IN THE SUPREME COURT

STATE OF GEORGIA

SUBODH RAYSONI	*	
	*	
Appellant/Plaintiff,	*	
	*	
vs.	*	Case No. S13G1826
	*	
PAYLESS AUTO DEALS, LLC, and AHSAN UI-HAQUE	*	
	*	
	*	
Appellees/Defendants.	*	

BRIEF OF AMICI CURIAE ATLANTA LEGAL AID SOCIETY, INC., GEORGIA WATCH, THE NATIONAL ASSOCIATION OF CONSUMER ADVOCATES, AND THE NATIONAL CONSUMER LAW CENTER.

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INTEREST OF AMICI CURIAE IN THIS APPEAL

Amici Atlanta Legal Aid Society, Inc., Georgia Watch, the National Association of Consumer Advocates, and the National Consumer Law Center file this brief to support Appellant's positions on its claims under the Fair Business Practices Act.

The Atlanta Legal Aid Society, Inc. ("ALAS") is a provider of legal services for low and moderate-income persons in the core, five-county Atlanta metropolitan area. ALAS was originally founded in 1924 with a focus of protecting World War I veterans from abusive predatory lending practices. Although ALAS has expanded its practice areas in its 90-year history, much of its attorneys' attention is still focused on consumer cases. In 2013 alone, ALAS received 3,047 applications for assistance with consumer issues. Many of these cases involved used car transactions, including misrepresentations as to vehicle condition or quality.

Founded in 2002, Georgia Watch is a statewide consumer advocacy organization working to empower and protect Georgia consumers on matters that impact their wallets and quality of life. Through education, advocacy and policy development, Georgia Watch focuses on safeguarding consumer protections in personal finance, as well as ensuring lower utility bills, cleaner energy, access to quality, affordable healthcare, protecting the right to trial by jury and promoting access to the courts.

The National Association of Consumer Advocates ("NACA") is a national non-profit of consumer advocates, whose membership includes both private and public sector lawyers, legal services lawyers, and law professors. In pursuit of its mission – justice for all consumers – NACA maintains a national forum for consumer advocates to share information and serves as a voice for consumers and its members to curb unfair and abusive business practices. NACA has filed amicus briefs in a number of leading consumer protection cases before the United States Supreme Court and other courts across the country.

Founded in 1969, the National Consumer Law Center ("NCLC) is a national, non-profit research and advocacy organization. NCLC draws on over forty years of expertise to provide information, legal research, and policy analysis to Congress, state legislatures, administrative agencies, and courts. The Supreme Court of the United States has cited its treatises with approval.

This case presents important issues for this Court's consideration, and illustrates that Georgia jurisprudence has departed from the plain language of the Fair Business Practices Act. The result of these developments is shown here: many consumer transactions in Georgia have become less about fair bargaining, and more about taking advantage of consumers. This dynamic has an especially harsh impact on low-income consumers, whose lack of financial sophistication puts them at a disadvantage when negotiating these transactions.

ARGUMENT

This Court, in its Order granting the Writ of Certiorari, requested that the parties address a specific question:

> Did the Court of Appeals err in affirming the trial court's grant of judgment on the pleadings to the defendant? Compare Novare Group, Inc. v. Sarif, 290 Ga. 186 (2011) with City Dodge, Inc. v. Gardner, 232 Ga. 766 (1974). See also O.C.G.A. § 10-1-393(c); Johnson v. GAPVT Motors, Inc., 292 Ga. App. 79, 85 (2008).

This brief will address this question with respect to the Georgia Fair Business Practices Act ("FBPA"). O.C.G.A. § 10-1-391 et. seq.

The cases and statute that the Court cites in its Order exemplify two vastly different approaches in interpreting the FBPA. Under the Johnson line of cases, the trier of fact determines whether a consumer has been damaged by a misrepresentation despite contract language that attempts to limit or disclaim the allegedly harmful misrepresentation. 292 Ga. App. at 85. In doing so, these cases take heed of O.C.G.A. § 10-1-393(c), which states that "[a] seller may not by contract, agreement, or otherwise limit the operation of this part notwithstanding any other provision of law."

