DECEPTIVE TRADE PRACTICES AND WARRANTY

TO RECOVER ATTORNEY'S FEES, DEFENDANT HAS THE BURDEN TO SHOW THE CONSUMER'S CLAIMS WERE GROUNDLESS IN FACT OR LAW, BROUGHT IN BAD FAITH, OR BROUGHT FOR THE PURPOSE OF HARASSMENT

Gaudet v. Icon Custom Home Builder, LLC, ___ S.W.3d ___ (Tex. App. 2024).
https://www.casemine.com/judgement/us/66d29cd46baafd489a9d3afa

FACTS: Appellant/Cross-Appellee Gaudet wanted to purchase a house from Appellees/Cross-Appellants Icon Custom Home Builder, LLC and Juana Garcia (collectively, "ICON"). After negotiations and a $500 deposit, ICON sent Gaudet design plans and included price quotes higher than the initial verbal estimates. Gaudet alleged ICON of engaging in a bait-and-switch scheme and filed suit against them for breach of contract, common law fraud, statutory fraud and violations of the DTPA. ICON denied the claims and included a counterclaim for attorney's fees pursuant to §17.50(c) of the DTPA on the grounds that Gaudet's claims were groundless and brought in bad faith. The trial court found each of Gaudet's claims to be groundless but not brought in bad faith or for purposes of harassment.

Gaudet appealed, and ICON cross-appealed on the issue of bad faith.

HOLDING: Reversed in part, affirmed in part.

REASONING: ICON argued that Gaudet's claims were groundless because they were precluded by prior case law. To recover attorney's fees, the contesting party must show that the consumer's claims were groundless in fact or law, brought in bad faith, or brought for the purpose of harassment. Under DTPA § 17.50(c), the test for groundlessness relies on whether the totality of the evidence demonstrates an arguable basis in fact and law for the claim.

The court held that ICON failed to meet its burden. First, the cases were factually distinct from Gaudet's claim. Second, none of the cases address a claim for groundlessness because such claims were never asserted. The court reasoned that while Gaudet's claims failed on its merits due to insufficient evidence, this did not automatically render his claims groundless. The appellate court held that Gaudet provided enough evidence that demonstrated an arguable basis for fact and law. The trial court's holding was reversed and the award for attorney's fees was rescinded.

ICON also argued that Gaudet's claims were brought in bad faith. Gaudet testified that his motivations to bring the suit did not include a malicious or discriminatory purpose. Absent evidence from ICON showing otherwise, the court held that ICON failed to support its contention that Gaudet acted in bad faith. This issue was overruled. The court affirmed the judgment to the extent it ordered that Gaudet take nothing from ICON.

BREACH OF THE WARRANTY OF MERCHANTABILITY MEANS THE GOODS SOLD ARE NOT FIT FOR THE ORDINARY PURPOSE FOR WHICH THE GOODS ARE USED

THE ORDINARY PURPOSE OF AN AUTOMOBILE IS TO PROVIDE TRANSPORTATION

VECHILE USED FOR APPROXIMATELY 229,000 IS MERCHANTABLE

Lessin v. Ford Motor Co., ___ F. Supp. 3d ___ (S.D. Cal. 2024).
https://docs.justia.com/cases/federal/district-courts/california/casdce/3:2019cv01082/632733/202

FACTS: Plaintiffs William Lessin, Carol Smalley, Caroline McGee, et. al., on behalf of themselves and others similarly situated (collectively, "Plaintiffs") sued Ford Motor Corporation ("Ford") for alleged defects in several generations of the Ford F-250 and F-350 trucks due to a "shimmy" in the vehicle due to the suspension system. Plaintiff Caroline McGee ("McGee") was from Texas and her claim was subject to Texas law governing the issue of merchantability. Ford filed a partial motion for summary judgement on Plaintiffs' claims for breach of implied warranty of merchantability, including McGee's.

HOLDING: Granted.

REASONING: In assessing McGee's claim against Ford, the court determined that Texas law is similar to those in other states for the issue of implied warranty of merchantability. To bring a claim in Texas for breach of implied warranty of merchantability, a plaintiff must establish that the goods are not fit for the ordinary purpose for which the goods are used. For vehicles, the ordinary purpose is providing transportation.

