative action separate and apart from the legal action. The ultimate resolution was achieved absent any judicial involvement:

> Respondents agreed to stay enforcement of the cease-and-desist orders pending resolution of the case and the parties began discovery. In 1998, the West Virginia Legislature enacted two bills eliminating the "self-preservation" requirement, see S. 627, I 1998 W. Va. Acts 983-986 (amending regulations); H.R. 4200, II 1998 W. Va. Acts 1198-1199 (amending statute), and respondents moved to dismiss the case as moot. The District Court granted the motion, finding that the 1998 legislation had eliminated the allegedly offensive provisions and that there was no indication that the West Virginia Legislature would repeal the amendments.

Id. In Buckhannon, the change in the legal relationship of the parties had nothing to do with the courts; it was a product of separate and independent legislative action. The Buckhannon Court reasoned that there was no "judicially sanctioned change." Id. at 605.

Here, unlike Buckhannon, the settlement agreement between the parties in litigation produced pursuant to an offer of judgment statute represents a "judicially sanctioned change." A settlement made pursuant to Florida's offer of judgment statute remains under that court's full jurisdiction. See § 768.79(4), Fla. Stat. It thus becomes clear that there is direct judicial involvement in this case because the court in which the settlement agreement was produced retains jurisdiction over that agreement. Further, the dissent fails to provide any authority that applies Buckhannon to the MMWA or any other circumstances similar to the case before us. When other courts have extended Buckhannon beyond the scope of the FHAA and the ADA, they provided authority for doing so. See, e.g., El Paso Indep. Sch. Dist. v. Richard R., 591 F.3d 417, 422 n.3 (5th Cir. 2009). Accordingly, Buckhannon is completely distinguishable and has no bearing on this case.

Even if Buckhannon has some application, which it does not, Mady is still a "prevailing party" under the MMWA and the reasoning in Buckhannon does not alter this outcome. In that decision, the United States Supreme Court merely rejected the catalyst theory for legislative action as a legitimate justification for an award of attorneys' fees pursuant to a fee-shifting statute. See Buckhannon, 532 U.S. at 605. The Court stated:

> A defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial imprimatur on the change. Our precedents thus counsel against holding that the term "prevailing

> party" authorizes an award of attorney's fees without a corresponding alteration in the legal relationship of the parties.

Id. (emphasis supplied). Where, as here, a court retains jurisdiction to enforce an offer of judgment, the resulting settlement contains the requisite judicial imprimatur to classify a plaintiff as a prevailing party. See supra p. 9 (citing Smalbein, 353 F.3d 901). The dissent's narrow reading of Buckhannon has been explicitly rejected by a number of the federal circuit courts of appeals, including the Eleventh Circuit. See, e.g., Perez v. Westchester Cnty. Dep't. of Corrections, 587 F.3d 143, 150 (2nd Cir. 2009) ("[N]othing in Buckhannon or its sequelae limits judicial imprimatur to [a judgment on the merits, a consent decree, or a judicially enforceable settlement agreement] . . . .") (emphasis supplied); Mynard v. Office of Personal Management, 348 Fed. Appx. 582, 586-87 (Fed. Cir. 2009); Johnson v. City of Tulsa, 489 F.3d 1089, 1108 (10th Cir. 2007) ("[W]e cannot accept the proposition that attorney fees for post-decree efforts are compensable only if they result in a judicially sanctioned change in the parties' legal relationship."); Smalbein v. City of Daytona Beach, 353 F.3d 901, 905 (11th Cir. 2003).

Without providing any authority to support its conclusion, the dissent asserts that "a judicially enforceable agreement is not equivalent to a judicially approved or sanctioned agreement." Dissenting op. at 23-24. Through this claim, the dissent attempts to create a rule that provides that a court's retention of jurisdiction over an

