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