However, under the Zeeman line of cases,[1] misled consumers cannot state a claim under the FBPA if the business can point to any written contractual

[1] This Court requested discussion of, among other cases, Novare v. Sarif, 290 Ga. 186 (2011). Amici respectfully submit that the twin issues of (1) whether contractual language may defeat an FBPA claim and (2) the justifiable reliance

language, no matter how obscure, to shield itself from liability. E.g., Zeeman v. Black, 156 Ga. App. 82, 87 (1980); Novare Group, Inc. v. Sarif, 290 Ga. 186 (2011). These cases further close the door to FBPA remedies by erroneously inserting an element of "justifiable reliance" into the consumer's cause of action. The Zeeman line often combines these two obstacles to FBPA claims, holding, for example, that contractual language may preclude a finding that a consumer justifiably relied upon a misrepresentation. E.g., Novare, 290 Ga. at 190 ("there can be no justifiable reliance where Purchasers are bound by their agreements, particularly where those agreements contain a comprehensive merger clause"). No case in this line discusses how contractual bars to FBPA claims or a justifiable reliance element may be squared with O.C.G.A. § 10-1-393(c). Amici respectfully submit that Johnson and its sister cases take the correct approach, and pay proper attention and deference to the statutory language of the FBPA.

I. The FBPA Provides Strong Consumer Remedies.

A. Deception of a Consumer That Causes Damage Is a Violation of the FBPA.

The FBPA states that "[a]ny person who suffers injury or damages…as a result of consumer acts or practices in violation of this part…may bring an action

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doctrine as applied to the FBPA both have their roots in Zeeman v. Black, 156 Ga. App. 82 (1980). We thus use the shorthand "the Zeeman line of cases" throughout this brief to refer to the cases, including Novare, that have held that justifiable reliance is a necessary element of a FBPA claim and that contractual language may, as a matter of law, defeat a claim under the statute.

… to seek equitable injunctive relief and to recover his general and exemplary damages sustained as a consequence thereof." O.C.G.A. § 10-1-399 (a) (emphasis added). A claim under the FBPA thus has "three elements: a violation of the Act or its rules, causation, and injury." Johnson, 292 Ga. App. at 84. The causation requirement is a simple one: damages caused "as a result" or "as a consequence" of a violation are recoverable. There is no mention of "justifiable reliance" in the statutory description of the elements of a claim. This is particularly notable given that the elements of a claim are specifically spelled out in Section 399(a).

In addition, the statute provides for two interpretive tools that must be used by courts in deciding cases under the FBPA, both of which also require rejection of Appellee's arguments. First, courts must interpret the FBPA consistently with the federal courts' interpretation of the FTC Act. O.C.G.A. § 10-1-391(b). Second, the statute requires that it be interpreted in a manner most consistent with protecting the rights of consumers. O.C.G.A. § 10-1-391(a). The text of the FBPA and its interpretive provisions will be discussed in turn below.

B. Section 10-1-393(c) Controls In This Case.

The FBPA specifically prohibits sellers from using contractual language to avoid the FBPA's application. O.C.G.A. § 10-1-393(c) provides:

> A seller may not by contract, agreement, or otherwise limit the operation of this part notwithstanding any other provision of law.

This statutory language requires reversal of the Court of Appeals' decision in the present case. That decision held that contractual language may, as a matter of law, deny a consumer the opportunity to prove that he or she was misled. Raysoni v. Payless Auto Deals, LLC, 323 Ga. App. 583, 587-88 (2013). The FBPA prohibits misrepresentations that harm consumers. Thus the seller that uses contractual language that purports to disclaim prior misrepresentations does so seeking to avoid the application of or "limit the operation" of the FBPA, in violation of O.C.G.A. § 10-1-393(c).[2]

A long line of Georgia cases has thus held that misrepresenting the quality of a vehicle being sold to a consumer creates a claim under the FBPA, even in the face of an "as is" or merger clause in the sales contract or related documents, so long as the consumer can show injury in fact. E.g., Johnson, 292 Ga. App. 79 (2008) (defendants' "argument that the merger clause in the purchase agreement prevents [consumer] 'from standing on any representation allegedly made by a

[2] Appellee suggests that a merger clause does not "limit the FBPA." (Appellee's Br. at 11.) To the contrary, such clauses, if upheld universally and as a matter of law, permit individuals and businesses to violate the terms of the FBPA with impunity, by making misrepresentations in the consumer marketplace, then avoiding liability by contracting around those very same misrepresentations. A contractual provision that removes a seller's violation entirely from the FBPA's reach could not be more directly effective in limiting the "operation" of the FBPA. This reading does not prohibit a contract from "specif[ying] the terms of a sale," as Appellee claims, nor even bar the seller from attempting to provide appropriate warnings to buyers; it merely keeps contractual disclaimers from being used to avoid liability as a matter of law despite actual deception of consumers.