agreement is insufficient to confer prevailing party status upon a party. None of the decisions relied on by the dissent, however, supports its bold assertion that judicial retention over an agreement is insufficient to confer prevailing party status to a plaintiff. In fact, all of the decisions relied on by the dissent to support its contention are materially distinguishable. In T.D. v. LaGrange School Dist. No. 102, 349 F.3d 469, 479 (7th Cir. 2003), the Seventh Circuit expressly noted that "the district court has no continuing jurisdiction to enforce the agreement." The court also noted that the agreement "was merely a private settlement agreement between the parties." Id. at 479 (emphasis supplied). Similarly, in John T. v. Del. County Intermediate Unit, 318 F.3d 545 (3d Cir. 2003), the two parties reached an agreement completely outside the confines of the judicial system. See 318 F.3d at 551. Not only did the parties in John T. reach an extrajudicial agreement, the trial court also granted the plaintiff's motion for voluntary dismissal, effectively discharging the matter from the jurisdiction of the court. See id. In Doe v. Boston Public Schools, 358 F.3d 20, 21-22 (1st Cir. 2004), the agreement in question was also reached privately, and the only "litigation" at issue that took place before the agreement was reached was through an administrative hearing officer. Next, in New York State Federation of Taxi Drivers, Inc. v. Westchester County Taxi & Limousine Commission, 272 F.3d 154, 158-59 (2d Cir. 2001), the district court dismissed the case as moot due to the parties entering into a private settlement.

Finally, in Smyth ex rel. Smyth v. Rivero, 282 F.3d 268, 276-81 (4th Cir. 2002), the Fourth Circuit merely held that a preliminary injunction did not make the beneficiaries of that injunction "prevailing parties" for purposes of the civil rights attorney fee statute, never addressing whether the retention of jurisdiction is sufficient. None of these cases involve an agreement made within the confines of the judicial system, let alone pursuant to an offer of judgment statute.

The only decision relied on by the dissent that does involve an offer of judgment statute actually undermines the dissent's own argument. In Utility Automation 2000, Inc. v. Choctawhatchee Electric Cooperative, Inc., 298 F.3d 1238, 1239 (11th Cir. 2002), the plaintiff sought attorneys fees pursuant to the federal offer of judgment rule,[1] the Alabama Trade Secrets Act, and a contract entered into with the defendant. Although the United States Court of Appeals for the Eleventh Circuit awarded attorneys' fees to the plaintiff pursuant to the terms of a contract, it discussed the federal offer of judgment statute and explicitly stated that the plaintiff would also be a prevailing party because of the offer of judgment statute. Id. at 1247:

> Prior to Buckhannon, courts attempted to determine whether a party was a "prevailing party" for the purpose of recovering attorneys' fees primarily by weighing the relief obtained against the relief sought. See, e.g., Fletcher v. City of Fort Wayne, 162 F. 3d 975, 976 (7th Cir.1998). . . . In Buckhannon, however, the Supreme Court defined a prevailing party as "[a] party in whose favor a judgment is

1. Fed. R. Civ. P. 68.

rendered, regardless of the amount of damages awarded." 532 U.S. at 603 (quoting Black's Law Dictionary (7th ed. 1999)). In holding that a plaintiff was not entitled to an award of attorneys' fees when the lawsuit had been dismissed as moot, even though it appeared that the suit had induced the legislation that rendered the action moot, the Court explained that a "material alteration of the legal relationship of the parties" is necessary to permit the award. Id. at 604 (quoting Texas State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 792-793 (1989)). The Court gave two examples of judicial outcomes that satisfy this requirement: an enforceable judgment on the merits or a settlement agreement enforced through a court-ordered consent decree. Id. An enforceable judgment establishes a plaintiff as a prevailing party because the plaintiff has received at least some relief based upon the merits of a claim. Id. A consent decree also passes the test because "[a]lthough [it] does not always include an admission of liability by the defendant, . . . it nonetheless is a court-ordered 'change [in] the legal relationship between [the plaintiff] and the defendant.' " Id. (quoting Texas State Teachers at 792).

Although Buckhannon does not specifically mention Rule 68 offers of judgment, we find its rationale equally applicable in the present context. Admittedly, an offer of judgment falls somewhere between a consent decree and the minimalist "catalyst theory" the Court rejected in Buckhannon. Unlike a consent decree, the court exercises little substantive review over a Rule 68 offer; upon notification that the plaintiff has accepted the offer, the court mechanically enters judgment. However, the court does ensure that the offer conforms with the Rule (it must include costs). More importantly, an accepted offer has the "necessary judicial imprimatur" of the court, Buckhannon at 605 (emphasis in original), in the crucial sense that it is an enforceable judgment against the defendant. Thus, unlike a "defendant's voluntary change in conduct" or a purely private settlement resulting in a dismissal, a Rule 68 judgment represents a "judicially sanctioned change in the relationship between the parties." Id. Indeed, this Court recently held that a district court's approval of a private settlement along with its explicit retention of jurisdiction to enforce the settlement terms, made the settlement the functional equivalent of a consent decree as described in Buckhannon, and thus rendered the plaintiff a prevailing party under the ADA.

