DECEPTIVE TRADE PRACTICES AND WARRANTY

TRIAL COURT DID NOT ERR IN GRANTING A DIRECTED VERDICT IN FAVOR OF DEFENDANT BECAUSE PLAINTIFF FAILED TO PROVIDE SUFFICIENT EVIDENCE TO PROVE ALL THE ELEMENTS OF HIS BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY CLAIM UNDER THE DTPA

TO RECOVER ON A BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY CLAIM, THE PLAINTIFF MUST PROVE THAT THE GOODS WERE DEFECTIVE WHEN THEY LEFT THE SELLER'S POSSESSION

Pleasant v. Murphy Oil USA, Inc., 2024 Tex. App. LEXIS 8399 (Tex. App.—Beaumont 2024).
https://casetext.com/case/pleasant-v-murphy-oil-us

FACTS: Appellant Pleasant alleged that his truck failed to start due to water contamination in the fuel he purchased from the Appellee Murphy Oil USA, Inc. d/b/a Murphy USA #7335 (hereinafter "Murphy Oil"). Pleasant brought claims under the Texas Deceptive Trade Practices Act ("DTPA"), asserting evidence that Murphy Oil breached its implied warranty of merchantability and misrepresented the fuel quality through testimony and a fuel service report. Murphy Oil refuted and presented evidence showing there was not any water contamination in its fuel storage tanks during the relevant period as well as evidence that customers had not reported any issues.

Murphy Oil moved for a directed verdict and final judgment. The court found for Murphy Oil. Pleasant appealed.
HOLDING: Affirmed.
REASONING: The trial court held that Pleasant's evidence was insufficient to establish the elements of his breach of implied warranty of merchantability. Pleasant failed to demonstrate by a preponderance of the evidence that the water contamination in his fuel tank was caused by defective diesel fuel purchased from Murphy Oil. While Pleasant relied on evidence such as the condition of his fuel tank and testimony about the fuel's quality, the evidence did not sufficiently link the alleged defect to Murphy Oil's storage tanks. Murphy Oil further refuted Pleasant's claim by providing records showing no water contamination in its storage tanks during the relevant period.

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The court explained a claim for breach of implied warranty of merchantability requires proof that the goods were defective when they left the seller's possession. Pleasant's evidence of the repair estimate, as well as their testimony, was insufficient to establish that Murphy Oil's diesel fuel contained water at the time of sale. Conversely, Murphy Oil presented evidence in the form of inspection records and sales data showing that its fuel met regulatory standards and that no other customers had reported similar issues at the time of the sale. Absent any other evidence, Pleasant could not meet his burden of proof under the DTPA. The court affirmed the trial court's order and final judgment.

UNDER THE DECEPTIVE TRADE PRACTICES ACT, AN INSURED MAY RECOVER DAMAGES CAUSED BY AN INSURER'S UNCONSCIONABLE ACTION OR COURSE OF ACTION

THE RESULTING UNFAIRNESS MUST BE GLARINGLY NOTICEABLE, FLAGRANT, COMPLETE, AND UNMITIGATED

THE VULNERATIBILITY OF THE CONSUMER IS RELEVANT TO THE DETERMINATION OF UNCONSCIONABILITY AND FACTORS SUCH AS OLD AGE INCREASE THE LIKELIHOOD THAT UNCONSCIONABILITY WILL BE FOUND

IF THE INSURER'S UNCONSCIONABLE CONDUCT IS COMMITTED KNOWINGLY, THEN THE INSURED MAY RECOVER UP TO THREE TIMES THE AMOUNT OF HER DAMAGES

State Farm Lloyds v. Ladkin, 2025 Tex. App. LEXIS 704 (Tex. App.—Fort Worth, 2025)
https://scholar.google.com/scholar_case?case=202016992521689110 9&hl=en&as_sdt=6&as_vis=1&oi=scholarr

FACTS: Appellee ("Ladkin"), an elderly widow, filed a homeowner's insurance claim with Appellant ("State Farm") for wind and hail damage to the roof of her home. State Farm denied the claim after observing damage to other components of Ladkin's property and without thoroughly examining the damaged roof. However, an appraisal panel later agreed that a full roof replacement was necessary and awarded Ladkin $20,000 for the damage to her home. Due to Ladkin's infirmity, her son reached out to State Farm multiple times regarding the roof leak, to communicate the urgent need for repairs. Rather than paying the appraisal award, State Farm commissioned a forensic engineering firm to find an alternative way to object to Ladkin's claim. The firm determined that the damage to the roof was caused by "blistering and mechanical damage" and State Farm subsequently mailed a check for $2,500 to cover a portion of the damaged items in the appraisal. Ladkin brought suit for DTPA violations. A jury sided with Ladkin, awarding her actual damages for her roof and repairs, treble damages based on State Farm's knowingly unconscionable conduct, and attorney's fees. State Farm appealed.
HOLDING: Affirmed.
REASONING: In asserting her DTPA claim, Ladkin provided evidence that State Farm disregarded numerous hail spots on her roof without reasoning, issued the denial letter without examining the damage that was under the tarp on her roof, commissioned disingenuous expert analysis, and took advantage of her vulnerability as an elderly consumer.

