

**SUPREME COURT OF FLORIDA**

LES KROL,

Petitioner,

Case No. SC19-952

v.

5th DCA Case No. 5D18-2149

GIBSON AUTO SALES, INC., d/b/a  
GIBSON TRUCK WORLD,

L.T. Case No. 2017-CA-049992

Respondent.

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**RESPONDENT'S RESPONSE IN OPPOSITION TO PETITIONER'S  
MOTION FOR ATTORNEY'S FEES**

Respondent, Gibson Auto Sales, Inc. d/b/a Gibson Truck World ("Gibson Auto"), by and through its undersigned counsel, and pursuant to the Florida Rules of Appellate Procedure, hereby files this, its Response in Opposition to Petitioner's Motion for Attorney's Fees filed with this Court on January 14, 2020, and states as follows:

1. On or about November 6, 2017, Petitioner, Les Krol ("Petitioner"), filed the underlying lawsuit against Gibson Auto alleging claims under the Magnuson Moss Warranty Act ("MMWA"). The trial compelled the arbitration of Petitioner's claims.

2. On or about July 2, 2018, Petitioner initiated an interlocutory appeal in the Fifth District Court of Appeal, which sought the review of the trial court's non-final Order Granting Defendant's Motion to Compel Arbitration.

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3. On or about May 10, 2019, the Fifth District Court of Appeal entered its opinion affirming the trial court's order granting the motion to compel arbitration. On the same date, the Fifth District Court of Appeal also entered its order denying Petitioner's Motion for Attorney's Fees and Costs.

4. On or about January 14, 2020, Petitioner filed his Motion for Attorney's Fees and Costs (the "Motion") to recover his attorney's fees.

5. The Motion argues that the MMWA provides for an award of attorneys' fees to a consumer who finally prevails on the claims asserted. Thus, Petitioner argues that he is entitled to his appellate attorney's fees under Rule 9.400 of the Federal Rules of Appellate Procedure because the MMWA creates a substantive basis for an award of attorneys' fees.

6. Petitioner's claim ignores the fact that even if he were to prevail on this appeal, he would still not be the final prevailing party on the claims alleged in his Complaint against Gibson Auto. Instead, the instant petition seeks to reverse the Fifth District Court of Appeal's opinion regarding the arbitrability of MMWA claims based on the location of an arbitration provision. Thus, prevailing on this appeal would simply mean that Petitioner was correct regarding the appropriate location of an arbitration provision in warranty documents, but would not make him the final prevailing party on the MMWA claims asserted.

7. Petitioner's argument regarding his entitlement to attorney's fees ignores "the general rule that, in an interlocutory appeal, the party prevailing on the interlocutory appeal must also be the ultimately prevailing party in the trial court to be entitled to a final judgment of appellate fees from the interlocutory appeal." *Sabina v. Dahlia Corp.*, 678 So. 2d 822, 822–23 (Fla. 2d DCA 1996); *See also Allstar Builders Corporation, Inc. v. Zimmerman*, 706 So. 2d 92 (Fla. 3rd DCA 1998) ("In an interlocutory appeal, the party prevailing on the interlocutory appeal must also be the *ultimate prevailing party* in the trial court to be entitled to a final judgment of appellate fees from the interlocutory appeal. ... The prevailing party for attorney's fees purposes is the party prevailing on the significant issues tried before the court.") (internal citations omitted); *Bridgestone/Firestone, Inc. v. Herron*, 828 So. 2d 414, 418 (Fla. 1st DCA 2002) ("Ordinarily, a prevailing party in an interlocutory appeal is not entitled to recover appellate attorney's fees for the appeal unless that party also prevails on the merits of the case in the proceeding on remand.").

8. Petitioners' Motion for Attorney's Fees ignores the foregoing precedent and thus improperly asks for attorney's fees for the pending interlocutory appeal. Under current law, Petitioner has no entitlement to attorney's fees if he were to prevail on this appeal and thus his Motion must be denied.

WHEREFORE, Appellee respectfully requests that this Court enter an Order denying Petitioners' Motion for Attorneys' Fees and granting any further relief this Court deems just and proper.

Respectfully submitted on January 29, 2020.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 29, 2020, a true and correct copy of this document was served via e-mail on the following:

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