STATE OF MICHIGAN

COURT OF APPEALS

JOHN ABELA and BARBARA ABELA, Plaintiffs-Appellees, v GENERAL MOTORS CORPORATION, Defendant-Appellant.	FOR PUBLICATION July 15, 2003 9:00 a.m. No. 236238 Oakland Circuit Court LC No. 99-018213-CK Updated Copy September 12, 2003

Before: Griffin, P.J., and Murphy and Jansen, JJ.

MURPHY, J. *(concurring).*

I concur with the majority that we are required to conclude that warranty claims arising under the Magnuson-Moss Warranty Act (MMWA), 15 USC 2301 *et seq.*, may be subject to valid binding arbitration agreements in light of the holdings in *Davis v Southern Energy Homes, Inc*, 305 F3d 1268 (CA 11, 2002), and *Walton v Rose Mobile Homes LLC*, 298 F3d 470 (CA 5, 2002). We are bound by the authoritative holding of a federal appellate court concerning interpretation of a federal statute absent a conflict among the various federal appellate circuits. *Ann Arbor Housing Comm v Wells*, 240 Mich App 610, 614 n 4; 618 NW2d 43 (2000). A review of federal appellate case law reveals no conflict with the holdings in *Davis* and *Walton, supra*, although there has been a split of authority in the federal district courts and in state courts as acknowledged by the majority.

I also concur with the majority that plaintiffs' claim under Michigan's lemon law, MCL 257.1401 *et seq.*, is precluded by the doctrine of preemption, which is predicated on the Supremacy Clause, US Const, art VI, cl 2, and which mandates state courts to enforce the substantive provisions of the Federal Arbitration Act (FAA), 9 USC 1 *et seq.*, regardless of state law to the contrary, unless the state law concerns the validity, revocability, and enforceability of contracts generally. *Doctor's Associates, Inc v Casarotto*, 517 US 681, 686-688; 116 S Ct 1652; 134 L Ed 2d 902 (1996); see also *DeCaminada v Coopers & Lybrand, LLP*, 232 Mich App 492, 498; 591 NW2d 364 (1998).

I write separately to merely voice my disagreement with the federal appellate court rulings on the interpretation of the MMWA and the FAA. I agree with the dissenting opinion of Chief Judge King in *Walton, supra* at 480. After a very reasoned analysis, Chief Judge King concluded:

> Accordingly, because I find that Congress has not "directly spoken to the precise question" whether binding arbitration clauses in written warranties governed by the MMWA are enforceable, and because the FTC's construction of the statute is eminently reasonable, I would defer to the Commission's expertise and affirm the district court's judgment refusing to compel arbitration of the Waltons' written warranty claims. [*Id.* at 492.]

If we were not obligated to apply the majority opinion from *Walton* and the holding in *Davis*, I would conclude that the MMWA, as reasonably interpreted by the FTC,[1] precludes the application of binding arbitration agreements to claims arising under the MMWA for the reasons set forth by Chief Judge King in *Walton, supra* at 480-492.

I concur.

/s/ William B. Murphy

[1] Federal Trade Commission.