Under the DTPA, an insured may recover actual damages caused by an insurer's "unconscionable action or course of action." Tex. Bus. & Com. Code Ann. §17.50(a)(3). "Unconscionable action" is an act that takes advantage of a consumer's lack of knowledge, ability, experience, or capacity to a grossly unfair degree. §17.45(5). The court cited *Bradford v. Vento*, to express that the resulting unfairness must be "glaringly noticeable, flagrant, complete, and unmitigated." If the insurer's unconscionable conduct is committed with actual awareness of the falsity, deception, or unfairness of the act or practice, Tex. Bus. & Com. Code Ann. §17.45(9), the insured may recover treble damages up to three times the amount of their damages. Id. §17.50(b)(1).

The court noted that Ladkin's infirmity bolstered her DTPA claim, as factors like old age tend to increase a finding of unconscionability. Ladkin was 80 when she filed her claim, heavily relied on her son to assist her with the claim and exhibited signs of confusion during her testimony. These factors were pertinent to the jury's determination that State Farm was aware of Ladkin's infirmity and, nonetheless, proceeded to act in a manner that would result in unmitigated unfairness.

The court concluded the evidence was sufficiently strong to support the jury's finding that State Farm had taken advantage of Ladkin to a grossly unfair degree by disregarding the hail damage, issuing an unsubstantiated denial letter, and providing shifting excuses for its denial, with the knowledge of Ladkin's infirmity.

TEXAS UCC REQUIRES A BUYER MUST WITHIN REASONABLE TIME AFTER HE DISCOVERS OR SHOULD HAVE DISCOVERED ANY BREACH NOTIFY THE SELLER OF THE BREACH

THIS STATUTE APPLIES TO SALES OF GOODS WHICH DOES NOT INCLUDE THE SALE OF AN ADVERTISEMENT

Bradley v. GateHouse Media Texas Holdings, II, 2025 U.S. App. LEXIS 2632 (5th Cir. 2025)
https://casetext.com/case/bradley-v-gatehouse-media-tex-holdings-ii-3

FACTS: Plaintiff Bradley contracted with Defendant GateHouse for an anonymous newspaper advertisement urging fellow parishioners to attend an upcoming church meeting with the hope of securing new church leadership. Plaintiff fully paid for the ad and was assured his identity would remain anonymous. Approximately one month after publication, Defendant mailed an invoice bearing the plaintiff's name to the church. Plaintiff sued, alleging breach of contract and breach of warranty under the Texas Deceptive Trade Practices Act (DTPA). The district court granted summary judgment for the defendant, ruling in part that Plaintiff's claim failed because he did not provide pre-suit notice of the alleged breach as required under the Texas UCC.
HOLDING: Reversed and remanded.
REASONING: Texas law requires the buyer, within a reasonable time after he discovers or should have discovered any breach, to notify the seller of that breach. The court reasoned that this notice requirement only applies if the transaction involves "goods" as defined by the Texas UCC. The court explained that §2.607(c)(1) of the Texas Business & Commerce Code is intended to give the seller a fair opportunity to "cure" a product-related issue before it becomes a bigger legal issue. Because tangible, movable goods can typically be inspected or repaired, notifying the seller makes sense. Failing to give notice to the seller can bar the buyer from damages, as he did not give the seller a chance to rectify the situation. Essentially, the statute's goal is to keep both parties on even footing and to reduce the risk that a seller will be blindsided by a legal claim long after the seller has completed the sale.

Failing to give notice to the seller can bar the buyer from damages, as he did not give the seller a chance to rectify the situation.

The court then examined whether an advertisement could be classified as a "good" under the UCC, reasoning that it could not because advertisements are intangible services. The court reiterated that the UCC's notice requirement is not applicable where the transaction involves a service or falls outside the UCC's definition of a "sale of goods." Because Plaintiff's purchase was an advertisement, the defendant had no statutory right to pre-suit notice. As a result, imposing a UCC notice requirement on Plaintiff's breach-of-warranty claim was improper. The court accordingly reversed and remanded.

COURT FINDS NO AUTHORITY HOLDING A DTPA "FAILURE TO DISCLOSE" CLAIM REQUIRES A PRIOR BREACH OF CONTRACT FINDING.

