

RECENT DEVELOPMENTS

DECEPTIVE TRADE PRACTICES AND WARRANTY

STATUTE OF LIMITATIONS FOR A DTPA CLAIM IS TWO YEARS

CAUSES OF ACTION ACCRUE AND STATUTES OF LIMITATIONS BEGIN TO RUN WHEN FACTS COME INTO EXISTENCE THAT AUTHORIZE A CLAIMANT TO SEEK A JUDICIAL REMEDY

REPAIRS PERFORMED BY A DEFENDANT DO NOT TOLL THE DISCOVERY RULE FOR PLAINTIFFS, WITHOUT MORE

JS Custom Homes LLC v. Doigg, 2026 Tex. App. LEXIS 6444 (Tex. App.—Dallas 2026).
<https://law.justia.com/cases/texas/fifth-court-of-appeals/2026/05-25-00253-cv.html>

FACTS: Appellant Jerret Smith (“Smith”), a homebuilder and founder of JS Custom Homes LLC (“JS”), contracted with Appellees, Jonathan and Carisa Doigg, (the “Doiggs”) for the construction of a new home. The Doiggs moved into the home in April 2013 and soon began noticing cracks in the laundry room tile and slab foundation. Smith paid for an engineer selected by the Doiggs to inspect the home. In September 2014, the engineer reported the foundation design was flawed, was not constructed to meet site conditions, and would continue to move even after the recommended repairs. Smith subsequently made the repairs and allegedly reported the foundation was normal after the repairs were completed.

To obtain the benefit of tolling based on fraudulent representations, the Doiggs had to establish that their reliance on Smith’s statements that the foundation was normal and reasonable.

In June 2021, the Doiggs noticed the doors inside the home would not close and observed additional cracking and damage. The Doiggs filed suit against JS and Smith in March 2023, alleging violations of the Deceptive Trade Practices Act (“DTPA”). After a jury trial, the trial court entered judgment in favor of the Doiggs and awarded damages in accordance with the jury’s verdict. JS and Smith appealed.

HOLDING: Reversed.

REASONING: JS and Smith argued that the statute of limitations barred the Doiggs’ DTPA claim because the Doiggs were on notice of the foundation defect in September 2014 but did not file suit until March 2023. The court agreed, reasoning the statute of limitations for a DTPA claim was two years. The court explained the causes of action accrued over time and statutes of limitations began to run when facts came into existence that authorize a claimant to seek a judicial remedy. After receiving the engineer’s report, the Doiggs were on notice that the foundation

was flawed and would continue to move even after the recommended repairs.

The court further held that repairs performed by a defendant do not toll the discovery rule for plaintiffs, without more. To obtain the benefit of tolling based on fraudulent representations, the Doiggs had to establish that their reliance on Smith’s statements that the foundation was normal and reasonable. The court reasoned that the Doiggs’ reliance was not reasonable because the 2014 engineer’s report had already informed them of extensive foundation defects and stated that the foundation would continue to move even after repairs. Therefore, the Doiggs’ DTPA claim was barred by the statute of limitations.

BECAUSE DTPA CLAIMS REQUIRE ALLEGATIONS OF ACTIONS THAT ARE “FALSE, MISLEADING, OR DECEPTIVE,” ALL DTPA CLAIMS AVER FRAUD THEREFORE, THE PLEADING REQUIREMENTS OF RULE 9(B) WILL BE APPLIED

AS PLAINTIFF’S DTPA CLAIMS FAIL TO MEET THE PLEADING REQUIREMENTS OF RULE 9(B), ITS DTPA CLAIMS ARE DISMISSED

Native Waterscapes, LLC v. Starstone Specialty Ins. Co., 2026 U.S. Dist. LEXIS 109217 (W.D. Tex. 2026).

FACTS: Plaintiff Native Waterscapes, LLC (“Waterscapes”) was insured by Defendant Starstone Specialty Insurance Company (“Starstone”). Waterscapes was sued by two of its customers for property damage and construction defects. Waterscapes requested a defense from Starstone in both suits, but Starstone denied coverage for one claim and continued to investigate the other.

Waterscapes subsequently sued Starstone, asserting Texas Deceptive Trade Practices Act (“DTPA”) violations, among other claims. Starstone moved to dismiss Waterscapes’ First Amended Complaint under Rule 12(b)(6), arguing, in part, that the DTPA claims failed to satisfy Rule 9(b).

