DECEPTIVE TRADE PRACTICES AND WARRANTIES

DTPA UNCONSCIONABILITY IS AN OBJECTIVE STANDARD

WORKERS COMPENSATION STATUTE PREEMPTS DTPA.

Vause v. Liberty Ins. Corp., 456 S.W.3d 222 (Tex. App.—San Antonio 2014).
http://caselaw.findlaw.com/tx-court-of-appeals/1685261.html

FACTS: Appellant Kathryne Vause ("Vause") injured herself while working at a restaurant. The restaurant's workers' compensation insurer, Appellees Liberty Insurance Corporation and Justin A. Smith ("Liberty Insurance"), investigated and subsequently denied Vause's claim. Vause alleged that Liberty Insurance violated provisions of the insurance code and the DTPA. The trial court granted Liberty Insurance's motion for summary judgment. Vause appealed.
HOLDING: Affirmed.
REASONING: Vause argued that Liberty Insurance, as both insurer and insurer's underwriter, engaged in unconscionable trade practices by failing to adequately investigate her claim and by improperly refusing and/or delaying payment of benefits. In assessing the unconscionability of Liberty Insurance's allegations under the DTPA the court of appeals noted that an the DTPA employs an objective standard, whereby intent or knowledge of wrongdoing on the part of the alleged offending party, is irrelevant. The court of appeals rejected Vause's DTPA claims in their entirety by holding that the workers' compensation statute under the insurance code was Vause's exclusive remedy, thereby precluding recovery under the DTPA.

CONSUMER CREDIT

TRUTH IN LENDING REQUIRES A SECURITY INTEREST IN A PRIMARY RESIDENCE

Lankhorst v. Indep. Sav. Plan Co., 787 F.3d 1100 (11th Cir. 2015).
https://scholar.google.com/scholar_case?case=6899192452061903203&hl=en&as_sdt=6&as_vis=1&oi=scholarr

FACTS: Plaintiffs, ("The Lankhorsts"), moved to Orange Park, Florida in 2010. After moving into their new home, they began receiving calls from WET, Inc. ("WET") soliciting the sale of a water treatment system. The Lankhorsts agreed to purchase the treatment system and indicated on the Purchase Agreement that they intended to seek financing for the purchase. The WET salesman told the Lankhorsts that they would qualify for a low interest rate. Following the installation of the treatment system, Defendant, Independent Savings Plan Company, ("ISPC") delivered the Credit Agreement, at which time, Lankhorst discovered that the interest rate was 17.99%.

The circuit court found that the provision in question added nothing that a judgment in the state of Florida would not already provide, and was not a security interest.

The Lankhorsts filed suit alleging that ISPC violated the Truth in Lending Act by failing to disclose examples of minimum payments and the maximum repayment period for this "extension of credit which is secured by the consumer's principal dwelling." The district court granted summary judgment in favor of ISPC, finding that the Credit Agreement did not convey a security interest in the Plaintiffs' residence violating the Truth in Lending Act. The Lankhorsts appealed.
HOLDING: Affirmed
REASONING: Subsections 15 U.S.C. § 1635 & 1637a, the Truth in Lending Act, apply to a security interest in a primary residence. The Eleventh Circuit found that the judgment against the debtor, as opposed to the Credit Agreement or the UCC, gave rise to the potential lien against the home. Florida state law converts any judgment to a lien against real property independent of any contract. The Eleventh Circuit also found that the provision in question added nothing that a judgment in the state of Florida would not already provide, and was not a security interest.

LOAN AGREEMENT THAT OBLIGATED BORROWER TO PAY FEES OF ATTORNEY HIRED TO COLLECT DID NOT COVER FEES INCURRED DEFENDING CLAIMS BY BORROWER

Clark v. Missouri Lottery Comm'n, ____ S.W.3d ____ (Mo. Ct. App. 2015).
http://law.justia.com/cases/missouri/court-of-appeals/2015/wd78060.html

FACTS: Gary Michael Clark, ("Clark"), won the Missouri Lottery, with a payout of $50,000.00 per year for the rest of his life, with a minimum payout of thirty years. Clark executed an agreement to deposit lottery payments in an account at Community Bank in order to secure a loan from the same bank. Clark brought a declaratory judgment action against the Missouri Lottery Commission and Community Bank of El Dorado Springs ("the Commission") to declare the agreement void and unenforceable. Clark argued that the state lottery prohibited the assignment of his lottery prizes by the Commission. Thus, the assignment of his lottery payments to secure

two loans from Community Bank was invalid.

The circuit court granted summary judgment against Clark and in favor of the Commission. Clark appealed.

HOLDING: Affirmed.