The court determined that McGee failed to raise an issue of material fact when it came to the trucks ability to function for its ordinary purpose. To reach this conclusion the court examined several factors: (1) if McGee's driving patterns and behaviors had changed due to the shimmy; (2) if McGee continued to use the vehicle and for how long; (3) whether McGee had alleged any facts to show that the shimmy had posed a significant safety hazard to render the vehicle unreasonably dangerous.

Based on the evidence provided to it, the court reasoned that McGee had continued to drive the vehicle for thousands of miles across Texas. McGee did not offer evidence to show that she had changed her driving habits or had treated the vehicle as unreasonably dangerous. In fact, the evidence showed that when McGee did encounter the shimmy, she had continued to drive the vehicle instead of stopping. Furthermore, McGee had continued to own the vehicle for the last five years and has put 299,000 miles on it, further showcasing the vehicles merchantability.

For all of these reasons, the court concluded that McGee had failed to raise an issue of material fact that would constitute denying Ford's motion for summary judgment on her claim for breach of implied warranty of merchantability.

IMPLIED WARRANTY CLAIMS WERE TIME-BARRED

DTPA CLAIMS WERE TIME-BARRED

Sparks v. Southwire Co., LLC, ___ S.W.3d ___(Tex. App.-Fort Worth 2024).
https://law.justia.com/cases/texas/second-court-of-appeals/2024/02-24-00120-cv.html

FACTS: Appellant Angie Sparks ("Sparks") purchased a travel trailer and surge protector from Appellee United Recreation and Mobile Home Center ("United") in 2015. In December 2016, a fire in the trailer caused by an electrical issue led to property damage and personal injuries when Sparks fell while trying to disconnect the trailer's electricity. Sparks filed suit in December 2020 against United and the surge protector's manufacturer, Appellee Southwire Company, LLC ("Southwire"), alleging breach of implied warranties and violations of the Texas Deceptive Trade Practices Act ("DTPA"). United and Southwire moved for summary judgment, arguing that the claims were barred by the applicable statutes of limitations. The trial court granted summary judgment, and Sparks appealed.
HOLDING: Affirmed.
REASONING: Sparks argued that the statute of limitations had not run by the time of filing because (1) she filed her implied warranty claims within the four-year limitations period, and (2) United and Southwire failed to identify the date on which Sparks discovered the fire's cause, which was the date her DTPA claims accrued.

The court explained, a claim generally accrues "when facts giving rise to the cause of action come into existence, even if those facts are not discovered or the resulting injuries do not occur until later." The discovery rule is an exception that defers a claim's accrual until the plaintiff discovers or reasonably should have discovered the wrongful act or injury. Implied warranties have a statute of limitations of either two or four years. Sparks' claims a statute of limitations of four years applies. However, because accrual began when United and Southwire delivered the faulty products in 2015, even if the statute of limitation was four years, filing in December 2020 was five years beyond the date of delivery and fell outside the statute of limitations.

A DTPA claim has a two-year statute of limitations from the "date on which the false, misleading, or deceptive act or practice occurred, or within two years after the consumer discovered…or should have discovered the occurrence…." Tex. Bus. & Com. Code Ann. §17.565. Sparks claimed her discovery was deferred until she learned the precise cause of the fire. However, Sparks observed wiring issues in the trailer within days of purchase and identified the cause of the fire as "electrical issues" and sought to solve the fire issue by running to the main breaker box, where she subsequently fell. Therefore, Sparks discovered the source of her wrongful injury on the date of the fire, December 2016. The statute of limitations expired in 2018, and the claim was filed in 2020.

The court concluded that both the implied warranty and DTPA claims were time-barred and affirmed the trial court's judgment.

