

RECENT DEVELOPMENTS

DECEPTIVE TRADE PRACTICES AND WARRANTIES

BORROWER WAS NOT A CONSUMER UNDER THE DTPA

Rojas v. Wells Fargo Bank N.A., 571 Fed. Appx. 274 (5th Cir. 2014) (unpublished).
<https://www.ca5.uscourts.gov/opinions%5Cunpub%5C13/13-50884.0.pdf>

FACTS: Appellee, Wells Fargo Bank N.A. (“Wells Fargo”), foreclosed on the house of Appellant, Shannon Rojas (“Rojas”), after Rojas defaulted on her mortgage payments. Rojas brought suit seeking to quiet title and alleged breach of contract, fraud, violation of DTPA and other claims against Wells Fargo. After removal to federal court, the district court upheld Wells Fargo’s motion to dismiss the complaints for failure to state claims. Rojas appealed.

HOLDING: Affirmed.

REASONING: Under the DTPA a mortgagor only qualifies as a consumer if her “primary objective in obtaining the loan was to acquire a good or service, and that good or service forms the basis of the complaint.” Because the subsequent loan servicing and foreclosure activities formed the basis of Rojas’s claim, rather than goods or services acquired in the original transaction, the court concluded that Rojas was not a consumer under the DTPA.

MAGNUSON-MOSS WARRANTY ACT DOES NOT APPLY TO A MANUFACTURED HOME

Bennett v. CMH Homes, Inc., 770 F.3d 511 (6th Cir. 2014).
<http://law.justia.com/cases/federal/appellate-courts/ca6/13-5560/13-5560-2014-10-30.html>

FACTS: Plaintiffs, manufactured home buyers (“Plaintiffs”), purchased a manufactured home from CMH Homes, Inc. (“Defendant”). As part of the sales agreement, Defendant warranted that for new homes, installation at the initial home-site would be completed in accordance with applicable government requirements. Plaintiffs noticed defects in the home prior to closing. Defendant assured Plaintiffs that it would repair the home, but failed to do so to the Plaintiffs’ satisfaction.

Plaintiffs filed suit and claimed a breach of contract and breach of warranty under the Magnuson-Moss Warranty Act (“MMWA”). The district court found that Defendant’s installation failed to meet the applicable government requirements by including unlicensed crew members to install the manufactured home. The district court awarded damages to Plaintiffs who subsequently appealed the awarded amount. Defendant cross-appealed to challenge both liability and the damage amount in controversy.

HOLDING: Reversed and remanded.

REASONING: The MMWA limits its protections to consumer products. The court looked at both the legislative history and a canon of statutory construction in determining whether manufactured homes are consumer products under MMWA. The court reasoned that the size, construction, and permanence of Plaintiffs’ home make it more like tangible personal property than a consumer product and thus concluded that MMWA does not apply to a manufactured home.

IN PRESENTING EVIDENCE OF DETRIMENTAL RELIANCE UNDER DTPA THERE IS NO REQUIREMENT THAT A CONSUMER USE THE ACTUAL WORDS “RELY” OR “RELIANCE”

THE DTPA DOES NOT REQUIRE THE CONSUMER TO BE THE PERSON WHO ACTUALLY PURCHASED OR LEASED THE SERVICES

McLeod v. Gyr, 439 S.W.3d 639 (Tex. App. 2014).
<http://www.morelaw.com/verdicts/case.asp?n=05-12-01607-CV&s=TX&d=68305>

FACTS: Plaintiff, Alfred Gyr (“Gyr”), retained Defendant, Bruce B. McLeod (“McLeod”), to handle his immigration matters. McLeod was to file Gyr’s N-400 application for naturalization of a United States citizen. Although McLeod had never previously represented a person in connection with an N-400 application, McLeod told Gyr that he was a specialist in immigration. Gyr paid McLeod \$23,000.00 for his services in connection with the N-400 application. McLeod submitted the application three times, and it was rejected three times.

Gyr sued McLeod for deceptive trade practices. The trial court rendered a final judgment in favor of Gyr on his claims under the DTPA. McLeod filed a motion for new trial, which the trial court denied.

HOLDING: Affirmed.

REASONING: The court sought to determine how much evidence one must present to sufficiently prove detrimental reliance. A consumer may maintain a DTPA action where the use or employment by any person of a false, misleading, or deceptive act or practice that is specifically listed in the statute and relied on by the consumer to his detriment is a producing cause of the consumer’s economic damages. The court highlighted that a consumer must show that he detrimentally relied; however, there is no requirement that a consumer use the actual words “rely” or “reliance.” Asserting that such words did not necessarily have to appear in Gyr’s testimony, the court determined that Gyr presented sufficient evidence to prove his detrimental reliance on McLeod’s false representations.

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The court highlighted that it was also unnecessary that Gyr be the person who actually purchased or leased McLeod’s services to qualify as a consumer under the DTPA. McLeod argued that Gyr was not a consumer because he obtained the funds to pay McLeod from other people. The court stated that Gyr acquired McLeod’s services, and his complaint arises from false representation made in connection with the purchase of those services. The court thus concluded that Gyr had standing to show that the deceptive conduct was a producing cause of his injury.