MISCELLANEOUS

LAWSUIT CHALLENGING AUSTIN'S PAYDAY LOAN ORDINANCE MAY PROCEED

TitleMax of Texas, Inc. v. City of Austin, ___ S.W. 3d ___ (Tex. App. 2021).
https://law.justia.com/cases/texas/seventh-court-of-appeals/2021/07-20-00305-cv.html

FACTS: Appellant, TitleMax of Texas, Inc. (TitleMax) sought declaratory judgment and injunctive relief against Appellee, City of Austin (City). The City passed an ordinance which established substantive regulations, including fee limits, on unsecured credit service organizations transactions; extended existing regulations on credit access businesses to apply to credit service organizations; limited the terms of repayment of these transactions to no more than four payments; and imposed criminal fines to enforce the provisions of the ordinance. TitleMax argued the ordinance was preempted by state law, violates its due process and due course of law rights, impairs its existing contracts, and violates its right to equal protection under the law.

The City filed a plea to the jurisdiction alleging that the ordinance is a penal law that cannot be challenged in a civil court. The trial court granted the City's plea and dismissed TitleMax's lawsuit. TitleMax appealed.
HOLDING: Order vacated and remanded.
REASONING: While the appeal was pending, the Texas Supreme Court decided Texas Propane Gas Association v. City of Houston, 622 S.W.3d 791 TEX. 2021). In that case, the court held that a law containing civil and criminal aspects could be challenged in a civil court if the "essence" of the law is civil. The City of Austin conceded that the "essence" of the case was civil and, therefore, the trial court had jurisdiction to decide the merits of the case.

The court agreed with the decision in *Texas Propane*, stating that it is dispositive of the issue in this case.

SUPREME COURT OF TEXAS DISCUSSES THE BURDEN OF PROOF FOR ENFORCING A DISPUTED ELECTRONIC SIGNATURE AND THE IMPORTANCE OF THE AUTHENTICATION PROCESS

Aerotek, Inc. v. Boyd, 2021 WL 2172538 (Tx. 2021).
https://law.justia.com/cases/texas/supreme-court/2021/20-0290.html

FACTS: Plaintiffs-Respondents Trojuan Cornett, Michael Marshall, Lerone Boyd, and Jimmy Allen ("Employees") sued Defendant-Petitioner Aerotek, Inc. for racial discrimination and retaliation after being terminated. Aerotek moved to compel arbitration attaching to its motion each Employee's timestamped and electronically signed Mutual Arbitration Agreement (MAA), which had to have been executed before being allowed to complete the online-only hiring application ("onboarding"). The Employees opposed Aerotek's motion, and each submitted a sworn declaration acknowledging they had completed onboarding but denied having seen, signed, or been presented with the MAA. The trial court conducted an avidentiary hearing on Aerotek's motion to compel at which the program manager of the onboarding process demonstrated how the MAA had to be completed before finalizing and submitting the application.

The trial court denied Aerotek's motion to compel arbitration. The Court of Appeals affirmed. Aerotek filed a petition for review, which the Texas Supreme Court granted.
HOLDING: Reversed and remanded.
REASONING: Employees argued they did not consent to the MAAs because the electronic signatures on them were not theirs. Aside from denying having signed the MAAs, Employees offered no evidence to support their allegation. Employees also argued Aerotek's evidence did not prove the efficacy of its onboarding security procedures.

The court disagreed citing the language of the Texas Uniform Electronic Transactions Act, stating that proof of the efficacy of the security procedures used in generating a contract can prove that an electronic signature is attributable to an alleged signatory.

The court disagreed citing the language of the Texas Uniform Electronic Transactions Act, stating that proof of the efficacy of the security procedures used in generating a contract can prove that an electronic signature is attributable to an alleged signatory. The burden then shifts to the opposing party to prove otherwise by offering evidence that security procedures lack integrity or effectiveness. Mere denial is insufficient.

ORAL MODIFICATIONS OF A LOAN AGREEMENT ARE UNENFORCEABLE UNDER THE TEXAS STATUTE OF FRAUDS

Dean v. Crosscountry Mortg. Inc., ___ F.3d ___ (5th Cir. 2021).
http://www.ca5.uscourts.gov/opinions/unpub/20/20-40365.0.pdf

FACTS: Plaintiff-Appellants, Dustin Dean and Lori Dean ("the Deans") fell behind on their mortgage payments. Defendant-Appellee, Crosscountry Mortgage, Inc. ("Crosscountry") thus sent the Deans a notice to inform the Deans that their loan would be accelerated unless they paid the past-due amount by a deadline. The Deans made no payment by this deadline, so Crosscountry sent a Notice of Acceleration, foreclosed on the property, and sold it to Defendant-Appellee, Federal National Mortgage Association ("Fannie Mae").

The Deans brought suit to reverse Crosscountry's foreclosure and alleged Crosscountry violated the Texas Debt Collection Act. The district court rejected the Deans' argument. The Deans appealed.
HOLDING: Affirmed.
REASONING: The Deans argued that the loan agreement was orally modified when Crosscountry allegedly told the Deans a

new amount was due and that by Crosscountry not accepting the Deans' check for the new amount, Crosscountry breached the contract. The court rejected this argument because the Statute of Frauds bars considering an alleged oral modification of a loan agreement under the TDCA.

