

RECENT DEVELOPMENTS

WARRANTIES

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

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,

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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 that stating 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

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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.