CONSUMER'S ALLEGATIONS, "READ IN A LIGHT MOST FAVORABLE TO HER," RAISE THE PLAUSIBLE INFERENCE THAT, IN RECEIVING A CREDIT LINE FROM CAPITAL ONE, SHE SOUGHT TO ACQUIRE GOOD[S] AND SERVICES

In re Cap. One 360 Sav. Acct. Int. Rate Litig., ___ F. Supp. 4th ___ (E.D. Va. 2024).
https://casetext.com/case/in-re-capital-one-360-sav-account-interest-rate-litig-2

FACTS: Plaintiffs were citizens of eighteen different states and 360 Savings accountholders with Capital One between September 2019 and the filing of the Consolidated Amended Complaint. Defendants were Capital One, N.A. ("CONA") and Capital One Financial Corp. (collectively, "Defendants"). This consolidated multidistrict action arises out of Defendants' alleged violations of various state consumer protection and unfair trade practice statutes, as well as other causes of action. Plaintiffs alleged that Defendants furtively created the 360 Performance Savings account without raising the 360 Savings rate or informing customers of the change. As a result, Plaintiffs lost interest income proportionate to their account balances.

Plaintiffs filed suit, seeking to recover lost interest that Defendants' alleged conduct prevented them from earning on their "high interest" 360 accounts. Defendants filed the instant Motion to Dismiss the Consolidated Amended Complaint.
HOLDING: Granted in part; denied in part.
REASONING: Plaintiffs cited *In re Cap. One Consumer Data Sec. Breach Litig.*, to argue that they received goods or services to qualify as "consumers." In that case, the court rejected that Capital One customers are not "consumers" under the CLRA or the Texas DTPA. The plaintiffs plausibly alleged coverage under the CLRA because in receiving such a line of credit, they ostensibly received services to develop, secure, [and] maintain that credit line. As to the Texas DTPA, the court reasoned that the plaintiff's allegations, "read in a light most favorable to her," "raise[d] the plausible inference that, in receiving a credit line from Capital One, she sought to acquire good[s] and services."

The plaintiffs plausibly alleged coverage under the CLRA because in receiving such a line of credit, they ostensibly received services to develop, secure, [and] maintain that credit line.

The court additionally referred to the persuasive authority of *Oswego Laborers' Loc. 214 Pension Fund v. Marine*, to reason that the opening of Plaintiffs' 360 Savings accounts did qualify as a consumer transaction, because opening a savings account constituted a "purchase of goods or services."

Furthermore, the court noted that the 360 Disclosures referred to several of CONA's "services" to accountholders, including "Electronic Fund Transfer services," a Mobile Deposit "service" and Automatic Clearing house (ACH) External Transfer transactions. These Disclosures directly acknowledged additional consumer services, beyond simply storage of money. Unlike a

standard checking account that typically offers no special "convenience services," the 360 Savings account offered the "service" of earning "high interest" on deposited money that the Plaintiffs specifically sought out. Thus, the 360 Savings account did not stand as an average bank deposit account to park their money, but a "high interest" service account that Plaintiffs actively relied on the to earn additional income. The court granted in part and denied in part Defendants' Motion to Dismiss.

AD NOT DECEPTIVE, REASONABLE CONSUMER WOULD KNOW TO READ THE LABEL TO CONFIRM THE INGREDIENTS

Bryan v. Del Monte Foods, Inc., ___ F.3d ___ (9th Cir. 2024).
https://cdn.ca9.uscourts.gov/datastore/memoranda/2024/11/22/23-3685.pdf

FACTS: Plaintiff Kerstine Bryan filed a putative class action lawsuit against Defendant Del Monte Foods, Inc. alleging violations of California and Oregon law due to the company's fruit cup labels. Plaintiff asserted that the fruit cups containing the phrase "fruit naturals" misled consumers into believing that all the ingredients in the fruit cups were natural.
The district court granted the Defendant's motion to dismiss. Plaintiff appealed.
HOLDING: Affirmed.
REASONING: Plaintiff argued that the word "natural" on the fruit cup labels was deceptive. The court noted that the labels on the front of the cups were ambiguous. A label is deemed ambiguous if a reasonable consumer would "necessarily require more information before they could reasonably conclude" whether a product displays a specific factual representation.

