DECEPTIVE TRADE PRACTICES AND WARRANTIES

MORTGAGOR IS NOT CONSUMER UNDER DTPA

James v. Wells Fargo Bank, N.A., 533 F. App'x 444 (5th Cir. 2013).

FACTS: Plaintiffs, Tommy James and Sherry Airhart ("James"), were homeowners whose loan was owned by Federal Home Loan Mortgage Corporation ("Freddie Mac") and serviced by Defendant, Wells Fargo Bank, N.A. ("Wells Fargo"). After defaulting on payment obligations, James sought to modify the loan under the Home Affordable Modification Program ("HAMP"). Wells Fargo denied the application and foreclosed on the house.

A person cannot qualify as a consumer if the underlying transaction is a pure monetary loan.

James sued Wells Fargo, alleging various causes of action, including violation of the Texas Deceptive Trade Practices Act ("DTPA"). Wells Fargo removed the case and moved to dismiss. The district court granted the motion.
HOLDING: Affirmed.
REASONING: James' DTPA claim failed as a matter of law, because James was not a consumer within the meaning of the Act. James did not seek or acquire goods or services as defined in the Act. A person cannot qualify as a consumer if the underlying transaction is a pure monetary loan, because lending money is considered neither a good nor a service. Furthermore, Texas federal courts have recently addressed similar DTPA claims and determined that a person seeking a loan modification under the HAMP while using a loan servicer does not qualify as a consumer.

A PARTY IS NOT A DTPA CONSUMER WHEN IT ARRANGES FOR SERVICES TO BE PROVIDED TO ANOTHER

Coinmach Corp. v. Aspenwood Apartment Corp., 417 S.W.3d 909 (Tex. 2013).

FACTS: Respondent, Aspenwood Apartment Corporation ("Aspenwood"), sued its lessee, Petitioner, Coinmach Corporation ("Coinmach"), for violations of the Deceptive Trade Practices Act ("DTPA"). Coinmach leased laundry rooms and operated its own machines in an apartment complex that Aspenwood bought in a foreclosure sale. Upon purchase, Aspenwood immediately gave Coinmach written notice to vacate the laundry rooms, asserting that the foreclosure sale had terminated their lease and that Coinmach had failed to safely and adequately maintain the equipment. After Coinmach did not vacate, Aspenwood asserted DTPA violations against Coinmach.

Coinmach moved for summary judgment for Aspenwood's DTPA claims. The trial court granted Coinmach's motion for summary judgment on the ground that Aspenwood was not a "consumer." The court of appeals affirmed, and Aspenwood appealed to the Supreme Court of Texas.
HOLDING: Affirmed.
REASONING: The court first discussed that the DTPA defines a "consumer" as "one who seeks or acquires by purchase or lease, any goods or services." The Court held that Aspenwood had not sought or acquired goods or services from Coinmach. Coinmach leased premises within Aspenwood's complex and paid rent, and while Aspenwood was entitled to rent payments, it was not itself a consumer of Coinmach's services.

The Court further stated that a party is not a consumer when it merely arranges for a service to be provided to its customers, even if it indirectly benefited from the service. The purpose of Coinmach's lease was to provide services to Aspenwood's tenants, not to Aspenwood itself. While Aspenwood received indirect benefits from Coinmach's services, the Court held that those services did not qualify Aspenwood as a consumer under the DTPA.

CONSUMER MUST ESTABLISH REPRESENTATION WAS A "PRODUCING CAUSE" OF DAMAGES

Bryant v. S.A.S., 416 S.W.3d 52 (Tex. App.—Houston [1st Dist.] 2013).

FACTS: Plaintiffs, the Smiths, learned about Defendant, Morgan Bryant's ("Bryant"), babysitting services from a flyer his mother, a Co-Defendant, circulated at Atascocita United Methodist Church endorsing his services. The Smiths decided to hire Bryant based on the information in the flyer. Bryant babysat for the Smiths several times, and eventually the children revealed that Bryant had molested them. Bryant pled guilty to felony charges.

The Smiths filed a DTPA claim against Bryant and his mother in connection with the representations on the flyer. The trial court entered judgment for the Smiths. Bryant appealed.
HOLDING: Reversed.
REASONING: The court listed the four elements a plaintiff must prove in a DTPA claim: (1) the plaintiff was a consumer; (2) the defendant engaged in one of a list of the activities or practices prohibited by the statute; (3) the plaintiff detrimentally relied on the false, misleading, or deceptive act or practice; and (4) the false, misleading, or deceptive act or practice was a producing cause of the plaintiff's injury. The court explained that the Smiths had to prove a cause-in-fact in order to show a producing cause, and that Bryant's misrepresentation were a substantial factor in causing the Smiths' injuries that otherwise would not have occurred.

The court clarified that even if the injury would not have happened but for Bryant's conduct, the connection may still be too attenuated to constitute legal cause. The court determined the evidence of the Smiths' hiring process showed a diminished link between misrepresentations and injuries, even if they had first relied on the flyer. The court ruled that the connection between the representations in the flyer and Bryant's presence in the Smiths' home was too attenuated to cause their injuries. Accordingly, because the Smiths failed to show a cause-in-fact, they failed to show the producing cause as required by the DTPA.

The dissent, however, took direction from the Texas Supreme Court, which has stated that producing cause and cause-in-fact are conceptually identical. From this, the dissent argued that because the Smiths testified that they would not have hired Bryant but for the representations of his mother, they had indeed shown producing cause.