salesman' directly contradicts the express provisions of the [FBPA]," citing O.C.G.A. § 10-1-393(c)); Marrale v. Gwinnett Place Ford, 271 Ga. App. 303 (2005) (summary judgment on FBPA claim in favor of defendant car dealership reversed, despite presence of as-is clause); Campbell v. Beak, 256 Ga. App. 493 (2002) (verdict in favor of plaintiff/car purchaser upheld despite presence of as-is clause); Catrett v. Landmark Dodge, 253 Ga. App. 639 (2002) (reversal of summary judgment in favor of car dealership who misrepresented a car as a "demonstrator" despite the fact that it had been in two crashes; as-is and merger clauses in contract).

To hold otherwise would seriously undermine the meaning of Section 393(c). A seller could insert a merger clause into its contract, make verbal misrepresentations concerning its goods that violated the FBPA, and still expect to win in court because the contract clause would, as a matter of law, defeat any potential FBPA claim. Such a seller would plainly be avoiding the application of the FBPA "by contract" in violation of Section 393(c). A violation of the FBPA would be transformed into a non-violation: a seller could make misrepresentations freely, so long as it purported to take them back in the fine print.

The Court of Appeals' holding that contractual language may, as a matter of law, defeat FBPA claims runs headlong into Section 393(c). It also runs afoul of the two provisions in the statute that describe how the FBPA is to be interpreted.

C. The FBPA Must Be Interpreted Consistently with the FTC Act.

The statutory instructions for interpreting the FBPA direct that it be interpreted consistent with the Federal Trade Commission ("FTC") Act.

> It is the intent of the General Assembly that this part be interpreted and construed consistently with interpretations given by the Federal Trade Commission in the federal courts pursuant to Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. Section 45(a)(1)), as from time to time amended.

O.C.G.A. § 10-1-391(b).

The FBPA's touchstone, the FTC Act, is the general purpose federal consumer protection statute. It provides that "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are … unlawful." 15 U.S.C. § 45(a)(1). The FTC Act empowers the Federal Trade Commission to bring actions for injunctive and compensatory relief on behalf of the consuming public.

The FTC has consistently argued, and federal courts interpreting the FTC Act have consistently agreed, that merger or as-is clauses or other disclaimers may not defeat actions brought by the FTC. E.g., In re Giant Food, Inc., 61 F.T.C. 326, at *17-20 (1962) (fine print disclaimers insufficient to cure misleading impression of advertisement); In re Macmillan, Inc., 96 F.T.C. 208, at *185 (1980) ("[o]nce a misleading overall impression has been created… disclaimers, or caveats are not likely to save the consumer from being misled"). The FTC has prosecuted many

cases on this issue, and won. See e.g., FTC v. Cyberspace.com, LLC, 453 F.3d 1196, 1200 (9th Cir. 2006) (internet company mailed unsolicited checks to consumers that appeared to be regular checks but actually created binding agreement for internet service; "fine print notices" did not overcome net impression of misrepresentations); FTC v. Gill, 71 F. Supp. 2d 1030, 1044 (C.D. Cal. 1999) (discussing contractual misrepresentations, "[f]irst, the disclaimer is not included in the representations. It is found on the contract that consumers eventually sign with the defendant. Therefore, because each representation must stand on its own merit, even if other representations contain accurate, non-deceptive information, that argument fails. Second, a disclaimer does not automatically exonerate deceptive activities"); FTC v. Affiliate Strategies, Inc., 849 F. Supp. 2d 1085, 1106 (D. Kan. 2011) (contract disclaimer did not defeat false "net impression" that consumers of a guide concerning government grants would receive grant money).

The FTC Act thus does not allow contract provisions to automatically overcome misrepresentations that cause harm to the consumer. Given that the Georgia legislature directed that the FBPA must be interpreted "consistently" with the FTC Act, the above reasoning should be applied in this matter. Failure to follow this interpretive instruction would violate the plain language of the FBPA.