Examined holistically with the rest of the front label, the phrase "fruit naturals®" with the term "syrup" can indicate that while the fruit may be natural, the syrup may not be.

The court identified three reasons why Plaintiff failed to plausibly allege that the front label was unambiguously deceptive to the ordinary consumer.

First, the court discussed that using the phrase "fruit naturals," in itself, was not deceptive. The word "naturals" is used as a noun and not a descriptive adjective. Additionally, the inclusion of the registered trademark following the phrase also indicated that it was likely just part of the product's name. Examined holistically with the rest of the front label, the phrase "fruit naturals®" with the term "syrup" can indicate that while the fruit may be natural, the syrup may not be.

Second, Plaintiff relied on a survey that purportedly showed consumers found the label deceptive. The court disagreed with this conclusion, noting that the survey focused on what respondents believed the term "natural" should signify on a product label, rather than how they interpreted its use on Defendant's cups.

Lastly, the court held that a reasonable consumer would look at the back label to clarify any ambiguity from the front label. Citing *McGinty v. Proctor & Gamble Co.*, the court explained that for a label to create an expectation that a product is entirely natural, it must explicitly state so. Vague or general terms without clear qualifiers (e.g., "all-natural" or "100% natural") are insufficient to make that guarantee. The court reasoned the back label "accurately and clearly disclosed several synthetic ingredients" that the Plaintiff complained about and affirmed.

DTPA AND INSURANCE CODE CLAIM BARRED BY LIMITATIONS

Galvan v. RVOS Farm Mut. Ins. Co., ___ S.W.3d ___(Tex. App.—Corpus Christi 2024, no pet. h.).
https://casetext.com/case/galvan-v-rvos-farm-mut-ins-co-2

FACTS: Appellee Jessica Galvan ("Galvan") held a homeowner's insurance policy with RVOS Farm Mutual Insurance Company ("RVOS"). Galvan's house was damaged by Hurricane Harvey on August 29, 2017, so she filed a claim with RVOS. Unsatisfied with RVOS's initial assessment, Galvan's counsel sent a demand letter on February 19, 2019, alleging that RVOS's adjuster had inadequately inspected her property, resulting in a significant discrepancy between RVOS's loss estimate and her expert's. This was claimed to violate both the Texas Insurance Code and the Deceptive Trade Practices Act (DTPA). Galvan sued RVOS on March 28, 2019, and filed an amended petition on May 8, 2019. Galvan filed a new suit in district court on July 6, 2023, alleging breach of contract and violations of the DTPA and Insurance Code. RVOS moved for summary judgement on the grounds that Galvan's suit was barred by a contractual limitations provision. On October 31, 2023, the trial court granted RVOS's summary judgement motion and Galvan appealed.
HOLDING: Affirmed.
REASONING: Galvan argued that her policy stated "no suit or action can be brought unless the policy provisions have been complied with. Action brought against us must be started within two years and one day after the cause of action accrues." The court rejected this argument, holding that Galvan's claims accrued no later than February 27, 2018, when RVOS notified her of the initial decision regarding the loss amount, and Galvan was aware that RVOS's conclusion was "substantially different" from her independent estimate. RVOS argued that Galvan's claims accrued when the letter was sent to her counsel because that letter notified her that some of her claim was denied, and that the payment was less than she sought. RVOS further argued that even if the contractual limitations provision does not apply, the DTPA and insurance code also contain two-year limitations provisions. As such, both her DTPA and Insurance Code claims were subject to a two-year limitations period

The court concluded that all of Galvan's claims derived from RVOS's initial decision regarding her amount of loss and since Galvan filed her district court suit more than two years later, her claims were barred by limitations. Galvan was advised of that decision on February 27, 2018, and Galvan was aware that RVOS's conclusion was substantially different from her own on February 19, 2019. Thus, no legal injury was suffered past February 19, 2019. The court concluded that RVOS established its entitlement to judgment as a matter of

law, and Galvan failed to raise a material fact issue regarding the limitations defense.