HOLDING: Granted in part and denied in part.

REASONING: Starstone argued Waterscapes’ DTPA claims were subject to Rule 9(b)’s heightened pleading requirements because the claims alleged false, misleading, or deceptive conduct. The court agreed and held that the Waterscapes’ DTPA claims averred fraud.

The court further explained that Waterscapes was required to plead with particularity the circumstances constituting fraud, including the alleged fraudulent statements, the speaker, when and where the statements were made, and why the statements were fraudulent. Because Waterscapes failed to provide those allegations, the court concluded the DTPA claims did not satisfy Rule 9(b) and dismissed the claims without prejudice.

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A TRANSACTION, A PROJECT, OR A SET OF TRANSACTIONS RELATING TO THE SAME PROJECT INVOLVING TOTAL CONSIDERATION BY THE CONSUMER OF MORE THAN \$500,000 IS EXEMPTED FROM THE DTPA

BECAUSE THE TOTAL CONSIDERATION FOR THE PLANNED UNDERTAKING INCLUDING SEVERAL CONTRACTORS EXCEEDED \$500,000, PLAINTIFF WAS NOT ENTITLED TO RELIEF UNDER ITS DTPA CLAIM AS A MATTER OF LAW

Mueller Supply Co. v. Arrow Self Storage, LLC, 2026 Tex. App. LEXIS 4772 (Tex. App.—Corpus Christi 2026).
<https://law.justia.com/cases/texas/thirteenth-court-of-appeals/2026/13-24-00380-cv.html>

FACTS: Appellee Arrow Self Storage, LLC (“Arrow”) hired Appellant Mueller Supply Company, Inc. d/b/a Mueller, Inc. (“Mueller”) to fabricate steel components for a self-storage facility. Arrow obtained a construction loan of just under \$1.3 million for the project but paid Mueller \$294,039 under the parties’ purchase agreement. After problems arose with the fabricated components, Arrow sued Mueller for, among other claims, violations of the Texas Deceptive Trade Practices Act (“DTPA”).

The jury found for Arrow on its DTPA claim, and the trial court entered judgment on the verdict. Mueller moved for judgment notwithstanding the verdict and for a new trial, arguing Arrow’s DTPA claim was barred because the total project value exceeded \$500,000. The trial

The court treated Arrow’s construction of the self-storage facility as the relevant planned undertaking, rather than limiting the analysis to Arrow’s \$294,039 payment to Mueller.

court denied Mueller’s motion. Mueller appealed.

HOLDING: Reversed and rendered.

REASONING: Mueller argued the jury’s DTPA award was barred by Tex. Bus. & Com. Code §17.49(g) because the transaction was part of a project involving total consumer consideration of more than \$500,000. The court agreed, explaining that the exemption applied to a transaction, project, or set of transactions relating to the same project when the consumer’s total consideration exceeded \$500,000.

The court treated Arrow’s construction of the self-storage facility as the relevant planned undertaking, rather than limiting the analysis to Arrow’s \$294,039 payment to Mueller. Arrow hired several subcontractors, coordinated their work, and used construction loan proceeds of just under \$1.3 million to complete the facility. Because the total consideration for the planned undertaking exceeded \$500,000, Arrow was not entitled to DTPA relief as a matter of law.

DISPOSITIVE ISSUE IN DETERMINING WHETHER CLIENT HAD STANDING TO SUE ATTORNEY UNDER DTPA “IS WHETHER [CLIENT] WAS A BENEFICIARY OF THE LEGAL SERVICES PROVIDED”

SECTION 17.49(C) SPECIFICALLY EXEMPTS FROM ITS PROTECTIONS AN EXPRESS MISREPRESENTATION OF MATERIAL FACT THAT CANNOT BE CHARACTERIZED AS ADVICE, JUDGMENT, OR OPINION, AS WELL AS “A FAILURE TO DISCLOSE INFORMATION”

GENERALLY, A PARTY MAY RECOVER UNDER QUANTUM MERUIT ONLY WHEN THERE IS NO EXPRESS CONTRACT

Cooper v. Schulman, 2026 Tex. App. LEXIS 5451 (Tex. App.—Austin, 2025).

