DECEPTIVE TRADE PRACTICES AND WARRANTY

DTPA CLAIM IS NOT ADDED TO MAGNUSON-MOSS FOR PURPOSES OF AMOUNT IN CONTROVERSY

Alam v. BMW of N. Am., LLC, ___ F. Supp. 3d ___ (W.D. Tex. 2020).
https://casetext.com/case/alam-v-bmw-of-n-am-llc-1

FACTS: Plaintiff Mohammed Alam purchased a certified pre-owned BMW vehicle from Defendant BMW of Austin (BMW). After the purchase, Alam discovered that the vehicle's engine was defective.

Alam filed suit against BMW, alleging express and implied warranty claims under the Magnuson-Moss Warranty Act (the "MMWA") and violations of Texas Deceptive Trade Practices Act ("DTPA"). BMW filed a motion to dismiss for lack of subject matter jurisdiction.

HOLDING: Motion granted.

REASONING: Alam asserted that the court had jurisdiction over this case because of the federal question raised by his MMWA claim, along with pendent jurisdiction over the remaining claims. The MMWA contains its own "amount in controversy" requirement, providing that "if the amount in controversy is less than the sum or value of $50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in th[e] suit," the federal courts lack jurisdiction. 15 U.S.C. § 2310(d)(3)(B)). Alam argued that the court must include the DTPA damages in the MMWA "amount in controversy" analysis. Alam claimed that there was more than $50,000 at issue by trebling his damages under the DTPA or, in the alternative, by arguing that he was entitled to a refund of the full purchase price of the car under the DTPA.

Damages for any pendent state-law claims should not be included to satisfy the jurisdictional amount under the MMWA.

The court rejected Alam's assertions. Citing Fifth Circuit precedent, the court held that damages for any pendent state-law claims should not be included to satisfy the jurisdictional amount under the MMWA. Thus, while the court could consider treble damages under the DTPA if it were conducting a diversity jurisdiction analysis of the amount in controversy, the court may not do so when determining the amount in controversy in an MMWA claim.

CLAIM ARISING FROM SERVICING OF LOAN DOES NOT GIVE RISE TO DTPA CONSUMER STATUS

Pittman v. U.S. Bank NA, ___ F. Supp. 3d ___ (E.D. Tex. 2020).
https://casetext.com/case/pittman-v-usbank-na

FACTS: Plaintiff Cheryl Pittman obtained a loan (the "Note"), secured by conveying a security interest in a purchased property. Plaintiff conveyed the security interest by executing a "Deed of Trust" (with the Note, the "Loan"). Defendants U.S. Bank NA, Successor Trustee to Bank of America, NA, Successor in Interest to LaSalle Bank NA ("Trustee Bank") asserted that it was the owner and holder of the Note. Trustee Bank was the beneficiary of the Deed of Trust by assignment and a Purchase Agreement. Defendant Select Portfolio Servicing, Inc. ("SPS") serviced the Loan. Plaintiff defaulted under the terms of the Loan. Following communications between the parties, the sale of the property proceeded, and the Trustee Bank purchased the Property.

Plaintiff sued Defendants, alleging Deceptive Trade Practices Act ("DTPA") violations. The magistrate judge found in their proposed findings of fact (the "Report") that the Plaintiff failed to respond to Defendants' argument that Plaintiff was not a consumer under the DTPA. Plaintiff objected to this finding in the Report.

HOLDING: Overruled.

REASONING: Plaintiff argued that under the DTPA, a borrower is a consumer.

The district overruled Plaintiff's objection and held the reply did not address Defendants' argument that Plaintiff is not a consumer under prevailing law. The court held that a mortgagor qualifies as a consumer under the DTPA if his or her primary objective in obtaining the loan was to acquire a good or service, and that good or service forms the basis of the complaint. Here, the secured real property did not form the basis of Plaintiff's complaint. Instead, Plaintiff's claims related to the servicing of her loan. The court held that performance of any services incidental to the loan transaction, such as acceleration, abandonment, and foreclosure, did not transform Plaintiff into a consumer under the DTPA.

