DECEPTIVE TRADE PRACTICES AND WARRANTY

PLAINTIFF IMPERMISSIBLY FRACTURES HIS DTPA PROFESSIONAL NEGLIGENCE CLAIM

Babauta v. Jennings, ___ S.W.3d ___ (Tex. App. 2021). https://law.justia.com/cases/texas/fourteenth-court-of-appeals/2021/14-16-00540-cv.html

FACTS: Appellant Felix Babauta was arrested and suffered various physical injuries by the officers. Babauta, represented by Appellees Jennings and Wilkins, sued the deputy and Harris County but his suit was dismissed. Subsequently, his appeal was also dismissed due to late filing.

Babauta sued Jennings and Wilkins alleging that the attorneys negligently failed to conduct discovery in the underlying suit and misinformed Babauta about the federal mailbox rule causing his notice of appeal to be filed untimely. Babauta asserted claims for breach of contract, negligence, fraud, breach of fiduciary duty, and violations of the DTPA. Wilkins and Jennings filed motions for no-evidence summary judgment that were granted by the trial court. Babauta appealed.

HOLDING: Affirmed.

REASONING: In asserting a DTPA violation, Babauta alleged that "Wilkins' acts in representing to Babauta that, if he filed the Notice of Appeal through the longstanding doctrine known as the [sic] is a DTPA violation because it is one of material fact."

If the gist of a client's complaint is that the attorney did not exercise that degree of care, skill, or diligence as attorneys of ordinary skill and knowledge commonly possess, then that complaint should be pursued as a negligence claim, rather than some other claim.

The court reasoned that because Babauta based his claims for DTPA violations on the same factual underpinnings of the negligence claim, Babauta impermissibly fractured his professional negligence claim. The court noted that under Texas law, a plaintiff is not permitted to divide or fracture a legal malpractice claim into additional claims that do not sound in negligence. Although other claims can coexist with a legal malpractice claim, the plaintiff must do more than merely reassert the same claim for legal malpractice under an alternative label.

Moreover, the court noted that if the gist of a client's complaint is that the attorney did not exercise that degree of care, skill, or diligence as attorneys of ordinary skill and knowledge commonly possess, then that complaint should be pursued as a negligence claim, rather than some other claim. Here, Babauta characterized Jennings and Wilkins' allegedly negligent conduct as involving "failure to perform" does not transform the essence of Babauta's claim from professional negligence to non-negligence. The Court held that the crux of Babauta's claim was that Jennings and Wilkins did not provide adequate legal representation to Babauta, and therefore, Babauta's claims should have been pursued only as a professional negligence claim.

MANUFACTURER IS NOT REQUIRED TO PROVIDE CONTRIBUTION OR INDEMNITY IN SUIT BY CONSUMER AGAINST DEALER UNDER TEX. CIV. PRAC. & REM. 82.002, BECAUSE SUIT SOUGHT ONLY ECONOMIC DAMAGES

Charlie Thomas Ford, Ltd. v. Ford Motor Co., 2021 Tex. App. LEXIS 1494 (Tex. App.—Houston [14th Dist.] Mar. 2, 2021). https://casetext.com/case/charlie-thomas-ford-ltd-v-ford-motor-co

FACTS: Appellant was Charlie Thomas Ford, LTD d/b/a AutoNation Ford Gulf Freeway, a car dealership that dealt cars manufactured by Appellee Ford Motor Company.

AutoNation and Ford were defendants in an underlying suit filed by Sylvia and Alejandra Roman, who claimed that an automobile they purchased from AutoNation was unfit under the DTPA. The Romans' claims against AutoNation went to arbitration, which resulted in an award for the Romans. AutoNation sought contribution and indemnity from Ford which resulted in both parties filing cross-motions for summary judgement. The trial court granted Ford's motion, denied AutoNation's motion, and dismissed AutoNation's claims. AutoNation appealed.

HOLDING: Affirmed.

REASONING: AutoNation argued that the trial court erroneously determined that Ford owed no indemnity under the parties' sales and services agreement because the sales and services agreement stated that Ford would defend, indemnify, hold harmless, and protect AutoNation from all losses, damages, or expenses resulting from lawsuits, complaints, or claims from third parties concerning "[p]roperty damage to a company product or bodily injury or property damage arising out of an occurrence caused solely by a 'production defect'. . . . [or] a defect in the design of that product."

A products liability action is an action against a manufacturer or seller for recovery of damages arising out of personal injury, death, or property damage.

The Romans' sought damages for the loss of trade-in value of their Ford Escape, the cost of Ford's extended service plan, the cost of the value care plan, and rental costs for a replacement vehicle. Under CPRC § 82.002, manufacturers must indemnify or hold harmless product sellers, the purpose being to cover products liability actions. A products liability action is an action against a manufacturer or seller for recovery of damages arising out of personal injury, death, or property damage from an alleged product defect.

The court concluded that the Romans' lawsuit did not allege or concern "bodily injury" or "property damage" "arising out of an occurrence caused solely by "a production or design defect in the Romans' vehicle. Instead, their lawsuit sought to recover economic damages only. Therefore, the trial court did not err in granting summary judgement on this issue.

NINTH CIRCUIT REVIVES SUIT OVER MEANING OF "KRAB MIX"

Kang v. P.F. Chang's China Bistro, Inc., ___ Fed. Appx. ___ (9th Cir. 2021).
https://www.proskaueronadvertising.com/wp-content/uploads/sites/16/2021/03/Chansue-Kang-v.-PF-Changs-China-Bistro.pdf

FACTS: Plaintiff-Appellant Chansue Kang was a customer of Defendant-Appellee P.F. Chang's China Bistro, Inc. Defendant sold food items containing "krab mix" on its menu, however no crab meat existed in these items.

Kang filed suit on behalf of himself and a California class of people who purchased products containing krab mix from Defendant, alleging that Defendant's menu was deceptive. The district court concluded that Kang's allegations were implausible on their face and granted defendant's motion to dismiss. Kang appealed.

HOLDING: Reversed and remanded.

REASONING: Defendant argued that reasonable consumers would not be misled by use of the term "krab mix" in the ingredient list for sushi rolls because other items on the menu include "crab" among their ingredients.

The court rejected this statement because reasonable consumers could not be assumed to look past the term "krab mix" in the item they were ordering to notice that "crab" appeared as an ingredient in other items on the same menu. The court also added that the word "crab" in the ingredient lists of other menu items did not represent "qualifying language" that would dispel the alleged deception. The court held that because the term "krab mix" lacked any commonly understood contrary meaning, Kang's allegation was not implausible on its face.