

# RECENT DEVELOPMENTS

## DECEPTIVE TRADE PRACTICES AND WARRANTIES

### MAGNUSON-MOSS EXHAUSTION RULE IS NOT JURISDICTIONAL

Maronyan v. Toyota Motor Sales, U.S.A., Inc., 658 F.3d 1038 (9th Cir. 2011).

**FACTS:** Mariam Maronyan leased a new car from defendant, Toyota Motor Sales. The car began to have mechanical problems within the warranty period. Toyota failed to repair the problems to Maronyan's satisfaction, and she brought suit against Toyota in federal district court. Her claim alleged breach of warranty under the Magnuson–Moss Warranty Act (“MMWA”). The district court granted Toyota's motion to dismiss for lack of subject matter jurisdiction on the ground that Maronyan did not pursue her claims through the California Dispute Settlement Program (which Toyota specified in its warranty) before filing suit in civil court.

**HOLDING:** Reversed.

**REASONING:** All parties agreed that under Section 2310(a) of the MMWA, if a warrantor establishes a requirement that a dispute settlement procedure must be used before pursuing any legal remedy, then the consumer may not commence a civil action until the dispute resolution process is completed. However, the court noted that despite the mandatory language, statutorily-created exhaustion requirements ordinarily constitute affirmative defenses that may be defeated by compelling reasons for failure to exhaust. A consumer's failure to exhaust a remedy will only deprive federal courts of subject matter jurisdiction in those cases in which Congress makes plain the jurisdictional character of the exhaustion requirement. *Weinberger v. Salfi*, 422 U.S. 749, 757 (1975). Subject matter jurisdiction is rarely lost due to lack of compliance with exhaustion requirements. See *I.A.M. Nat'l Pen-*

*sion Fund Benefit Plan C. v. Stockton TRI Indus.*, 727 F.2d 1204, 1208 (D.C. Cir.1984) (“Only when Congress states in clear, unequivocal terms that the judiciary is barred from hearing an action until the administrative agency has come to a decision . . . has the Supreme Court held that exhaustion is a jurisdictional prerequisite.”).

The court disagreed with Toyota's contention that Congress had mandated the MMWA exhaustion requirement as jurisdictional, concluding that the necessary “sweeping and direct” language required in *Weinberger* was not present. Only when Congress has used “sweeping and direct language that goes beyond a requirement that only exhausted claims be brought” should a failure to exhaust be seen as affecting jurisdiction. The Court has chastised lower courts for their “overly zealous” application of the term “jurisdictional” to what are accurately understood as claims-processing rules or elements of a plaintiff's claim. In two earlier cases, the court found that similarly-worded statutory exhaustion requirements did not deprive federal courts of subject matter jurisdiction. *Rumbles v. Hill*, 182 F.3d 1064 (9th Cir. 1999); *McBride Cotton and Cattle Corp. v. Veneman*, 290 F.3d 973, 978 (9th Cir. 2002). The court held that the generic language in the MMWA was not “sweeping and direct.” Thus, the court held that § 2310(a)'s prerequisite that “the consumer may not commence a civil action . . . unless he initially resorts to [an informal dispute settlement procedure]” is merely a codification of the MMWA's exhaustion requirement and does not operate as a jurisdictional bar.

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## CONSUMER CREDIT

### SUIT ON CREDIT CARD DEBT IS AN ACTION ON AN OPEN ACCOUNT

Capital One Bank v. Conti, 245 S.W.3d 490 (Tex. App.—San Antonio 2011).

**FACTS:** Capital One sued Duane Conti for failure to pay amounts owed on his credit card account. The undisputed facts showed that Conti made his last payment in June 2005 and that Capital One's petition was file-stamped on August 4, 2009. The trial court granted Conti's motion for summary judgment on the grounds that the suit was not commenced before the statute of limitations had expired.

**HOLDING:** Reversed.

**REASONING:** The court outlined the four elements of an open account as: 1) transactions between the parties; 2) creating a creditor-debtor relationship through a general course of dealing; 3) with the account still being open; and 4) with expectation of further dealing. *Eaves v. Unifund CCR Partners*, 301 S.W.3d 402,

408-409 (Tex. App.—El Paso 2009). A credit card debt is considered an open account because the terms of repayment remain subject to modification and the parties exchange credits and debits until either party settles the balance and closes the account.

If an action to collect a credit card debt is brought as an action on an open account, Section 16.004(c) of the Texas Civil Practices and Remedies Code establishes the applicable statute of limitations. Under Section 16.004, a person must bring an action on an open or stated account not later than four years after the day that the cause of action accrues. The cause of action accrues on the day that the dealings in which the parties were interested together cease. As the party moving for summary judgment, Conti had the burden to conclusively establish the date upon which the parties' dealings ceased. Proof of the date of last payment is not conclusive evidence of the date upon which the parties' dealings ceased. The court reasoned that a typical credit card agreement requires the credit card holder to make payments at regular intervals. Therefore, merely establishing the last date of payment is not sufficient to establish, as a matter of law, that the relationship be-