ABSENT EVIDENCE OF A VALID INSURANCE CONTRACT, THE PLAINTIFFS' EXTRA-CONTRACTUAL DTPA CLAIMS ALSO FAIL AS A MATTER OF LAW

Sliepcevic v. Am. Fam. Connect Prop. & Cas. Ins. Co., 2024 U.S. Dist. LEXIS 106268 (W.D. Tex. 2024).
https://law.justia.com/cases/federal/district-courts/texas/txwdce/5:2023cv00553/1217165/22/

FACTS: Mark and Linda Sliepcevic ("Plaintiffs") sued American Family Connect Property and Casualty Insurance Company, Inc. ("Defendant") for breach of contract and violations of the Texas Deceptive Trade Practices Act ("DTPA") after Defendant denied their home insurance claim.

In August 2022, Plaintiffs applied for a homeowner's insurance policy and agreed to pay the full premium. Defendant mailed a confirmation letter but could not process the payment because Plaintiffs' financial institution declined the charge. Defendant notified Plaintiffs on August 3, 2022, that the policy would expire on August 18, 2022, without payment. After the expiration date, Defendant sent letters confirming the policy's cancellation for non-payment.

On October 26, 2022, Plaintiffs' property sustained damage, which they reported to Defendant. On November 1, 2022, Defendant denied the claim, stating that the policy had been canceled prior to the date of loss. Plaintiffs sued, and Defendant moved for summary judgment, arguing Plaintiffs failed to provide evidence of a valid insurance contract.

HOLDING: Granted

REASONING: The court held that a valid contract is essential for a breach of contract claim under Texas law. The court found that Plaintiffs failed to fulfill the condition of payment, which is necessary to create an enforceable contract. Defendant provided evidence that it never received payment, and Plaintiffs presented no evidence to refute this.

For the DTPA claims, the court reasoned that extra-contractual claims like those under the DTPA cannot succeed without an underlying insurance contract. Because the court had already determined that the policy was not in effect at the time of the loss, Plaintiffs' DTPA claims failed as a matter of law. The court granted summary judgment in favor of the Defendant.

CAR RENTAL "JACKETS" ARE PART OF CONTRACT WITH CAR RENTAL COMPANY.

Calderon v. Sixt Rent a Car, LLC, ___ F.4th ___ (11th Cir. Aug. 15, 2024).
https://law.justia.com/cases/federal/appellate-courts/ca11/20-10989/20-10989-2024-08-15.html

FACTS: Plaintiffs Phillippe Calderon of Florida, Ancizar Marin of Arizona, and Kelli Borel of Colorado rented a vehicle from Sixt. Usually, a customer renting from Sixt receives their rental agreement when picking up their rental car. The Sixt rental agreement came in two parts: the Face Card and the Terms and Conditions (the "T&C"). The Face Card would provide the terms specific to that customer's rental and include the customer's signature on the bottom, while the T&C contained the general terms applicable to Sixt rentals. Right above the signature line on the face card, the text states that by signing below, the signer also assents to the T&C in the rental jacket. The T&C established the customer was responsible for any damage during the rental period and appeared most often in a preprinted booklet called "Rental Jacket."

While each plaintiff's experience obtaining their rental was different, they all reported some variation, such as not being informed of the Rental Agreement or being unaware that they were signing it. After each plaintiff returned the vehicle at the end of their rental period, they all received invoices from Sixt seeking payment for damages the car sustained during their rental period.

The T&C established the customer was responsible for any damage during the rental period and appeared most often in a preprinted booklet called "Rental Jacket."

The plaintiffs filed a putative class action against Sixt in a federal district court in Florida for violations of Florida's Deceptive and Unfair Trade Practice Act and common law breach of contract, alleging Sixt sent them these invoices violating Sixt's Terms and Conditions. The district court granted summary judgment for Sixt's breach of contract claim based on its finding that the T&C was not part of the Rental Agreement. Therefore, the court held there couldn't be a breach of contract. The plaintiffs appealed to the Fourth Circuit.

HOLDING: Reversed in part.