<https://law.justia.com/cases/texas/third-court-of-appeals/2026/03-23-00778-cv.html>

FACTS: Plaintiff-Appellant Johnathan Cooper sought legal representation from Defendant-Appellee David Schulman after Cooper was convicted of several crimes. Cooper’s brother, Wesley, signed a legal-services agreement and paid Schulman a \$10,000 fee on Cooper’s behalf. After Schulman’s business partner fell ill, Schulman refunded \$7,500 to Wesley but retained \$2,500 as a fee for the personal interview conducted with Cooper. Cooper and Wesley alleged they understood the \$10,000 was solely for representation beyond the personal interview and would not have agreed to the payment if they had known the \$2,500 would not be refunded.

Cooper filed suit, asserting, among other claims, fraudulent inducement and violations of the Texas Deceptive Trade Practices Act (“DTPA”). Schulman counterclaimed for quantum meruit and moved for summary judgment on both his counterclaim and Cooper’s DTPA claim. The trial court granted Schulman’s motion for summary judgment. Cooper appealed.

HOLDING: Reversed and remanded.

REASONING: Schulman argued that Cooper lacked standing to assert a DTPA claim because Wesley paid the \$2,500 fee. The court disagreed, holding that the dispositive issue was not who paid the money but whether Cooper was a beneficiary of the legal services provided.

Schulman also argued that Tex. Bus. & Com. Code §17.49(c) barred Cooper’s DTPA claim because it arose from the rendition of professional services. The court disagreed, explaining that §17.49(c) specifically exempts from its protection an express misrepresentation of material fact that cannot be characterized as advice, judgment, or opinion, as well as a failure to disclose information intended to induce a consumer into a transaction the consumer otherwise would not have entered. Cooper presented evidence creating a fact issue that Schulman failed to disclose his intent to retain the \$2,500 fee, precluding summary judgment.

Finally, the court concluded that summary judgment on Schulman’s quantum meruit claim was improper because the summary judgment evidence raised a fact issue regarding the existence of an

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express contract, and quantum meruit generally is unavailable where an express contract governs the parties' dispute.

AN AWARD OF TREBLE DAMAGES UNDER THE DTPA IS CONSIDERED PART OF THE AMOUNT IN CONTROVERSY

PLAINTIFF HAS PROVIDED PROPER PRE-SUIT NOTICE AS REQUIRED UNDER §17.505(A)

Profit & Holding, LLC v. Lozano Liquidation Enter., LLC, 2025 U.S. Dist. LEXIS 86880 (S.D. Tex. 2025).
<https://trellis.law/doc/district/35611060/>

FACTS: Plaintiff Profit & Holding, LLC ("Plaintiff") entered into an agreement with Defendants Lozano Liquidation Enterprise, LLC and Joel Lozano ("Defendants") to purchase 10,800 units of Dymatize Super Mass Gainer Protein Powder for \$45,950. Defendants allegedly failed to deliver the product. Plaintiff sued in federal court for breach of contract, fraud, and violations of the Texas Deceptive Trade Practices Act ("DTPA"). Defendants moved to dismiss, arguing: (1) lack of subject matter jurisdiction because the amount in controversy was less than \$75,000; (2) failure to provide pre-suit notice under DTPA § 17.505(a); and (3) inadequate pleadings. Plaintiff attached two demand letters to its First Amended Complaint.

HOLDING: Denied.

REASONING: Defendants argued that the court lacked subject matter jurisdiction because the amount in controversy stated in the First Amended Complaint did not exceed \$75,000. The court rejected this argument, citing the Texas DTPA that allows a pre-

vailing plaintiff to obtain treble damages if the defendant's actions are found to be "knowing or intentional." This elevated the Plaintiff's claim to \$137,850, not including attorney's fees. Therefore, the court held that the \$75,000 jurisdictional requirement was satisfied

The court found that the two demand letters contained Plaintiff's complaint, damages, and attorney's fees, which fulfilled the statutory notice requirement's purpose of encouraging settlement.

because treble damages and attorney's fees under the DTPA are included in the amount in controversy.