Mock v. St. David's Healthcare P'ship, LP, LLP, 2025 Tex. App. LEXIS 1049 (Tex. App.—Austin, 2025).
https://law.justia.com/cases/texas/third-court-of-appeals/2025/03-22-00708-cv.html

FACTS: Plaintiff, Appellant Melanie Mock, sought medical treatment at Defendant Appellee St. David's Healthcare's Emergency Department. After Plaintiff received treatment, Defendant provided Plaintiff with a contract outlining the Financial Agreement Plaintiff was to fulfill in exchange for the hospital services. The Agreement detailed that charges would be processed for hospital services or other "special items" provided. After Plaintiff received a bill that included Evaluation and Management Services (EMS) charges, Plaintiff brought a DTPA claim, among others, alleging that the item was an undisclosed charge outside the Agreement's scope.

The trial court granted the Defendant's motion to dismiss on the DTPA claim. Plaintiff appealed.
HOLDING: Reversed and Remanded.
REASONING: Plaintiff argued that Defendant failed to disclose the EMS charge which violated the DTPA. Defendant argued that Plaintiff's DTPA claim arose from the same conduct alleged in Plaintiff's breach-of-contract claim and that because the breach-of-contract claim was previously dismissed by the trial court, the DTPA claim should follow. Defendant also brought case law supporting that assertion. The court disagreed with Defendant.

First, none of Defendant's case law addressed the factual scenario at issue of presenting a contract to an already treated patient. The court reasoned that while there may be case law that supported certain DTPA claims to be impermissible absent

a breach-of-contract finding, Plaintiff's allegation for "failing to disclose" is a separate issue. Defendant presented no governing authority addressing a DTPA action based on a failure to disclose.

Second, while the alleged facts are based on the same conduct, each cause of action requires different elements of proof. A DTPA claim has its own set of elements independent of a breach-of-contract action. Because Defendant's motion for summary judgment on Plaintiff's DTPA claim did not explain why Plaintiff could not meet their burden, Defendant failed to show the absence of a genuine issue of material fact. Thus, the court reversed and remanded the motion to dismiss Plaintiff's DTPA claim.

TO RECOVER REPAIR OR COMPLETION COSTS AS ACTUAL DAMAGES, A PARTY MUST PROVE THAT THE COSTS WERE REASONABLE AND NECESSARY

UNDER THE DECEPTIVE TRADE PRACTICES ACT (DTPA), BREACH OF CONTRACT, AND BREACH OF IMPLIED WARRANTY CAUSES OF ACTION, ONLY A PREVAILING PARTY MAY RECOVER ATTORNEY'S FEES

Edmond Demiraj d/b/a ALB Painting and Remodeling v. Martinez, ___ S.W.3d ___ (Tex. App.—Houston [1st Dist.] 2025, no pet.).
https://law.justia.com/cases/texas/first-court-of-appeals/2025/01-23-00493-cv.html

FACTS: Plaintiffs-Appellees Noe and Judy Martinez entered a contract with Defendant/Appellant Edmond Demiraj to repair flood damages to their home. The parties agreed that the Martinezes would purchase construction materials while Demiraj provided labor. Demiraj had only performed fifty percent of the project when he requested an additional $65,000 from the agreed price to complete the work. Dissatisfied with the quality of his performance, the Martinezes terminated Demiraj. They sought an alternative contractor, All Star Construction, to repair Demiraj's defective work and complete the remainder of the project.

The totality of the evidence was ample to show that the service cost was reasonable and necessary, entitling the Martinezes to the $45,000 award.

The Martinezes sued Demiraj for breach of contract, breach of implied warranty, and a DTPA claim, seeking actual damages and attorney's fees. They incurred $53,863.77 for construction materials and $45,000 for All Star's repair, totaling $98,863.77. The trial court held for the Martinezes and awarded them the full cost of actual damages and attorney's fees. Demiraj appealed.

HOLDING: Reversed and remanded in part; affirmed in part.

REASONING: Demiraj argued that the Martinezes had insufficient evidence to show that the actual damages were reasonable and necessary, warranting a reversal of the award.

First, the court held that the record contained more than a scintilla of evidence showing that $45,000 for All Star's services was a reasonable amount. The court considered that All Star offered to fix and finish the project for $20,000 less, the final price was consistent with similar industry rates, and the Martinezes provided photographs of the project's defects in Demiraj's work. The totality of the evidence was ample to show that the service cost was reasonable and necessary, entitling the Martinezes to the $45,000 award.

However, while evidence of Demiraj's work may have shown the necessity in their purchase of construction materials, the Martinezes offered no proof as to the reasonableness of the amount. Thus, the court held that the evidence for the materials was legally insufficient to support that the $53,863.77 was reasonable and necessary, warranting reversal.

Demiraj also argued that because the awarded damages must be reversed, so should the attorney's fees, a position the court agreed with. The court held that only a prevailing party may recover attorney's fees, and because the damages award was in dispute, the Martinezes did not prevail. Thus, also warranting a reversal for attorney's fees.