DECEPTIVE TRADE PRACTICES AND WARRANTY

DECEPTIVE TRADE PRACTICES CLAIM IS NOT A REAL PROPERTY CLAIM UNDER THE LIS PENDENS STATUTE

In re Gaudet, ___S.W.3d ___ (Tex. App. 2021).
https://casetext.com/case/in-re-gaudet-22208

FACTS: Robert Gaudet and his wife entered into negotiations with Icon Custom Home Builder, L.L.C, (and Juana Garcia to purchase a lot and build a custom home. The parties could not agree on a building design or the cost. Gaudet sent a letter to Icon and Garcia demanding a custom home design and price orally discussed prior to signing the Builders Deposit Receipt. Garcia and Icon requested a meeting, but Gaudet did not respond. A year passed, and Icon sold the lot to a third party and built a custom home.

Gaudet filed a lawsuit asserting various claims, including violation of the DTPA, and filed a notice of lis pendens. Icon moved to expunge because it prevented the third party's real estate transaction from closing. The trial court granted the order to expunge the lis pendens. Gaudet brought mandamus action challenging expungement of lis pendens.
HOLDING: Mandamus Denied.
REASONING: Gaudet pleaded multiple claims under the lis pendens statute, one of them being that Icon and Garcia violated the DTPA.

The court disagreed with Gaudet that the DTPA claim could be the basis for the lis pendens. The court found that a DTPA claim is not a real property claim at all; it neither establishes an interest or an incumbrance upon real property nor does it involve title to real property. Rather, a DTPA claim punishes conduct in the course of a business transaction by allowing for the award of damages. The court held that the purpose of a notice of lis pendens is to put those interested in a particular tract of land on inquiry about the facts and issues involved in the suit and to put prospective buyers on notice that they acquire any interest subject to the outcome of the pending litigation. The court further held that the trial court may expunge a notice of lis pendens if the pleading on which the original expungement order rests does not include a real property claim. Therefore, the court ruled that a DTPA claim cannot form the basis for a valid lis pendens.

TEX. INS. CODE INCORPORATES PART OF THE DTPA BY PROVIDING A CAUSE OF ACTION FOR UNLAWFUL DECEPTIVE TRADE PRACTICES DEFINED UNDER DTPA SECTION 17.46

Riverstone Corp. Capital Ltd. v. Frank Swingle & Assocs., ___ F. Supp. 3d ___ (N.D. Tex. 2021)
https://www.leagle.com/decision/infdco20210804d19

FACTS: Plaintiff is Riverstone Corp. Capital Ltd. ("Riverstone"), and its predecessor in interest underwrote a commercial property insurance policy that Defendant Frank Swingle and Assocs. ("Swingle") sold to a condominium homeowners association ("Bluffs Lakewood"). After a fire occurred at the condominium community, Riverstone discovered that over one third of the units were rentals, which would have excluded Bluffs Lakewood from its insurance program. Riverstone alleged that Swingle submitted to its predecessor an insurance application that included incorrect material information as to the number of rental units at the condominium community for Bluffs Lakewood to qualify for the insurance program.

Riverstone paid Bluffs Lakewood due to the fire damage and sued Swingle for violations of the Deceptive Trade Practices Act (DTPA). Swingle filed a motion to dismiss for failure to state a claim.

The court cited section 541.141, which "incorporates part of the DTPA by providing a cause of action for 'unlawful deceptive practice[s]' defined under DTPA section 17.46."

HOLDING: Motion denied.
REASONING: Swingle argued that Riverstone is not a "consumer" so it could not assert a DTPA claim.

The court rejected Swingle's argument, recognizing that Riverside asserted its DTPA claim under Chapter 541 of the Texas Insurance Code. Generally, only consumers can state DTPA claims. However, the court cited section 541.141, which "incorporates part of the DTPA by providing a cause of action for 'unlawful deceptive practice[s]' defined under DTPA section 17.46." Because this section of chapter 541 authorizes private actions for damages for alleged violations of DTPA section 17.46(b), the court held Riverside's claim was sufficient.

DTPA DOES NOT APPLY TO LARGE TRANSACTIONS

DTPA DOES NOT APPLY TO COMMERCIAL PROPERTY

In re Briar Bldg. Hous. LLC, ___ B.R. ___ (Bankr. S.D. Tex. 2021).
https://www.leagle.com/decision/inbco20210617543

FACTS: In August of 2013, Ali Choudhri personally guaranteed Jetall Companies, Inc. ("Jetall") commercial contract (the "Contract") for the deed to purchase the Rivercrest Property ("Property"). The Contract was modified and extended with the written consent and approval of Choudhri. In August of 2017, George M. Lee ("Lee") alleged that Jetall failed to pay Lee all amounts due and owing under the Contract by its termination date of August 12, 2017. In 2018, Briar Building Houston, LLC ("Debtor") filed a Chapter 11 petition. At the time of filing, Debtor's main asset was the Property. Lee owns one hundred percent of the membership interests of the Debtor. Lee previously owned the Property individually but transferred the Property to Debtor under a Special Warranty Deed. The bankruptcy case was dismissed, then Lee filied two separate lawsuits against Choudhri; those cases were removed to bankruptcy court.

