DECEPTIVE TRADE PRACTICES AND WARRANTY

COMMON-LAW DEFENSE CANNOT BE RAISED TO DEFEAT A CLAIM UNDER THE DTPA OR THE INSURANCE CODE

Wyly v. Integrity Ins. Solutions, ____ S.W.3d ____ (Tex. App. –Houston [14th Dist.] 2016).
http://cases.justia.com/texas/fourteenth-court-of-appeals/2016-14-15-00042-cv.pdf?ts=1476807046

FACTS: Appellant, Benson Scott Wyly, contacted Garner Geisler, an agent for Appellee, Integrity Insurance, to obtain insurance on an aircraft Wyly was transporting. Wyly detailed the extent of the coverage he was seeking by expressing to Geisler the need for a comprehensive policy to protect from all foreseeable loss to the aircraft from loading through unloading. Geisler then contacted a third party, US Risk, who obtained a policy from Essex insurance. Geisler relayed to Wyly that he had secured a policy with the requested full coverage. Wyly relied on Geisler's description of coverage and arranged for the plane to be shipped. Upon arrival it was discovered that the fuselage of the plane had been damaged during transit by a tie strap that secured the plane to the trailer. Wyly filed a claim under the policy. Essex denied coverage on the basis that the policy contained an express exclusion for "the improper packing, preparation for shipment or loading by you or the shipper." This led Wyly to discover that the policy was not as comprehensive as Geisler had expressed to him. Wyly then filed suit against Integrity alleging deceptive trade practices under the DTPA and violations of the Texas Insurance Code.

The trial court granted Integrity's motion for summary judgment, based partially on Integrity's assertion that Wyly had a duty to read the policy and failed to satisfy that duty by relying solely on Geisler's description. Wyly appealed.

HOLDING: Reversed and Remanded.

REASONING: Wyly argued that "failure to read" was a common-law defense that could not be raised to defeat a claim under the DTPA or the Insurance Code. The court agreed and relied on multiple precedents to reach its decision. The first case the court looks to is *Smith v. Baldwin*, 611 S.W.2d 611, 616 (Tex. 1980), wherein the Texas Supreme Court stated that "A primary purpose of the enactment of the DTPA was to provide consumers a cause of action for deceptive trade practices without the burden of proof and numerous defenses encountered in a common law fraud or breach of warranty suit." The court also cited *Frank B. Hall & Co. v. Beach, Inc.*, 733 S.W.2d 251 (Tex. App. –Corpus Christi 1987) wherein the court held that the inability to raise a common law defense under the DTPA was equally applicable to Insurance Code claims and "any contributory negligence attributable to the insured could not defeat recovery on its Insurance Code claims."

"A primary purpose of the enactment of the DTPA was to provide consumers a cause of action for deceptive trade practices without the burden of proof and numerous defenses encountered in a common law fraud or breach of warranty suit."

Integrity denied raising a common law defense and contended that the rule that an insured is charged with knowledge of the contents of his policy (the "deemed to know" rule) is not an affirmative defense. The court, however, rejected this argument stating that it saw no distinction between "failure to read" and "deemed to know" and would, therefore, apply the rule despite Integrity's attempt to characterize its defense as one not arising under common law.

DEBT COLLECTION

LAW FIRM AND SUBSTITUTE TRUSTEES WERE "DEBT COLLECTORS" SUBJECT TO THE FDCPA'S REGULATIONS

McCray v. Federal Home Loan Mortgage Corp., ____ F.3d ____ (4th Cir. 2016).
http://caselaw.findlaw.com/us-4th-circuit/1750721.html

FACTS: Plaintiff Renee McCray ("McCray") defaulted on a mortgage that was held by Freddie Mac and was serviced by Wells Fargo. Following the default, Wells Fargo retained the White Firm to pursue foreclosure. The White Firm sent McCray a letter stating the firm had been instructed to initiate foreclosure proceedings on her mortgage. The letter concluded with the statements: "This is an attempt to collect a debt. This is a communication from a debt collector. Any information obtained will be used for that purpose." A few days after they sent this initial letter, the White Firm sent McCray a more detailed notice of intent to foreclose. Several members of the White Firm were substituted as trustees ("Substitute Trustees") on the deed of trust to facilitate foreclosure. The Substitute Trustees commenced the foreclosure proceeding in state court, McCray brought suit alleging, among other things, that the White Firm and the Substitute Trustees violated the FDCPA. The White Firm filed a motion to dismiss for failure to state a claim.

The district court granted the White Firm's motion to dismiss. It reasoned McCray had failed to sufficiently allege The White Firm was a "debt collector" under the FDCPA because the letters that the firm sent to McCray did not expressly demand payment and other specific information about the debt. McCray appealed.

HOLDING: Reversed and remanded.

REASONING: The White Firm and the Substitute Trustees argued McCray's complaint failed to establish their status as debt collectors because she failed to plead any facts indicating they had made demands for payment, or communicated deadlines and penalties for McCray's failure to make payment. The court rejected Defendants' argument because the FDCPA's definition