The Deans attempted to counter this argument claiming that the Statute of Frauds does not apply given their "partial performance" of the oral agreement. The court rejected this argument because, under the partial performance equitable exception, an oral agreement that does not satisfy the traditional statute of frauds but that has been partially performed may be enforced if denying enforcement would itself amount to a fraud. But the actions asserted to constitute partial performance must be "unequivocally referable" to the alleged oral agreement and corroborate the existence of that agreement. The Deans pointed to no action that "unequivocally" referred to an alleged oral agreement to modify the loan; therefore, the court affirmed the lower court's ruling.

THE BANKRUPTCY COURT FOR THE DISTRICT OF MARYLAND RESOLVED A CONFLICT BETWEEN THE STRONG PRESUMPTION IN FAVOR OF ENFORCING ARBITRATION AGREEMENTS AND THE BANKRUPTCY CODE'S EMPHASIS ON CENTRALIZATION OF CLAIMS

In re McPherson, ___ B.R. ___ (Bankr. E.D. Md. 2021). https://www.govinfo.gov/content/pkg/USCOURTS-mdb-1_21-bk-10205/pdf/USCOURTS-mdb-1_21-bk-10205-0.pdf

FACTS: Before filing his chapter 11 bankruptcy, John McDonnell McPherson (the "Debtor"), and Camac Fund, L.P. ("Camac") entered into a Litigation Funding Agreement (the "Funding Agreement"). Under the Funding Agreement, Camac was to extend financing to the Debtor in exchange for a percentage of the Debtor's interest in certain whistleblower litigation cases. Disputes arose between the parties under the Funding Agreement, and Camac invoked its rights under the Funding Agreement's arbitration clause.

The Debtor filed a response disputing the validity of the arbitration and a stay motion after filing his chapter 11 case.
HOLDING: Motion denied.
REASONING: The Debtor argued that the arbitration clause's application to this case inherently conflicted with key objectives of the bankruptcy code. The Debtor further argued that that the court could resolve all of the parties' disputes within the context of the Debtor's chapter 11 plan of reorganization and the related claims administration process.

The court rejected this argument and observed that the arbitration clause in the Funding Agreement was arguably narrow in scope and would not encompass all of the claims asserted by the parties in either the arbitration proceeding or the Chapter 11 case.

The court held that it must bifurcate the disputes in this matter with the Bankruptcy Claims staying in the bankruptcy case and the Contract and Non-Bankruptcy Claims remaining subject to arbitration. The Bankruptcy claims were non-arbitrable because they would not exist absent the bankruptcy case and thus extended from the bankruptcy itself. The court recognized that a debtor might be able to plead an action in a way that transforms certain pure state law claims into claims under the Bankruptcy Code but found that those concerns were not warranted in this case. Because the FDCPA non-bankruptcy claims and the contract claims were claims that existed prior to and independently of the bankruptcy proceedings, the court held that these categories of claims were non-core and lifted the stay to allow the arbitration proceedings to continue.

ASTROS FANS' SIGN-STEALING SUIT DISMISSED

In re Hous. Astros, LLC, ___ S.W.3d ___ (Tex. App. 2021). https://law.justia.com/cases/texas/fourteenth-court-of-appeals/2021/14-20-00769-cv.html

FACTS: In January of 2020, Major League Baseball ("MLB") concluded that the Houston Astros had at some point been involved in stealing opposing teams' signs by electronic means. The MLB imposed sanctions on the Houston Astros for violating these rules. Plaintiffs sued Houston Astros, LLC and Houston Astros Management, Inc. (collectively, "the Astros") for intentionally, and deceptively selling season tickets with full knowledge that Astros employees and representatives were surreptitiously engaged in a sign stealing scheme in violation of MLB rules. They alleged that they would not have purchased season tickets, postseason tickets, or other goods and/or services from the Astros had they known about the sign-stealing scheme. The Astros filed a motion to dismiss. They argued that the Plaintiffs have no justiciable interest in a baseball game of a particular nature and quality and free from violations of MLB rules.

The trial court denied the Astros motion to dismiss. Astros filed a petition for writ of mandamus seeking to compel the trial court to set aside the order denying the motion to dismiss.
HOLDING: Petition granted.
REASONING: The Astros argue that the plantiffs' claims based on the sign stealing controversy and not legally recognized causes of action. Specifically, the Astros assert that the plaintiffs' claims are based on what happened on the field of play. The plaintiffs argue that their claims are based on statements off the field of falsely portraying the Astros as a team that has integrity instead of a team that had been cheating for years.

The Astros argue that the plantiffs' claims based on the sign stealing controversy and not legally recognized causes of action.

The court held that claims based on how a sport team plays the game are not cognizable. Therefore, plaintiffs did not allege legally cognizable claims on which they may recover damages. Further, the court held that plaintiffs cannot maintain their claims because they were only granted a revocable license to enter Minute Maid Park to watch the games in the seats for which they had purchased ticket and do not allege that they were denied those rights.