See American Disability Ass'n, Inc. v. Chmielarz, 289 F.3d 1315 (2002).

Id. at 1248 (emphasis supplied) (parallel citations omitted).

III. CONCLUSION

We hold that a consumer who resolves a legal action with a warrantor pursuant to Florida's offer of judgment statute constitutes a prevailing party under the MMWA and may recover attorneys' fees as allowed by that statute. Therefore, we quash the decision on review and remand for further proceedings consistent with this opinion. We also approve the decisions of the Second District Court of Appeal in Dufresne and the Third District Court of Appeal in San Martin.

It is so ordered.

PARIENTE, QUINCE, and PERRY, JJ., concur.
CANADY, C.J., dissents with an opinion, in which POLSTON and LABARGA, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

CANADY, J., dissenting.

I would affirm the Fourth District's decision for two reasons. First, the interpretation of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (MMWA) attorney-fee provision should adhere to the reasoning of Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources, 532 U.S. 598 (2001). That reasoning points to the

inescapable conclusion that the private settlement between Mady and DaimlerChrysler was insufficient to qualify Mady for the recovery of fees under the MMWA because that settlement did not involve a court-ordered or judicially sanctioned change in the legal relationship of the parties. Second, the MMWA specifically provides that a finally prevailing consumer may recover attorney fees "as part of the judgment." The statute thus clearly contemplates that attorney fees will be awarded only if some other relief is awarded by way of a judgment. No such relief was awarded to Mady.

In the MMWA, Congress authorized the award of attorney fees to the consumer only "[i]f a consumer finally prevails." 15 U.S.C. § 2310(d)(2) (emphasis added). The majority's conclusion that "a consumer who resolves a legal action with a warrantor pursuant to Florida's offer of judgment statute constitutes a prevailing party under the MMWA and may recover attorneys' fees as allowed by that statute" cannot be reconciled with Buckhannon's understanding of what is necessary for a litigant to be a prevailing party. Majority op. at 18.

In Buckhannon, the plaintiff sought an award of attorney fees and expenses as the prevailing party in a case under the Fair Housing Amendments Act of 1988 (FHAA) and the Americans with Disabilities Act of 1990 (ADA). 532 U.S. at 601. Buckhannon Board and Care Home, Inc. (BBCH), which operated care homes providing assisted living to their residents, failed a fire inspection because some of

the homes' residents were incapable of "self-preservation" under state law. Id. at 600-01. BBCH instituted an action seeking declaratory and injunctive relief on the ground that the self-preservation requirement violated the FHAA and ADA. Id. Before the case was resolved on the merits, the State eliminated the self-preservation requirement, and the case was dismissed as moot. Id. at 601. BBCH moved for costs and attorney fees, which the trial court denied. Id. at 602. BBCH "argued that they were entitled to attorney's fees under the 'catalyst theory,' which posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." Id. at 601.

The Supreme Court affirmed the denial of attorney fees, holding that the circumstances of the case could not support the conclusion that BBCH was a prevailing party. See id. at 602, 605. The Supreme Court specifically rejected the "catalyst theory," concluding that "[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties." Id. at 605. According to the Supreme Court, its caselaw reflects the settled view that "a 'prevailing party' is one who has been awarded some relief by the court." Id. at 603 (emphasis added). For example, "enforceable judgments on the merits and court-ordered consent decrees create the 'material alteration of the legal relationship of the parties' necessary to permit an award of attorney's fees." Id. at 604 (quoting Texas

State Teachers Assn. v. Garland Ind. Sch. Dist., 489 U.S. 782, 792-93 (1989)). "Although a consent decree does not always include an admission of liability by the defendant, it nonetheless is a court-ordered 'chang[e] [in] the legal relationship between [the plaintiff] and the defendant.'" Id. (alterations in original) (citation omitted) (quoting Garland, 489 U.S. at 792). Additionally, "settlement agreements enforced through a consent decree may serve as the basis for an award of attorney's fees." Id. But private settlements alone "do not entail the judicial approval and oversight involved in consent decrees." Id. at 604 n.7. Similarly, the catalyst theory is problematic because "[a] defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial imprimatur on the change." Id. at 605. Indeed, the Supreme Court emphasized that "[n]ever have we awarded attorney's fees for a nonjudicial 'alteration of actual circumstances.'" Id. at 606.