Defendants also sought abatement, alleging Plaintiff failed to provide pre-suit notice under § 17.505(a) of the DTPA. The court found that the two demand letters contained Plaintiff's complaint, damages, and attorney's fees, which fulfilled the statutory notice requirement's purpose of encouraging settlement. The court denied Defendants' request for abatement, holding that Plaintiff provided proper pre-suit notice as required under § 17.505(a).

COURT DENIES DEFENDANT'S MOTION TO COMPEL ARBITRATION IN A CLASS ACTION BROUGHT UNDER THE TELEPHONE CONSUMER PROTECTION ACT ("TCPA")

COURT HELD THAT A DEFENDANT'S CONDUCT, EVEN PRIOR TO CLASS CERTIFICATION, MAY SUPPORT AN INFERENCE THAT IT WAIVED ITS RIGHT TO COMPEL ARBITRATION OF PUTATIVE CLASS MEMBER'S CLAIMS

Moore, et al. v. Club Exploria, LLC, (7th Cir. 2026).
<https://law.justia.com/cases/federal/appellate-courts/ca7/25-2721/25-2721-2026-08-18.html>

FACTS: Club Exploria, LLC ("Exploria"), a vacation property company, contracted with third-party vendors to run a telemarketing campaign. The vendors purchased leads generated through opt-in websites and used scripted, prerecorded calls to contact potential customers. George Moore ("Moore") received two of these calls and sued Exploria, alleging he and other class members received calls without their consent in violation of the Telephone Consumer Protection Act ("TCPA").

Over the next several years, Exploria actively defended the case in court. Exploria filed pleadings with affirmative defenses, engaged in class-related discovery, filed motions on the merits, and opposed class certification. After the class was certified, Exploria sought to raise arbitration as a defense to unnamed class members' claims. The district court denied Exploria's motion to compel arbitration, holding that Exploria's conduct before and after class certification was inconsistent with an intent to arbitrate and therefore constituted waiver. Exploria appealed.

HOLDING: Affirmed.

REASONING: Exploria argued that it did not waive its arbitration rights because it moved to compel arbitration after the class was finalized. The court rejected this argument, holding that a defendant's conduct before class certification may be relevant to whether it waived the right to compel arbitration of putative class members' claims. Arbitration agreements with putative class members may also be relevant to class certification, especially where the agreements contain class-action or joinder limitations. By failing to raise arbitration during class-related discovery or in opposition to class certification, a defendant may imply that it intends to litigate the class claims in court. Thus, a defendant's pre-certification conduct may support an inference of waiver. Exploria's conduct at each stage of litigation was inconsistent with an intent to arbitrate. Therefore, the district court did not err in denying Exploria's motion to compel arbitration.

PUFFERY IS AN EXPRESSION OF OPINION BY A SELLER NOT MADE AS A REPRESENTATION OF FACT. ASSERTIONS THAT A PROPERTY IS SUPERB, SUPER FINE, AND ONE OF THE FINEST LITTLE PROPERTIES CONSTITUTE PUFFERY

THE TEXAS UNIFORM COMMERCIAL CODE ALLOWS SELLERS TO DISCLAIM BOTH THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

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Foster v. Corteva Agriscience LLC, 2026 U.S. Dist. LEXIS 193338 (N.D. Tex. 2026).
<https://law.justia.com/cases/federal/district-courts/texas/txndce/5:2025cv00183/408595/30/>

FACTS: Plaintiffs (the “Fosters”) had been in the cotton business in West Texas for generations and had purchased cotton seeds from Defendant Corteva Agriscience LLC (“Corteva”). In 2024, the Fosters planted Phytogen cotton seeds purchased from Corteva. The seeds failed to emerge, resulting in multiple replants and an estimated loss of over \$1.5 million. Corteva had advertised that its Phytogen cotton seeds were “Improving West Texas Cotton Yields” and were “keeping cotton king in West Texas with ‘game-changing’ high yields.” The Fosters sued Corteva under the Texas Deceptive Trade Practices Act (“DTPA”), alleging these statements were false or misleading. The Fosters also alleged Corteva breached the implied warranties of merchantability and fitness for a particular purpose.

The Fosters had entered into a Technology Use Agreement (“TUA”) with Corteva that expressly disclaimed the implied warranties of merchantability and fitness for a particular purpose. Corteva moved to dismiss all four claims under Rule 12(b)(6).

HOLDING: Motion to dismiss granted. Counts Two, Three, and Four dismissed with prejudice; Count One dismissed without prejudice.

