

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 29, 2021

Lyle W. Cayce
Clerk

No. 20-20108

MORGAN McMILLAN, *individually and as next friend of E.G., a minor child,*

Plaintiff—Appellee,

versus

AMAZON.COM, INCORPORATED,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CV-2242

Before WIENER, COSTA, and WILLETT, *Circuit Judges.*

DON R. WILLETT, *Circuit Judge:*

This interlocutory appeal presents a single, narrow question: May Amazon be held liable as a “seller” under Texas products-liability law for third-party products sold on Amazon’s website and handled through Amazon’s Fulfillment by Amazon program? We certified this question to the Supreme Court of Texas “[g]iven the dearth of on-point caselaw and the significant potential consequences of holding online marketplaces responsible for third-party sellers’ faulty products.” *McMillan v. Amazon.com, Inc.*, 983 F.3d 194, 196 (5th Cir. 2020), *certified question*

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answered sub nom. Amazon.com, Inc. v. McMillan, No. 20-0979, 2021 WL 2605885 (Tex. June 25, 2021).

The Supreme Court of Texas has now answered the question, holding that “potentially liable sellers are limited to those who relinquished title to the product at some point in the distribution chain.” *Amazon.com, Inc. v. McMillan*, No. 20-0979, 2021 WL 2605885, at *1 (Tex. June 25, 2021). Because third-party sellers do not relinquish title to their products, “Amazon is not a ‘seller’” of those “products under Texas law.” *Id.* Accordingly, we REVERSE the district court’s conclusion that Amazon is a “seller” under Texas law with instructions to grant Amazon’s motion for summary judgment in full on remand.