The Supreme Court considered the argument that "prevailing party" should be read to include the "catalyst theory" based on legislative history which included a committee report stating that "parties may be considered to have prevailed when they vindicate rights . . . without formally obtaining relief." Id. at 607. The Supreme Court expressed its "doubt that legislative history could overcome . . . the rather clear meaning of 'prevailing party'—the term actually used in the statute." Id. The Supreme Court concluded that "the legislative history cited by petitioners

is at best ambiguous as to the availability of the 'catalyst theory' for awarding attorney's fees." Id. at 607-08. Such legislative history was not sufficient to displace the well-established meaning of "prevailing party": "Particularly in view of the 'American Rule' that attorney's fees will not be awarded absent 'explicit statutory authority,' such legislative history is clearly insufficient to alter the accepted meaning of the statutory term." Id. at 608 (citing Key Tronic Corp. v. United States, 511 U.S. 809, 819 (1994)).

Although Buckhannon only dealt with the fee-shifting provisions of the FHAA and the ADA, there is no basis for applying a different line of reasoning to the MMWA. The Buckhannon court understood "prevailing party" as a legal term of art to be interpreted consistently across fee-shifting statutes. 532 U.S. at 603 n.4. "[T]he principles underlying Buckannon's holding are broadly stated and are not statute-specific." Doe v. Boston Pub. Sch., 358 F.3d 20, 25 (1st Cir. 2004); see also John T. v. Del. Cnty. Intermediate Unit, 318 F.3d 545, 556-57 (3d Cir. 2003) (applying Buckhannon to the Individuals with Disabilities Education Act and noting that "Buckhannon heralded its wider applicability"). Indeed, the Buckhannon court referenced the MMWA when it cited the appendix in Marek v. Chesny, 473 U.S. 1, 43-51 (1985) (appendix to opinion of Brennan, J., dissenting), which lists over 100 federal fee-shifting statutes, including the MMWA. See Buckhannon, 532 U.S. at 603. In a footnote immediately following the reference

to the Marek appendix, the Supreme Court stated: "We have interpreted these fee-shifting provisions consistently, and so approach the nearly identical provisions at issue here." Id. at 603 n.4 (citation omitted). The fact that the text of the MMWA reads "finally prevails" instead of "prevailing party" is thus of no consequence.

When we are called on to interpret and apply a federal statute authorizing the award of attorney fees to a prevailing party, we are bound by Buckhannon's explication of what it means to be a prevailing party. We should diverge from Buckhannon's reasoning only when the federal statute at issue provides a clear basis for concluding that Congress did not use the prevailing-party terminology in the "traditional 'term of art' sense" explained in Buckhannon. T.D. v. LaGrange Sch. Dist. No. 102, 349 F.3d 469, 475 (7th Cir. 2003). Here, there is no such basis.

Under Buckhannon, the mere entry of a settlement agreement is not sufficient to confer "prevailing party status." Buckhannon is crystal clear in its holding that a litigant can be considered a prevailing party only when the litigant "has been awarded some relief by the court." 532 U.S. at 603 (emphasis added). Where the parties have entered a settlement, "[t]here must be some official judicial approval of the settlement and some level of continuing judicial oversight." LaGrange Sch. Dist. No. 102, 349 F.3d at 479 (emphasis added). There can be no "'judicial imprimatur' on the cha[n]ge" in the legal relationship of the parties as required by Buckhannon in the absence of such "official judicial approval" of a

settlement. Id. at 474, 479; see also John T., 318 F.3d 545 at 558 (noting that a stipulated settlement could confer prevailing party status under circumstances where the settlement (1) contained mandatory language, (2) was entitled "Order," (3) bore the signature of the district court judge, not the parties' counsel, and (4) provided for judicial enforcement); Util. Automation 2000, Inc. v. Choctawhatchee Elec. Co-op., Inc., 298 F.3d 1238, 1248-49 (11th Cir. 2002) (finding plaintiff prevailed where district court, pursuant to Federal Rule of Civil Procedure 68, entered "an enforceable judgment against the defendant" based on accepted offer of judgment); Smyth ex rel. Smyth v. Rivero, 282 F.3d 268, 281 n.10 (4th Cir. 2002) (holding that its precedent "[upholding] awards of attorney's fees based on private settlements not integrated into consent decrees or court orders . . . do[es] not survive Buckhannon's rejection of private settlements as a basis for prevailing party status."); N.Y. State Fed'n of Taxi Drivers, Inc. v. Westchester Cnty. Taxi & Limousine Comm'n, 272 F.3d 154, 158-59 (2d Cir. 2001) (reversing grant of fees where the parties entered a private settlement and the district court simply entered an order dismissing the case as moot).

