

RECENT DEVELOPMENTS

CONSUMER CREDIT

TO PLEAD A BREACH OF CONTRACT CLAIM UNDER CHAPTER 3 OF THE TEXAS BUSINESS AND COMMERCE CODE, PLAINTIFF MUST ALLEGE THAT THE CONTRACT INVOLVED A NEGOTIABLE INSTRUMENT

PLAINTIFF FAILED TO PLAUSIBLY ALLEGE THAT HE HAD STANDING AS A “CONSUMER” UNDER THE DTPA, AS HE DID NOT SEEK OR ACQUIRE GOODS OR SERVICES BEYOND AN EXTENSION OF CREDIT AND INCIDENTAL SERVICES

Hunter v. Navy Fed. Credit Union, ___ F. Supp. 3d ___ No. 3:24-CV-0788-D (N.D. Tex. 2024).

<https://law.justia.com/cases/federal/district-courts/texas/txndce/3:2024cv00788/388347/23/>

FACTS: Plaintiff Henry Lee Hunter (“Hunter”) sued Defendant Navy Federal Credit Union (“NFCU”), amongst other claims, for breach of contract under Chapter 3 of the Texas Business and Commerce Code and consumer fraud under the Deceptive Trade Practices–Consumer Protection Act (DTPA). Hunter alleged that his contracts with NFCU involved negotiable instruments under Texas Business and Commerce Code §3.104 and NFCU’S failure to honor the terms of these contracts constituted breach under §§3.301 and 3.302. Additionally, Hunter claimed that NFCU engaged in deceptive trade practices by failing to disclose material terms of the account agreements and misrepresenting the terms and conditions, thereby violating the DTPA. NFCU moved to dismiss under Fed. R. Civ. P. 12(b)(6).

HOLDING: Granted.

REASONING: NFCU argued that Hunter failed to plead factual allegations to reasonably infer that their contract qualified as negotiable instruments. The court agreed that Hunter failed to satisfy his burden of proof, because Hunter simply provided the court with conclusory statements. For a breach of contract claim under Chapter 3 to succeed, a plaintiff must satisfy the elements under Texas law and allege

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3’s definition of negotiable instrument because Hunter neither attached to his first amended complaint the exhibits on which he relied, nor alleged facts about their contents.

NFCU argued that Hunter failed to plausibly plead a DTPA claim because he could not establish that he has consumer status. The court agreed, reasoning that Hunter’s mere acquisition of a line of credit from NFCU, without more, did not suf-

fer to confer consumer status under the DTPA. The elements of a DTPA claim are: (1) the plaintiff was a consumer; (2) the defendant either engaged in false, misleading or deceptive acts or engaged in an unconscionable action or course of action; and (3) the DTPA laundry-list violation or unconscionable action was a producing cause of the plaintiff’s injury. The court relied on *Cobb v. Miller*, to determine that there was nothing to support the claim that applying the proceeds from a collateral account to a secured credit account constituted a “financial service.” Moreover, the court cited *First State Bank v. Keilman* to substantiate that even if NFCU’s applying the proceeds of the collateral account were considered a “financial service,” it was incidental to NFCU’s objective and, therefore, insufficient to confer consumer status under the DTPA. Because Hunter did not allege anything more than an extension of credit and incidental services, the court was unable to infer that Hunter had consumer status within the meaning of the DTPA. For these reasons, the court granted NFCU’s motion to dismiss.

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INDIVIDUALIZED QUESTIONS PREDOMINATE, CLASS ACTION CERTIFICATION REVERSED

Ford v. TD Ameritrade Holding Corp., 115 F.4th 854 (8th Cir. 2024).

<https://caselaw.findlaw.com/court/us-8th-circuit/116541966.html>

FACTS: Plaintiff-Appellant Roderick Ford (“Ford”), a customer of Defendant-Appellant, TD Ameritrade, Inc. (“TD”), and lead plaintiff for a group of investors who traded securities through TD Ameritrade between 2011 and 2014, filed a securities fraud lawsuit against TD. Ford alleged that TD violated its “duty of best execution” by routing customer orders to trading venues that offered TD the highest payments, rather than those providing the best outcomes for customers. Ford claimed that this practice caused financial harm to customers and proposed using an algorithm capable of automatically determining economic loss for each affected individual.

Ford sought class certification for all TD Ameritrade clients who suffered economic loss due to this practice during the 2011-2014 period. Despite concerns about the need for individualized inquiries, the district court initially granted class certification. TD appealed.

HOLDING: Reversed.