Based on this holding the court conditionally granted the Astros' petition for writ of mandamus and directed the trial court to set aside the order from the trial court denying the motion to dismiss.

TELEPHONE CONSUMER PROTECTION ACT APPLIES TO JOB RECRUITING ROBOCALLS

Loyhayem v. Fraser Fin. & Ins., ___ F.3d ___ (9th Cir 2021). https://cdn.ca9.uscourts.gov/datastore/opinions/2021/08/10/20-56014.pdf

FACTS: Plaintiff-Appellant Jonathan Loyhayem received an automated job-recruitment robocall voicemail from Defendants-Appellees Fraser Financial and Insurance Services, Inc. ("Fraser"). The voicemail was allegedly made using an "automated telephone dialing system" and a pre-recorded voice without Loyhayem's prior express consent to receive calls from Fraser. The voicemail stated Fraser was looking to partner with advisors in the Los Angeles area and they believed Loyhayem would be a good fit with the company. Fraser left their phone number for Loyhayem to call them back regarding the job opportunity.

Loyhayem filed suit in district court, alleging that Fraser violated the TCPA. The district court dismissed Loyhayem's suit for failure to state a claim. Loyhayem appealed.

HOLDING: Reversed and remanded.

REASONING: The district court held that the TCPA did not prohibit job-recruitment robocalls to cell phones, and that TCPA only prohibited robocalls that included advertisements or constituted telemarketing, as defined by the FCC. Since Loyhayem had admitted the voicemail did not include either of these, the district court dismissed the claim.

The court rejected this holding, stating that the district court wrongfully narrowed the language of the TCPA to prohibit robocalls only pertaining to advertising or telemarketing. The correct interpretation was that "any call" made to a cell phone using an automatic dialing system or an artificial or pre-recorded voice was prohibited, unless the call was made for an emergency or prior express consent from the individual being called. Because the call was not an emergency and Loyhayem had not previously consented to the call, his TCPA claim was valid. The district court also erred when interpreting TCPA by overlooking Section 64.1200(a)(1) of the TCPA, which provides a caveat for prohibited communications under the Act; instead, the district court relied on Section 64.1200(a)(2), which prohibited a subset of robocalls: those involving advertising or telemarketing. The court relied on Section 64.1200(a)(1), which requires prior express consent to receive robocalls, whether given in writing or orally. Therefore, Loyhayem's claims should have survived the motion to dismiss.

FIFTH CIRCUIT HOLDS RECEIPT OF A SINGLE, UNSOLICITED TEXT MESSAGE IS SUFFICIENT TO ESTABLISH TELEPHONE CONSUMER PROTECTION ACT STANDING UNDER ARTICLE III

Cranor v. 5 Star Nutrition, L.L.C., ___ F.3d ___ (5th Cir. 2021). https://www.ca5.uscourts.gov/opinions/pub/19/19-51173-CV0.pdf

FACTS: Plaintiff-Appellant Lucas Cranor purchased at one of Defendant-Appellee 5 Star Nutrition, L.L.C.'s ("5 Star") locations where he provided the business with his cell phone number. Cranor began receiving unsolicited text messages from 5 Star regarding joining a rewards program and advertising special sales. Cranor responded with a "STOP" text that opted him out of receiving future messages. A dispute followed, and the parties entered into a pre-suit settlement agreement, with 5 Star agreeing to pay Cranor $1,000 in exchange for a waiver of any causes of action or claims against the company relating to the dispute and a settlement was executed. After this, Cranor continued receiving unsolicited text messages from 5 Star, and he responded with a "STOP" request again. 5 Star dutifully stopped.

Cranor nonetheless filed suit alleding 5 Star violated the Telephone Consumer Protection Act of 1991 ("TCPA"). The district court dismissed Cranor's complaint for lack of standing. Cranor appealed.

HOLDING: Reversed and remanded.

REASONING: The district court held that while text messages are a sufficient form of injury in fact under the standing requirements of Article III, a single text message, as in Cranor's case, did not constitute an injury in fact.

The language of the TCPA also demonstrates the Act's purpose was to address "nuisance and invasion of privacy," even when applied to cell phones.

The court rejected this holding, stating that while a plaintiff must show he suffered an invasion of legally protected interest that is concrete and particularized, concrete did not mean tangible and that intangible injuries could nevertheless be concrete. Because the TCPA "expressly covers cellular phones," it does not solely protect nuisances inside the home. The language of the TCPA also demonstrates the Act's purpose was to address "nuisance and invasion of privacy," even when applied to cell phones. Moreover, Congress' delegation of authority to the FCC allowed it to expand the protection of nuisances to cell phones. The court then concluded that TCPA could not be read to regulate unsolicited telemarketing only when it affected home.

Additionally, Cranor's injury was different than the kind suffered by the general public. He was subject to the nuisance of receiving unsolicited text messages after opting out. Therefore, the court further held that a single text message could constitute an injury in fact.