REASONING: The court explained that a DTPA misrepresentation must concern a material fact and cannot be mere puffery or opinion. Puffery is an expression of opinion by a seller that is not made as a representation of fact. Whether a statement is one of fact or opinion depends on the circumstances, including the specificity of the statement. The court noted that Texas courts have found statements describing property as “superb,” “super fine,” and “one of the finest little properties” to be puffery.

The court concluded that Corteva’s statements that its Phytogen seeds were “improving West Texas cotton yields” and producing “game-changing high yields” were similarly broad and did not make specific factual representations or comparisons. The statements were therefore puffery and were not actionable under the DTPA.

The court also held that the TUA validly disclaimed the implied warranties of merchantability and fitness for a particular purpose. The Texas Uniform Commercial Code allows sellers to disclaim both implied warranties if the disclaimer satisfies certain requirements. To disclaim the implied warranty of merchantability, a written disclaimer must mention “merchantability” and be conspicuous. To disclaim the implied warranty of fitness for a particular purpose, the disclaimer must be in writing and must be conspicuous. Here, the TUA’s disclaimer appeared in a stand-alone section titled “Disclaimer of Warranty” and was written in bold capital letters. The disclaimer expressly mentioned “merchantability” and “fitness for a particular purpose.” Because the disclaimer contained the required language and was conspicuous enough for a reasonable person to notice it, the court held that the disclaimer was enforceable.

BECAUSE BUYER AGREED TO ACCEPT THE PROPERTY “AS IS” AND “WITHOUT WARRANTY EXCEPT FOR THE WARRANTIES OF TITLE AND THE WARRANTIES IN THIS CONTRACT,” THE TRIAL COURT DID NOT ERR IN GRANTING DIRECTED VERDICT IN FAVOR SELLER ON DTPA EXPRESS WARRANTY CLAIM

Bassett v. Byrn, 2025 Tex. App. LEXIS 9056 (Tex. App.—Austin 2025).

<https://law.justia.com/cases/texas/third-court-of-appeals/2025/03-23-00867-cv.html>

FACTS: Defendant Justin Byrn listed a property (the “Property”) for sale. Plaintiffs Darin and Kimberly Bassett (the “Bassetts”) entered into a contract with Byrn to purchase the Property. The contract included a provision stating that the Bassetts accepted the Property “as is,” meaning in its present condition with any and all defects and without warranty except for warranties of title and warranties contained in the contract. The Bassetts retained a third party to inspect the Property, and the inspection revealed several defects. The Bassetts requested Byrn to reduce the purchase price based on those defects, and Byrn complied. The contract was then executed and the sale closed in the same month.

The Bassetts sued Byrn, alleging he made misrepresentations about the condition of the Property. The Bassetts asserted claims for fraud in a real estate transaction, fraud by nondisclosure, fraud in the inducement, breach of contract, and violations of the Texas Deceptive Trade Practices Act (“DTPA”). The trial court granted a directed verdict on the Bassetts’ breach-of-contract and warranty claims and rendered a take-nothing judgment on the remaining claims. The Bassetts appealed.

HOLDING: Affirmed.

REASONING: The Bassetts argued Byrn misrepresented the condition of the Property. The Bassetts claimed they relied on an express warranty made in Byrn’s advertisement stating the Property had been “completely remodeled from the piers up” when further inspection showed the Property did not meet that standard. Byrn denied that the advertisement created an express warranty and argued that, even if it did, the contract’s “as is” provision disclaimed warranties except for warranties of title and warranties contained in the contract.

The court agreed with Byrn. The “as is” provision stated the buyer accepted the Property “with any and all defects without warranty except for the warranties of title and the warranties in this contract.” The court reasoned that, by agreeing to this provision, the buyer agreed to make their own independent assessment of the bargain and accept the risks that they may be wrong. The provision did not prevent the buyer from conducting an inspection of the property or negotiating repairs or treatments before closing.

The Bassetts agreed to the “as is” provision, conducted their own inspection, and discovered the defects during the inspection. Nonetheless, the Bassetts executed the purchase agreement and closed on the Property. As such, the court found that the trial court had not erred in granting Byrn’s motion for directed verdict on the Bassett’s DTPA express warranty claim against him.