REASONING: Sixt argued that since the plaintiffs signed the Face Card using an electronic signature pad, the T&C provisions related to damages and fees were not incorporated by reference. Without these terms being incorporated, Sixt claimed they were not in breach and could not breach their rental agreement by breaching the T&C. Thus, Sixt requested the district court ruling be affirmed.

The circuit court held that the district court erred in its judgment because the T&Cs in the rental jacket were adequately incorporated by reference under Florida, Arizona, and Colorado state law. The court reasoned that the T&C on the rental jacket was incorporated by reference under Florida law because the Face Card (1) expressly provided that the Face Card was subject to the incorporated T&C and (2) sufficiently described the incorporated T&C so that the parties' intentions could be ascertained. Similarly, the court reasoned that the same T&C was incorporated by reference under Arizona law because the reference on the Face Card was clear and unequivocal, called to the customer's attention, assented to by the customer, and terms of the incorporated T&C were readily known and available to the customer. Finally, the circuit court similarly held that since the reference to the T&C on the rental jacket was expressly identified, the T&C of the rental jacket was also incorporated correctly in Colorado law.

ALLEGATIONS REGARDING EMPLOYEE'S MISREPRESENTATION ABOUT THE SOUP INGREDIENTS SATISFIED THE ELEMENTS OF A DTPA CLAIM FOR FALSE, MISLEADING, OR DECEPTIVE ACTS UNDER §17.46(B)(5)

EMPLOYEE'S ASSURANCE ABOUT THE SOUP BEING MEAT-FREE WAS SUFFICIENT TO STATE A CLAIM FOR BREACH OF EXPRESS WARRANTY UNDER THE UCC AND DTPA

IF CONSUMER CAN PROVE BREACH OF WARRANTY UNDER THE UCC, HE MAY RECOVER MENTAL ANGUISH DAMAGES ON HIS DTPA CLAIM WITHOUT PROVING INTENTIONAL CONDUCT

Kumar v. Panera Bread Co., No. 4:21-CV-03779 (S.D. Tex.2024). https://law.justia.com/cases/federal/district-courts/texas/txsdce/4:2021cv03779/1851588/67/

FACTS: Plaintiff Selva Kumar ("Kumar") alleged that on January 23, 2021, Defendant Panera Bread Company's ("Panera") associate misrepresented - the broccoli cheddar soup by telling him that it did not contain chicken broth or meat and was made fresh daily. Kumar relied on this representation and purchased the soup. Kumar claimed that the statements of Panera's employees "falsely and fraudulently" misled him about the ingredients and freshness of its products and he suffered physical and emotional distress as a result. Kumar alleged violations under the Texas Deceptive Trade Practices Act (DTPA) breach of warranty under the DTPA and the Uniform Commercial Code (UCC). Panera filed a motion to dismiss.
HOLDING: Denied.
REASONING: A DTPA claim requires (1) the plaintiff to be a consumer; (2) the defendant to have engaged in false, misleading, or deceptive acts; and (3) these acts to have been a producing cause of the consumer's damages. Under the Tex. Bus. & Com. Code Ann. § 17.46(b)(5), the term "false, misleading, or deceptive acts or practices" includes representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have. Panera contended that Kumar's DTPA claim failed the second element. The court disagreed and reasoned that Kumar's claim–stating that Panera misrepresented the characteristics or ingredients of its products—was sufficient at the pleading stage to satisfy the second element of a DTPA claim.

Similarly, the court applied the same reasoning to Kumar's reliance on the assurance. Kumar alleged Panera's associate's assurance that the soup did not contain meat was specific enough to establish a warranty. Kumar undoubtedly relied on the associate's assurance that the soup was meat-free, but contrary to the warranty, the soup did contain meat. At the pleading stage, this was enough to state a claim for breach of warranty under the DTPA and the UCC.

The DTPA allows recovery of actual damages "without regard to whether the defendant's conduct was committed intentionally." Tex. Bus. & Com. Code Ann. §17.50(h). Since Kumar was granted the right to bring a cause of action for breach of warranty under the UCC, the court determined that Kumar could recover mental anguish damages on his DTPA claim regardless of whether Panera's conduct was intentional. The court denied Panera's motion to dismiss Kumar's DTPA claims.