REASONING: Ford argued that the proposed class of customers satisfied the class certification requirements under the Federal Rule of Civil Procedure 23(b)(3). The district court certified a class based on Rule 23(b)(3), which required that (1) questions of law or fact common to class members predominate over any questions affecting only individual members and that (2) a class action was superior to other available methods for fairly and efficiently adjudicating the controversy.

The court provided two reasons for reversing the district court’s class certification. First, the court found that the proposed class did not meet the predominance requirement of Rule 23(b)(3), as determining economic loss for each member would require

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individual inquiries, outweighing common issues. The court concluded that individual inquiries would have been required for each trade, as the economic loss could not be presumed and depended on specific circumstances. Despite Ford's algorithm, the court found that individual assessments remained necessary, particularly in instances of unusual market conditions or diverse investor strategies.

The court also determined that the proposed class constituted an impermissible "fail-safe class." The class was defined to include only customers who did not receive the best execution and were economically harmed by the practice. This created a "fail-safe" class, where class membership depended on the success of the plaintiffs' claims on the merits. Such a class was deemed impermissible because it allowed putative class members to avoid the consequences of an adverse judgment, resulting in manageability issues and undermining the fairness of the process. The court held that the proposed class does not satisfy the requirements of Rule 23 and reversed and remanded.

THE TRUTH IN LENDING ACT'S RIGHT OF RESCISSION APPLIES ONLY TO CONSUMER CREDIT TRANSACTIONS INVOLVING A SECURITY INTEREST IN THE BORROWER'S PRINCIPAL DWELLING, NOT AUTO LOANS

PLAINTIFF FAILED TO STATE A CLAIM UNDER THE FAIR DEBT COLLECTION PRACTICES ACT OR FAIR CREDIT REPORTING ACT

Brady v. Santander Consumer USA, ___ F. Supp. 3d ___ (E.D. Pa. 2024).

<https://cases.justia.com/federal/district-courts/pennsylvania/paedce/2:2022cv05051/604126/19/0.pdf>

FACTS: Plaintiff Charles Brady ("Plaintiff") purchased a used 2015 vehicle from Defendant, Platinum Motor Group ("Platinum") in March 2022. Plaintiff financed the purchase through Defendant Santander Consumer USA ("Santander"), pursuant to a Retail Installment Sale Contract Finance Charge ("Contract"). In August 2022, Plaintiff sent notices to Defendants attempting to rescind the Contract, citing financial hardship, and attached a Debt Validation Letter. Defendants continued to seek repayment on the loan.

Plaintiff filed suit against Defendants, asserting violations of (1) the Truth in Lending Act, 15 U.S.C. §1601, et seq. ("TILA"); (2) the Fair Debt Collection Practices Act, 15 U.S.C. §1681, et seq. ("FDCPA"); and (3) the Fair Credit Reporting Act, 15 U.S.C. §1692, et seq. ("FCRA"). Defendants moved for summary judgment on all of Brady's claims.

HOLDING: Granted.

REASONING: Plaintiff asserted that Defendant Platinum violated his right of rescission under 15 U.S.C. §1635 of TILA. Under 15 U.S.C. §1635 of TILA, an obligor has the right to rescind a transaction that is related to any consumer credit transaction in which a security interest is or will be retained or acquired in any property that was used as the principal dwelling of the obligor. The court explained that TILA's right of rescission applies only to residential mortgages, not auto loans. The court rejected Plaintiff's argument and granted Platinum's motion for summary

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judgment on this issue because Plaintiff's purchase and financing of the vehicle had no connection to his principal dwelling, and thus, 15 U.S.C. §1635 of TILA was not applicable.

Plaintiff further asserted that Defendants violated the FDCPA. The court explained that to prevail

on a claim under the FDCPA, the plaintiff must prove four elements: (1) the plaintiff is a consumer; (2) the defendant is a debt collector; (3) the defendant's challenged practice involves an attempt to collect a "debt" as defined by the Act; and (4) the defendant violated a provision of the FDCPA in attempting to collect the debt. The FDCPA defines "debt collectors" as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. §1692a(6). Additionally, a "debt collector" is not an employee of a creditor attempting to collect debts; rather, the goal of the FDCPA is to target "third party collection agents working for a debt owner." The court reasoned that Plaintiff failed to show that Defendants are debt collectors as defined by the FDCPA and held that Defendants are "creditors" under the Act because they were acting on behalf of their own company and were not using third party collectors.

Accordingly, the court concluded that Plaintiff failed to state a claim upon which relief could be granted under both TILA and the FDCPA. Defendants' motions for summary judgment were granted.