D. The FBPA Also Mandates That it be Interpreted Broadly to Protect Consumers.

In addition, the stated purpose of the FBPA is "to protect consumers and legitimate business enterprises from unfair or deceptive practices in the conduct of any trade or commerce." O.C.G.A. § 10-1-391(a). The General Assembly, in passing the statute, declared that its intent was that such unfair or deceptive practices "be swiftly stopped" and that the statute should be "liberally construed and applied to promote its underlying purposes and policies." Id. It is important to note that this is not the sort of "legislative intent" that must be pieced together from committee reports or legislator's statements, but the express instructions of the legislature, written into the body of the statute itself.

The context in which the statute was adopted further supports the idea that contract provisions cannot automatically overcome misrepresentations that caused harm to the consumer. At the time of the passage of the FBPA, existing Georgia law, as stated in City Dodge v. Gardner, 232 Ga. 766 (1974), already allowed consumers bringing a fraud action to demonstrate that they were harmed by misrepresentations even where there were conflicting contract provisions. Id. at 771. It is inconceivable that the FBPA, a remedial statute, intended to provide lesser protection.

Finally, state unfair and deceptive practices statutes were passed in recognition of the fact that "the common law imposed requirements that made it

exceedingly difficult for consumers to succeed on claims brought against business defendants." Mark E. Budnitz, Buyer Beware: Georgia Consumers Can't Rely On the Fair Business Practices Act, 6 John Marshall Law J. 507, 515 (Spring 2013) (citations omitted) (criticizing some judicial interpretations as inconsistent with the statute and the Legislature's stated intent). Applying the common law standard to a statute passed precisely to avoid such a standard defeats the legislative intent and remedial purpose behind the FBPA.

II. Zeeman and Subsequent Decisions Have Misinterpreted the FBPA.

A. Case Law Regarding the Interaction of Contractual Language and FBPA Claims Is in Conflict.

Despite the unambiguous language of the FBPA, it has been misinterpreted and weakened by a series of incorrect decisions, beginning with Zeeman v. Black, 156 Ga. App. 82 (1980). The failure of the Zeeman line of cases to consider Section 393(c) has resulted in a body of conflicting case law in Georgia. Compare Zeeman v. Black, 156 Ga. App. 82 (1980) and Novare Group, Inc. v. Sarif, 290 Ga. 186 (2011) on the one hand and City Dodge v. Gardner, 232 Ga. 766 (1974) and Johnson v GAPVT Motors, Inc., 292 Ga. 85 (2008) on the other. Much of the conflict was created by Zeeman's creation of a "justifiable reliance" element as part of a FBPA claim, which has transformed, over time, into the dispute over contractual disclaimers present in this matter. Amici submit that the Zeeman and

Johnson lines of cases are irreconcilable and that the reasoning of Johnson should prevail.

In Johnson v. GAPVT Motors, Inc. the court held that a merger clause "directly contradicts the express provisions of the [FBPA]" and cannot be used to bar a claim under the statute. 292 Ga. App. 79, 85 (2008). Johnson's facts mirror those of the instant case. There, a consumer sought to purchase a motor vehicle from the defendant car dealership that was labeled and identified as a special edition, and therefore worth significantly more than the ordinary version of the car. 292 Ga. App. at 80-81. A dealership salesperson assured the consumer that the vehicle was in fact the desired special edition, and the consumer bought the vehicle on that (mistaken) understanding. Id. The Court of Appeals held that the plaintiff-consumer stated a FBPA damages claim arising from the misrepresentations by the dealership and salesperson, despite a merger clause in the sales contract. Id. at 85. In affirming the plaintiff's claim, the court recognized the importance of Section 393(c), and quoted that prohibition as essential to its holding. Johnson gives effect to statutory language that is exactly on point in this matter. 292 Ga. App. at 85 (citing O.C.G.A. § 10-1-393(c)).

B. The Zeeman Line Failed to Consider Controlling Statutory Provisions of the FBPA.

The Zeeman line of cases takes a different approach. The key differences lie in Zeeman's importation of the fraud element of "justifiable reliance" into the

FBPA. This has led to Georgia courts holding that contractual language alone may defeat a FBPA claim as a matter of law. E.g. Novare Group, Inc. v. Sarif, 290 Ga. 186, 190 (Ga. 2011) (stating, without analyzing the FBPA, that "[j]ustifiable reliance is an essential element of Purchasers' fraud, negligent misrepresentation, and FBPA claims").