MERE NONDISCLOSURE OF MATERIAL INFORMATION DOES NOT ESTABLISH AN ACTIONABLE DTPA CLAIM

BROAD STATEMENTS COMPARING ONE'S GOOD WITH OTHERS OR LABELING SERVICE "GOOD" OR "SUPERB" WITHOUT MORE AMOUNTS TO MERE SALES TALK, OR PUFFERY, NOT A STATEMENT OF MATERIAL FACT

A DISCLAIMER OF THE IMPLIED WARRANTY OF MERCHANTABILITY MUST BE CONSPICUOUS, AND A DISCLAIMER OF THE IMPLIED WARRANTY OF MERCHANTABILITY MUST MENTION THE WORD "MERCHANTABILITY"

AN UNCONSCIONABLE ACT UNDER THE DTPA IS ONE THAT, TO A CONSUMER'S DETRIMENT, TAKES ADVANTAGE OF THE LACK OF KNOWLEDGE, ABILITY, EXPERIENCE, OR CAPACITY TO A GROSSLY UNFAIR DEGREE

Pate v. Fun Town RV San Angelo, LP, No. 03-22-00059-CV, (Tex. App. 2024).
https://law.justia.com/cases/texas/third-court-of-appeals/2024/03-22-00059-cv.html

FACTS: Plaintiff-Appellant Pate ("Pate") purchased a recreational vehicle ("RV") from Defendant-Appellee Fun Town RV ("Fun Town"). Pate alleged the RV had numerous defects and that Fun Town failed to disclose prior repairs made to the trailer's flooring and the defects rendered the trailer worthless. Pate refused to take possession of the travel trailer despite it being repaired at no cost prior to the sale and subsequently demanded rescission of the sale and a full refund.

Mere nondisclosures of information or minor repairs do not constitute a DTPA violation, and Pate provided no evidence of deception. Moreover, Fun Town's "as is" sale limited their responsibility for any pre-sale repairs or defects.

Pate filed suit for failure to disclose, misrepresentation, unconscionable conduct, and breach of warranty under the Texas Deceptive Trade Practices Act (DTPA), asserting that Fun Town failed to disclose pre-sale repairs and sold them a defective travel trailer. The trial court granted summary judgment in favor of Fun Town, finding that Pate lacked sufficient evidence to substantiate their claims regarding Fun Town's alleged deceptive practices and breach of warranty. Pate appealed.

HOLDING: Affirmed.
REASONING: Pate argued that Fun Town's verbal assurances and sales materials had guaranteed the RV's quality and functionality, and that defects and undisclosed repairs rendered the trailer unfit for its ordinary purpose as a recreational vehicle, violating express and implied warranties under the DTPA and constituting an unconscionable act.

The court disagreed and held that Fun Town's statements about the RV were not actionable misrepresentations, but rather amounted to mere puffery (e.g., general claims about quality), which is not sufficient to establish an express warranty under the DTPA. Furthermore, a properly conspicuous disclaimer of the implied warranty of merchantability will be upheld under the DTPA, effectively limiting the seller's liability. Because Pate admitted that everything worked during the walk-through, accepted the trailer after inspection, and signed the purchase agreement that included a conspicuous disclaimer, Fun Town cannot be held liable for any implied warranty claims.

The court also noted that Fun Town's repairs were routine maintenance and did not require disclosure as a material defect. Mere nondisclosures of information or minor repairs do not constitute a DTPA violation, and Pate provided no evidence of deception. Moreover, Fun Town's "as is" sale limited their responsibility for any pre-sale repairs or defects.

Lastly, the court explained that Fun Town's actions were not unconscionable due to the nature of the purchase and Pate's history with recreational vehicles. An unconscionable act under the DTPA is one that grossly takes advantage of a consumer's lack of knowledge, ability, experience, or capacity to the consumer's detriment. In this case, Pate had prior experience owning recreational vehicles and had options to purchase a travel trailer from other dealerships. Consequently, no evidence of grossly unfair actions taken to Pate's detriment was ever established. The court upheld the trial court's finding and affirmed.