Choudhri filed a counterclaim to which Lee filed a motion to dimiss.
HOLDING: Motion Granted
REASONING: Lee argued that Choudhri's counterclaim alleging violation under the DTPA should be dismissed because such claims were expressly excluded from the ambit of the DTPA as a matter of law.

The court agreed with Lee, holding that the DTPA expressly excludes from its coverage a cause of action arising from a transaction, a project, or a set of transactions relating to the same project involving total consideration by the consumer of more than $500,000.00, other than a cause of action involving the consumer's residence. Here, the plain language of the Contract revealed that the underlying consideration for the transaction was, at a minimum, $1,500,000.

Furthermore, the court held that "the plain language of the Contract places the transaction involving the Rivercrest Property outside the protections of the DTPA as a matter of law because it involves a commercial property, not a residential property." Therefore, Lee's Motion was granted because the alleged DTPA violation did not hold up since the transaction was too large and involved commercial property.

DTPA STATUTE OF LIMITATIONS RUNS FROM WHEN CONSUMER DISCOVERED OR SHOULD HAVE DISCOVERED THE DEFECT

Robinson v. Gen. Motors LLC, ___ F. Supp. 2d___ (D. Del. 2021).
https://www.leagle.com/decision/infdco20210722734

FACTS: Plaintiffs were owners of Cadillac vehicles sold by Defendant General Motors LLC ("GM"). The vehicles at issue were built with a two-layer interface system in the front panel that controlled built-in media through a single touch screen. Over time, plaintiffs noticed that the space between both layers was too broad and eventually made the touch screen system unresponsive.

Plaintiffs brought a class action suit for violations of the Deceptive Trade Practices Act. Plaintiffs alleged that these defects were within the knowledge of GM at the time it sold the vehicles to them based on pre-release testing data and "Technical Service Bulletins" circulated internally that acknowledged the defect. GM moved to dismiss on the grounds of being time-barred.
HOLDING: Motion denied.
REASONING: GM argued that the claims Plaintiffs made in certain states were based on alleged omissions by GM and an injury suffered at the time of purchase, and therefore, these claims had exceeded the statute of limitation.

The court disagreed, holding that the statute of limitations begins to run when the deceptive act or practice occurs or, if the deception is concealed, when the plaintiff, in the exercise of reasonable diligence, should have discovered the occurrence of the misrepresentation made the basis of the complaint. Therefore, based on the time when Plaintiffs discovered or should have discovered the defect, the claims were not time-barred.

SELLERS DID NOT HAVE A DUTY TO DISCLOSE FACTS THAT THEY WERE UNAWARE OF OR THAT THE BUYERS COULD HAVE DISCOVERED DURING A REASONABLE INVESTIGATION

BY PURCHASING A HOME "AS IS," BUYERS AGREE TO MAKE THEIR OWN APPRAISAL OF THE BARGAIN AND TO ACCEPT THE RISK AS TO THE QUALITY OF THE HOUSE AND ANY RESULTING LOSS

Rohrs v. Hartz, ___ S.W.3d ___, (Tex. App. 2021)
https://law.justia.com/cases/texas/ninth-court-of-appeals/2021/09-19-00196-cv.html

FACTS: Defendants-Appellees Maureen and George Hartz ("Hartzes") sold their home to Plaintiffs-Appellants Joyce and Jeremy Rohrs ("Rohrses") in 2017. The Rohrses conducted a home inspection and accepted the property "As Is" in its present condition. The Hartzes, while not at home for the 2016 Memorial Day Flood, indicated that they estimated one inch of water had flooded the home for one hour and reaffirmed that in the Seller's Disclosure Notice. During Hurricane Harvey, the house was flooded with twenty-two inches of water. After the hurricane, the Rohrses discovered the original baseboards had mold and plugged drill holes made to remediate any water penetration issues. The report from the mold inspection expert led the Rohrses to believe the 2016 Memorial Day Flood caused the mold.

The Rohrses sued Hartzes for fraudulent nondisclosure and breach of contract. The trial court issued a take-nothing judgment against the Rohrses. The Rohrses appealed.
HOLDING: Affirmed.
REASONING: The Rohrses argued that the Seller's Disclosure Notice was false and that the Hartzes had a duty to disclose the truth about the property's flooding history and repairs. They further argued that the Hartzes hid facts from them and misled them in order to sell the property.

The court rejected the argument, holding that the Hartzes had no duty to disclose anything beyond the seller's belief and knowledge of the property's condition as of the date signed, as stipulated in Section 5.008 of the Texas Property Code. Because the Hartzes provided the Rohrses a Seller's Disclosure Notice, which was completed to the best of their belief and knowledge, and the Rohrses failed to show how a reasonable investigation would not have disclosed the remediation repairs, the court overruled the issue of fraud by nondisclosure.

The court similarly disposed of the Rohrses' contention that the Hartzes breached the contract by failing to disclose the truth about the property's flooding history and completed repairs. The court emphasized the validity of the contract's "As Is" clause, which is defined in the contract to mean the property's present condition with any and all defects and without warranty except for the warranties of title and those in the contract. The court reasoned that an "As Is" clause is invalid and unenforceable if it is the product of fraudulent concealment by the seller or if the seller obstructs the buyer's ability to inspect the property. Because the Rohrses failed to present more than a scintilla of evidence as to fraud by nondisclosure or that the Hartzes obstructed their ability to inspect the property, the "As Is" clause is valid and enforceable.