Zeeman v. Black erroneously created a justifiable reliance element by simply misreading the FBPA. 156 Ga. App. 82, 87 (1980). The FBPA requires only that a consumer show that she was harmed "as a result of" an unfair or deceptive practice. O.C.G.A. § 10-1-399(a). To support the proposition that the FBPA has a justifiable reliance element like the tort of misrepresentation, the Zeeman court cited O.C.G.A. § 10-1-399(b). Zeeman states:

> "Thus a private FBPA claim has three elements: a violation of the Act, causation, and injury. Subsection (b) of Code Ann. § 106-1210 further requires written notice as a prerequisite to filing suit "reasonably describing the unfair or deceptive act or practice *relied upon* . . ." (emphasis supplied.) Since the Act contemplates notice of the deception relied upon as the prerequisite to a suit for recovery of damages resulting from that deception, we construe Code Ann. § 106-1210 as incorporating the "reliance" element of the common law tort of misrepresentation into the causation element of an individual claim under the FBPA."

156 Ga. App. at 86-87. It is here that the Zeeman court erred.

Section 399(b) is distinct and separate from the section describing the elements of a FBPA claim. Compare O.C.G.A. § 10-1-399(a) with

O.C.G.A. § 10-1-399(b). Section 399(b) deals only with an ante litem notice meant to make respondents aware of a potential FBPA claim. It has no bearing on the elements of an FBPA claim, which are described in Section 399(a).

Instead, Section 399(b) simply requires the plaintiff to notify the future defendant of the conduct that is the basis (the conduct that is "relied upon") of the potential plaintiff's assertion that there has been an FBPA violation. Nothing about this requirement purports to create and transmit over to Section 399(a) a new element of a FBPA cause of action. In particular, Section 399(b), even if hypothetically read to import a "reliance" element into a FBPA claim, does not come close to requiring the more onerous fraud concept of "justifiable reliance."

A further demonstration that Section 399(b) cannot be read to create a new element for FBPA claims is that it is not even applicable to all such claims. The notice required by Section 399(b), and therefore its requirement to send notice of the act or practice "relied upon," is not applicable to (1) claims against out-of-state defendants and (2) counterclaims. This omission would suggest that consumers that (1) raise the FBPA as a counterclaim or (2) pursue FBPA claims against out-of-state defendants would not need to show justifiable reliance as an element of their claim, while all other consumers would – an absurd result. This makes clear that 399(b) cannot have intended to add a reliance element to FBPA claims.

Simply put, the Zeeman decision was without foundation in the statute it was applying. Furthermore, Zeeman and subsequent cases fail to grapple with or address Section 393(c) at all. No attempt is made at explaining or even contemplating how merger clauses or other contractual terms can defeat claims when Section 393(c) explicitly states that the effect of the FBPA cannot be limited by contract.[3]

This incorrect reading has persisted.[4] This Court adopted Zeeman's holding in Tiismann v. Linda Martin Homes Corp., 281 Ga. 137, 138-39 (2006), relying on the argument that since Zeeman had been decided, the Georgia legislature had amended the FBPA several times without altering Zeeman's interpretation, rendering Zeeman the law. This principle of "legislative acquiescence" does not support continued life for Zeeman.

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[3] Zeeman's omission to discuss Section 393(c) is understandable. In Zeeman, the court's finding of lack of justifiable reliance had nothing to do with contract disclaimers. In that case, the purchaser alleged an oral misrepresentation as to the size of a lot purchased. The Court found no reasonable reliance because the purchaser had actually walked the land and because the recorded plat showed the size of the lot. 156 Ga. App. at 87.

[4] And in some respects, worsened. Compare Zeeman v. Black, where a buyer of real estate who claimed he had been deceived as to the size of the purchased lot had walked the grounds of the lot before the sale and made no independent effort to ascertain or confirm its represented size, 156 Ga. App. at 87, with the present case, where a purchaser of a car specifically inquired about its condition and received what he believed to be reputable third-party verification of its crash history. Raysoni, 323 Ga. App. at 584. The Zeeman court suggests that some due diligence by the buyer would have allowed their claim to survive; the Raysoni court suggests that no level of diligence is sufficient in the face of a merger clause.