Here, there was no award of "some relief by the court," no "official judicial approval of the settlement," and no "judicial imprimatur" on the change in the parties' relationship. As the Fourth District noted, "[t]here simply was no court-ordered change in the relationship of the parties in this case by the plaintiff's

acceptance of DaimlerChrysler's proposal for settlement." Mady, 976 So. 2d at 1215. Unlike the situation where there is a consent decree, the trial court here did not review or approve the agreement and played no role in changing the legal relationship between the parties. The court had no involvement whatsoever in the settlement entered into by the parties. That reality is not altered by the majority's bare assertion that "any offer made and accepted pursuant to Florida's offer of judgment statute is **. . .** under the auspices of the court in which the offer is made and accepted" and thus "bears the imprimatur of the court." Majority op. at 6-7. Imprimatur means "approval." Webster's Third New International Dictionary of the English Language 1137 (1993). Contrary to the majority's assertion, a judicially enforceable agreement is not equivalent to a judicially approved or sanctioned agreement. The prospect that some relief may be available in the future does not meet Buckhannon's requirement that a litigant "has been awarded some relief by the court." 532 U.S. at 603 (emphasis added).

In both San Martin v. DaimlerChrysler Corp., 983 So. 2d 620 (Fla. 3d DCA 2008), and Dufresne v. DaimlerChrysler Corp., 975 So. 2d 555 (Fla. 2d DCA 2008), the district courts—like the majority here—inappropriately focus on the parties' actions rather than on judicial action to determine whether the settlements were akin to consent decrees. In San Martin, the court stated that "the use of the procedural vehicle [section 768.79, Florida Statutes] as it was employed by the

parties in this case removes their arrangement from that of a private settlement or voluntary cessation." 983 So. 2d at 625. Similarly, the court in Dufresne focused on the nature of the settlement and the fact that the settlement pursuant to section 768.79 gave the trial court the authority to enforce the agreement. 975 So. 2d at 557. However, Buckhannon's reasoning necessarily turns on the court's actions—not the private parties' actions—as the basis for determining whether there is a judicially sanctioned change in the legal relationship of the parties.

Beyond the "finally prevails" terminology in the statute, the text of the attorney-fee provision of the MMWA expressly points to the conclusion that attorney fees will be awarded only in conjunction with other relief from the court. The MMWA provides that "[i]f a consumer finally prevails . . . , he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended)." 15 U.S.C. § 2310(d)(2) (emphasis added). The statute thus provides that the award of attorney fees is ancillary to the granting of other relief by the court. The statute does not contemplate that fees will be awarded apart from some other relief obtained by way of a judgment.

Mady relies on legislative history to support his argument that Buckhannon's reasoning should not apply to the MMWA. Mady cites a Senate committee report that states that an injured consumer "may resort to formal

adversary proceedings with reasonable attorney's fees available if successful in the litigation (including settlement)." S. Rep. No. 93-151, at 22-23 (1973). This argument is no more persuasive than the legislative-history argument rejected in Buckhannon. Mady's argument should be rejected for the same reasons that the Supreme Court rejected the similar argument presented in Buckhannon. The legislative history relied on by Mady is at the very best ambiguous. Although it mentions "settlement," it is silent concerning whether such a settlement must be sanctioned by a judgment entered by the court. Such ambiguous legislative history "is clearly insufficient to alter the accepted meaning" of the statutory text. Buckhannon, 532 U.S. at 608. The text of the MMWA is if anything clearer on the question at issue than was the text considered by the court in Buckhannon.

Accordingly, I would affirm the Fourth District's decision that is on review and disapprove Defresne and San Martin.

POLSTON and LABARGA, JJ., concur.

Application for Review of the Decision of the District Court of Appeal - Certified Direct Conflict of Decisions

Fourth District - Case No. 4D07-842

(Palm Beach County)

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