

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-10575

GEORGE TERSHAKOVEC,
DIANA TERSHAKOVEC,
JACQUES RIMOKH,
HERBERT ALLEY,
individually and on behalf of all others similarly situated,
MICHAEL DELAGARZA, et al.,

Plaintiffs-Appellees,

versus

FORD MOTOR COMPANY, INC.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:17-cv-21087-FAM

Before NEWSOM, LUCK, and TJOFLAT, Circuit Judges.

NEWSOM, Circuit Judge:

Ford Motor Company advertised its Shelby GT350 Mustang as “track ready.” But some Shelby models weren’t equipped for long track runs, and when the cars overheated, they would rapidly decelerate. A group of Shelby owners sued Ford on various state-law fraud theories and sought class certification, which the district court granted in substantial part. Ford challenges class certification on the ground that proving each plaintiff’s reliance on the alleged misinformation requires individualized proof and, therefore, that common questions don’t “predominate” within the meaning of Federal Rule of Civil Procedure 23(b)(3).

For reasons we will explain, the predominance inquiry turns on the specifics of the state laws under which plaintiffs have sued—and, in particular, on (1) whether those laws require proof of reliance, (2) if so, whether they permit reliance to be presumed, and (3) if so, under what circumstances. Having considered those questions, we hold that some of plaintiffs’ claims may be certified for class treatment, that others may not, and that some require the district court to take a closer look at applicable state-law requirements.

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I

A

The putative class representatives hail from seven states—California, Florida, Missouri, New York, Tennessee, Texas, and Washington. Each purchased one of two models of Ford’s Shelby GT350 Mustang.

The Shelby is an upgrade of the standard Mustang and, importantly here, was advertised as “an all-day track car that’s also street legal.”¹ Track-capability refers to the vehicle’s capacity to perform at higher-than-normal speeds in a controlled environment—like, say, on a racetrack. Track-readiness was a central theme in Ford’s Shelby advertising. For example, in a race-day invitation to Shelby owners, Ford’s marketing manager touted the Shelby’s “exceptional racetrack capabilities” and said that he was “sure” they were “one of the reasons you purchased your GT350—perhaps the main reason.” Other Shelby ads included descriptions like “track capable,” “track ready,” and “tested endlessly on the most challenging roads and tracks in the world,” as well as statements like, “[W]e wanted to build the best possible Mustang for the places we most love to drive—challenging back roads with a variety of corners and elevation changes—and the track on weekends.”

¹ The designer for whom the Shelby was named, Carroll Shelby, was portrayed by Matt Damon in the 2019 blockbuster *Ford v. Ferrari*. *FORD V. FERRARI* (Twentieth Century Fox 2019).

The Shelby comes in five trims. Plaintiffs are purchasers of the “Base” and “Technology” trims. Those trims lack “transmission and differential coolers,” a feature—originally included as standard on all Shelbys—that is designed to prevent engine overheating. Without these coolers, the Shelbys compensate at high RPMs by reverting to “limp mode,” a self-preservation status that reduces the vehicle’s power, speed, and performance to avoid engine damage. “Limp mode” presents a problem for car enthusiasts who want to take Ford up on its promise of “track capab[ility].”

One way that Shelby owners indulge their need for speed is by participating in “Track Days,” organized events at which drivers can take their Shelbys around controlled racetracks at triple-digit clips. According to some plaintiffs, though, “limp mode” set in after six or seven laps—about ten minutes of track time—resulting in rapid deceleration and rendering the vehicles “essentially unusable for sustained track driving,” which, they say, was “the main reason many [of them] bought the car.”

B

Plaintiffs filed this putative class action alleging, among other things, common-law fraud claims and state-specific statutory violations. Plaintiffs alleged that Ford falsely advertised all Shelbys as being track-capable, that those representations induced them to buy Shelbys, but that their Shelbys couldn’t perform as billed.

Following discovery and a hearing, the district court granted plaintiffs’ request for class certification. In particular, the court chose to create multiple state-law classes within a single class-

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action case. Although it acknowledged that, as thus structured, the case “look[ed] more like a Multi-District Litigation than a standard class action,” the court thought that this framework would “avoid the choice of law issues concomitant with a proposed nationwide class (an issue that would almost certainly defeat [Rule 23(b)(3)] predominance).” The district court separately dismissed Ford’s concerns about “the . . . difficulties in managing a class action,” Fed. R. Civ. P. 23(b)(3)(D), on the grounds that the proposed classes were “small enough” and that variations among state laws could be addressed through “appropriate jury instructions” and “multiple verdict forms that tick[ed] through the elements of the nine certified state class[es]’ statutory and common law fraud claims.”

The district court certified classes of plaintiffs whose claims arose under the common and/or statutory law of California, Florida, Illinois, Missouri, New York, Oregon, Tennessee, Texas, and Washington.² The district court also certified two classes—one in California and another in Texas—stemming from alleged breaches of implied warranties and violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* On appeal, twelve separate claims

² Each class consisted of “[a]ll persons who purchased a Class Vehicle from a Ford-authorized dealer or distributor located in [insert state here] before April [27], 2016.” Doc. 231 at 28; *see also Tershakovec v. Ford Motor Co.*, No. 17-21087-CIV, 2021 WL 3711444, at *1 (S.D. Fla. Aug. 20, 2021) (amending the “class certification order to reflect a class cut-off date of April 27, 2016” instead of April 1). The “Class Vehicles” cover Ford’s Shelby GT350 Base and Technology trims purchased during the relevant period. Plaintiffs estimate that there are 1,668 Class Vehicles nationwide.

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