First, there can be no meaningful acquiescence where the backdrop against which the Legislature omits to act is cases in conflict. This Court has identified conflicting lines of cases in Georgia on the key issue: those like Zeeman that adopt a justifiable reliance element, contradicted by those like Johnson that cite Section 393(c) and allow a trier of fact to determine causation under the statute. Compare Novare Group, Inc. v. Sarif, 290 Ga. 186 (2011) with City Dodge, Inc. v. Gardner, 232 Ga. 766 (1974) and Johnson v. GAPVT Motors, Inc., 292 Ga. App. 79, 85 (2008). The General Assembly could not acquiesce in uncertain law.

Second, Georgia case law makes plain that the principle of legislative silence must yield when justice requires it, Garza v. State, 284 Ga. 696, 702-03 (2008) (superseded by statute),[5] or when the language of the statute "is plain." Norred v. Teaver, 320 Ga. App. 508, 512 (2013) (full court) ("[w]here the language of a statute is plain and unambiguous, judicial construction is not only unnecessary but forbidden") (overturning prior readings of statute, rejecting dissent's invocation of legislative silence). Indeed, this Court has recently expressed significant doubts about the continuing usefulness of the entire doctrine. State v. Jackson, 287 Ga. 646, 660 n.8 (2010) (overruling a decision from 29 years

[5] The policy reason articulated in favor of the principle of legislative silence is often one of stability. That policy argument makes little sense here, where (a) the law is uncertain and unstable and (b) when the "stability" allegedly preserved would be that of permitting businesses to deceive consumers and then avoid liability via fine-print, complex contracts.

prior and stating that "[l]egislative silence is a poor beacon to follow in discerning the proper statutory route. . . . The verdict of quiescent years cannot be invoked to baptize a statutory gloss that is otherwise impermissible" (quoting Zuber v. Allen, 396 U.S. 168, 185 n.21 (1969)).

These concerns are amplified here, as upholding Novare, Zeeman, and the like would not only continue the misinterpretation of Section 399(a) and (b) and the incorrect importation of a justifiable reliance element; it would also require this Court to ignore and render ineffective the plain language of Section 393(c). This Court would thus depart from the plain language of at least four previously overlooked provisions of the FBPA: Section 393(c), Section 399(a), and the interpretive provisions of Section 10-1-391(a) and (b),[6] in order to perpetuate an incorrect reading of one provision, Section 399(b). The legislative acquiescence doctrine does not require this Court to overlook fresh indications of the General Assembly's handiwork.

Zeeman and its progeny linger like a specter over the FBPA and its attempts to protect consumers, frustrating the law's purposes, and inconsistent with the language of the statute itself. This cumulative effect is most commonly seen in cases, like this one, which concern merger clauses or as-is clauses.

[6] See the discussion of these interpretive provisions, supra at pp. 9-12, which require the FBPA to (a) be interpreted liberally and favor of consumers and (b) construed consistent with interpretations of the FTC Act.

C. A Correct Interpretation of the FBPA.

The Court of Appeals in this case and this Court in Novare held that contract disclaimers require dismissal as a matter of law of claims alleging harm caused by unfair and deceptive acts and practices. The Johnson line does not render contract terms irrelevant. Instead the Act and its implementing decisions require a fact finder to determine whether an unfair or deceptive act caused harm. The terms of the contract may well be relevant to that inquiry, because a buyer alleging misrepresentation must rely in fact upon representations in order to suffer harm, and contract disclaimers if both read and understood may be relevant to injury or the lack of it. Following the Johnson line of cases simply means that a fact finder must determine causation, rather than having cases resolved based upon contractual disclaimers that may or may not have countered any individual buyer's impressions as created by prior misrepresentation.

Like Appellant, we do not attempt to say what the ultimate result in the many cases decided under the Zeeman line should have been, only that in some of those cases, the fact-finder should have been given the opportunity to decide whether an unfair business practice had caused harm; and that in any case, O.C.G.A. § 10-1-393(c) prevents contract disclaimers from forming the basis for dismissal of FBPA claims as a matter of law.

CONCLUSION

Amici Curiae respectfully request that the Court reverse the Georgia Court of Appeals' determination that contractual language may defeat a FBPA claim as a matter of law.

Respectfully submitted this 19th day of May, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of the foregoing Brief of Amici Curiae upon the following counsel of record via United States mail, with sufficient postage affixed, and by the Court's electronic filing system:

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