REASONING: The appellate court stated that Community Bank failed to establish that it was entitled to attorney's fees under the terms of the loan agreement. The loan agreement had a provision that stated Clark agreed to pay the fees incurred by Community Bank if the bank hired an attorney to collect on the notes.

The appellate court found that this case was not a collection case brought by Community Bank, but rather a declaratory judgment action created by Clark to determine the validity of the assignment of his lottery winnings and the loan agreement created therefrom. The court further determined that Community Bank's motion for attorney's fees was lacking an adequate explanation as to how the facts and circumstances of the current case entitled them to attorney's fees under the provision of the loan agreement.

DEBT COLLECTION

FILLING A PROOF OF CLAIM ON A TIME-BARRED DEBT IS NOT, STANDING ALONE, A PROHIBITED DEBT COLLECTION PRACTICE UNDER THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT

Gatewood v. CP Medical, LLC____F3d.____(8th Cir. 2015).
http://law.justia.com/cases/federal/appellate-courts/ca8/15-6008/15-6008-2015-07-10.html

FACTS: Mr. and Mrs. Gatewood ("the Gatewoods") filed a Chapter 13 bankruptcy petition. CP Medical's agent timely filed a proof of claim. The court confirmed the Chapter 13 plan, proposing monthly payments and a pro rata distribution to unsecured creditors. The Gatewoods subsequently fell behind on their plan payments and converted the case to a Chapter 7.

The bankruptcy court and court officers protect debtors from abusive collection practices.

After confirmation, but during the pendency of the Chapter 13 case, the Gatewoods filed an adversary proceeding against CP Medical for monetary damages caused by a violation of the Fair Debt Collection Practices Act ("FDCPA"). The Gatewoods asserted that by filing a claim on a debt that is time-barred, CP Medical engaged in "false, deceptive, misleading, unfair and unconscionable" debt collection practice in contravention of the FDCPA.

The bankruptcy court granted CP Medical's motion for summary judgment. The Gatewoods appealed.

HOLDING: Affirmed.

REASONING: The Eighth Circuit reasoned that filing an accurate proof of claim containing all the required information, including the timing of the debt, standing alone, is not a prohibited debt collection practice. The court reasoned there is no need to protect debtors who are already under the protection of the bankruptcy court, and there is no need to supplement the remedies afforded. The bankruptcy court and court officers protect debtors from abusive collection practices, and the Bankruptcy Code provides adequate remedies for potential creditor misconduct. The court refused to insert judicially created remedies into Congress's carefully calibrated bankruptcy scheme, thus tilting the balance of right and obligations between debtors and creditors.

DEBT COLLECTOR DOES NOT HAVE AN OBLIGATION UNDER THE FDCPA TO INFORM CONSUMER OF TAX CONSEQUENCES

Altman v. J.C. Christensen & Assocs., 786 F.3d 191 (2d Cir. N.Y. 2015).
http://law.justia.com/cases/federal/appellate-courts/ca2/14-2240/14-2240-2015-05-14.html

FACTS: Defendant**,** Christensen & Associates ("Christensen") was hired to collect debts owed by Plaintiff, Issac Altman, ("Altman") on his credit card bills. Christensen offered to settle Altman's debts for a lesser amount than his total balance. Altman alleged that Christensen violated the FDCPA by not warning Altman that his tax liability may increase from cancellation of debt income. The trial court ruled that Christensen did not owe a duty to Altman to inform him of possible tax consequences. Altman appealed.

HOLDING: Affirmed.

REASONING: The appellate court held that Christensen was not deceptive by his failure to disclose tax consequences, because the letter expressly stated that the savings were based on the "outstanding account balance" and not on tax liability. The appellate court reasoned that the scope of the FDCPA was to protect debtors from abusive debt collection practices, and requiring a debt collector to disclose potential tax consequences is outside the scope of the FDCPA.

TEXAS BREACH OF CONTRACT CLAIM IS NOT PREEMPTED BY THE FEDERAL HOME OWNER'S LOAN ACT

TEXAS NEGLIGENT MISREPRESENTATION CLAIM IS PREEMPTED BY THE HOLA

TEXAS DEBT COLLECTION ACT CLAIM IS NOT PREEMPTED BY THE HOLA

Barzelis v. Flagstar Bank, F.S.B., 784 F.3d 971, 973 (5th Cir. 2015).
http://www.gpo.gov/fdsys/granule/USCOURTS-ca5-14-10782/USCOURTS-ca5-14-10782-0

FACTS: Stacy Barzelis ("Mortgagor") brought action in Texas state trial court against Flagstar Bank ("Lender") for wrongful