A PERSON CANNOT QUALIFY AS A CONSUMER IF THE UNDERLYING TRANSACTION IS A PURE LOAN BECAUSE MONEY IS CONSIDERED NEITHER A GOOD NOR A SERVICE

STATEMENTS REGARDING LOAN MODIFICATIONS DO NOT CONCERN THE "CHARACTER, EXTENT, OR AMOUNT OF CONSUMER DEBT" FOR PURPOSES OF THE TDCA

Compass Bank v. Collier, ___ S.W.3d ___ (Tex. App. 2020).
https://casetext.com/case/compass-bank-v-collier

FACTS: Appellees Everett Wayne Collier and Jan Collier attempted to modify their mortgage loan with Appellant Compass Bank ("Compass") after the Colliers defaulted to avoid foreclosure. Compass sent the Colliers a "Commitment Letter" outlining various conditions for loan modification approval. The Colliers signed the Commitment Letter. However, the Colliers failed to provide tax returns and failed to ensure that the Compass lien remained in first place. The Colliers made three required payments under the Commitment Letter. Due to the Colliers' failure to file tax returns, they could not produce tax returns and the IRS asserted federal tax liens on the property. Compass denied the loan modification.

The Colliers sued Compass alleging violation of both the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA") and the Texas Debt Collection Act ("TDCA"). The Colliers prevailed against Compass. Compass appealed.
HOLDING: Reversed.
REASONING: Compass argued that the Colliers' DTPA claims should fail because the Colliers did not qualify for consumer status. The Colliers, however, contended that they were consumers because the original loan financed the expansion of their house.

The court agreed with Compass, holding a loan modification was similar to refinancing a loan because it was not sought for the acquisition of a good or service but instead to finance an existing loan on previously acquired property. None of the Colliers' evidence of alleged deceptive trade practices pertaining to the actual home sales transaction or a deceptive act related to the original financing of their home. Nor did the Colliers not seek to acquire a good or service with the loan modification. Rather, the Colliers merely attempted to refinance an existing loan on a previously acquired property.

Discussions regarding loan modification or the postponement of foreclosure were not representations or misrepresentations of the amount or character of a debt.

Compass further argued that loan modifications were not actionable under the TDCA. The Colliers rebutted that Compass attempted to foreclose without authority and misrepresented amounts owed after modification was denied in violation of TDCA §392.304(a)(8).

The court rejected Collier's arguments. Federal courts have repeatedly held that statements regarding loan modifications did not concern the character, extent, or amount of consumer debt under §392.304(a)(8). Other evidence and the Commitment Letter, signed by the Colliers, established that the Colliers knew they were in default, the amount they owed, the steps to cure default, and the risk of foreclosure. Discussions regarding loan modification or the postponement of foreclosure were not representations or misrepresentations of the amount or character of a debt nor were those discussions a deceptive means to collect a debt.

DTPA CONSUMER ESTABLISHED RELIANCE, KNOWLEDGE, PRODUCING CAUSE

A CORPORATE AGENT MAY BE INDIVIDUALLY LIABLE UNDER DTPA

Kerr v. Lambert, ___ S.W.3d ___ (Tex. App. 2020).
https://casetext.com/case/kerr-v-lambert

FACTS: Plaintiff-Appellees the Lamberts purchased ranch land ("Property"). After purchasing the Property, the Lamberts wanted to remove dead cacti but did not want to use a tractor and blade. Defendant-Appellant Kerr stated that he would spray the cactus with Picloram, an herbicide. Kerr told the Lamberts that he had sprayed Picloram on the trees and that it would not harm them. The Lamberts hired an arborist, who noted the trees were dying. The Lamberts waited two years to reassess the trees and 1,000 oak trees on the Property were either dead or dying.

The Lamberts brought a Deceptive Trade Practices-Consumer Protection Act ("DTPA") suit against Kerr, individually and as an agent of Cowpuncher Services ("Appellants"). Appellants appealed from the trial court's judgment after a bench trial held in favor of Lambert on their claims.
HOLDING: Affirmed.
REASONING: The Lamberts alleged that they relied on Kerr's assurance that Picloram would not harm their trees and that they would not have hired Kerr had he disclosed to them that the herbicide could harm the trees.

Appellants argued that the evidence presented at trial was legally insufficient to support this finding. They argued that there was a complete absence of evidence that the spraying was the proximate cause of the death of the Lamberts' trees.

The court disagreed with the Appellants. The court relied on (1) the testimony of horticulturists presented at trial for the finding that Picloram harmed trees on the property, (2) the label for Picloram cautioned that it can "control" trees, including oak trees, (3) Appellants' conduct in assuring Lambert that Picloram was safe for his trees, and (4) Lambert testified that without those assurances he would not have hired Appellants to spray Picloram on the Property.

Appellants also argued that the trial court erred when it concluded that Kerr was personally liable for misrepresentations made to Lambert. Lambert argued that Kerr, as Cowpuncher's agent, was personally liable for any misrepresentation he made, even if he was acting as agent for a corporation.

The appellate court disagreed with Appellants, reiterating the Texas Supreme Court holding that an agent for a corporation may be held personally liable for his own violations of the DTPA.