DECEPTIVE TRADE PRACTICES AND WARRANTY

COURT AWARDS THREE TIMES ECONOMIC DAMAGES UNDER DTPA

UNDER DTPA, "NO RECOVERY SHALL BE PERMITTED UNDER BOTH THIS SUBCHAPTER AND ANOTHER LAW OF BOTH DAMAGES AND PENALTIES FOR THE SAME ACT OR PRACTICE"

Eminent Commercial, LLC v. Digitalight Sys., Inc., ___ F. Supp. 3d ___ (W.D. Tex. 2021). https://docs.justia.com/cases/federal/district-courts/texas/txwdce/1:2020cv00680/1099931/38

FACTS: Plaintiff, Eminent Commercial, LLC ("Eminent") ordered KN-95 masks from Defendant, Digitalight Systems, Inc. ("Digitalight"), to resell to the State of Texas. A portion of the order was non-conforming. Eminent did not accept the non-conforming masks but allowed Digitalight to cure. Digitalight failed to cure. Eminent demanded a refund. Digitalight refused to refund Eminent. Eminent brought suit alleging breach of contract, fraud, negligent misrepresentation, and DTPA violation.

Digitalight removed the case to federal court. After Digitalight's counsel withdrew from representation and Digitalight did not replace counsel, Eminent motioned to compel discovery and strike pleadings. Digitalight did not respond, and the court ordered Eminent to move for default judgment.

"Eminent is entitled to $900,000.00 in its out-of pocket economic damages. … Eminent is also entitled to $2,700,000.00 in additional damages for its DTPA claim, based on Digitalight's knowing and intentional conduct."

HOLDING: Motion for default judgement granted.

REASONING: The court held that default judgment was warranted procedurally because Eminent was clearly prejudiced and harmed by the lacking of response and continued delay and Digitalight had abandoned its defense. The court specified that when a default has been entered, the factual allegations of the complaint are taken as true. Since Eminent's allegations were uncontested, Eminent was entitled to its out-of-pocket economic damages for the DTPA violations and treble damages based on Digitalight's knowing and intentional conduct. The court stated, "Eminent is entitled to $900,000.00 in its out-of pocket economic damages. … Eminent is also entitled to $2,700,000.00 in additional damages for its DTPA claim, based on Digitalight's knowing and intentional conduct."

The court denied recovery to Eminent for breach of contract damages because the DTPA prohibits recovery under its "subchapter and another law of damages and penalties for the same act or practice." Tex. Bus. & Com. Code § 17.43. Because the Eminent's DPTA claim and breach of contract claim gave rise to the same operative facts, Eminent might only recover under the DTPA.

CONSUMER IS NOT BOUND BY AN AS-IS CONTRACT, IF THE CONTRACT IS A PRODUCT OF FRAUDULENT REPRESENTATION OR CONCEALMENT BY THE SELLER

Ivy v. Garcia, ___S.W.3d___ (Tex. App.—Austin 2022). https://law.justia.com/cases/texas/third-court-of-appeals/2022/03-20-00448-cv.html

FACTS: Plaintiff-Appellant Marlonia Ivy purchased a property from Defendant-Appellees Victor and Wanda Garcia (the "Garcias") under an "as-is" contract. Ivy later filed suit against the Garcias, alleging common-law fraud and DTPA violations. The trial court granted Garcias traditional summary judgment on the ground that the "as-is" clause precluded Ivy from recovery on all claims. The appellate court reversed because Ivy produced evidence showing Garcias' awareness of the fire and their intentional non-disclosure, and Ivy's would not have entered into the contract but for the alleged misrepresentation or fraudulent non-disclosure. On remand, the trial court again granted Garcias's no-evidence motion for summary judgment, and Ivy appealed.

HOLDING: Reversed and remanded.

REASONING: Garcias argued that Ivy failed to produce evidence of Garcias' intent to induce Ivy's on the as-is clause, and consequently, the requirement of the fraud element could not be sufficed.

The court rejected this argument and followed its decision in the first appeal. In the first appeal, the court determined that because Ivy had produced more than a scintilla of evidence to support her assertion that she was fraudulently induced to enter into the as-is contract, a genuine issue of material fact existed as to the enforceability of the as-is clause with respect to alleged defects not identified in the inspection report. Because Garcias' awareness of and non-disclosure of the fire was sufficient circumstantial evidence, and there was a fact issue as to "intent" thus making summary judgment of the trial court improper, the original appellate decision was not clearly erroneous. Therefore, under the law-of-the-case doctrine, the court would follow its original decision in subsequent appeals.

CLAIMS ALLEGING VIOLATIONS OF THE DTPA ARE SUBJECT TO THE REQUIREMENTS OF FCPA RULE 9(b)

Lawrence v. Corin Grp., PLC, ___ F. Supp. 3d ___ (E.D. Tex. 2021). https://www.leagle.com/decision/infdco20211216e59

FACTS: Plaintiff Don Lawrence had Defendant's Corin revival stem (the "product") surgically implanted in his hip. Eventually, the product broke while still in his hip and Plaintiff had it surgically removed.

Plaintiff filed suit against Defendants Corin Group, PLC, and Corin USA Limited for deceptive trade practices under

the DTPA, among other claims. Defendants filed a motion to dismiss, asserting that Plaintiff had not stated a claim.
HOLDING: Dismissed.
REASONING: Defendants argued Plaintiff's DTPA claim failed because Plaintiff didn't satisfy the heightened Fed. R. Civ. P. 9(b) pleading standard.

The court agreed with the argument and held that Plaintiff's unqualified exhibit attachments to the motion without reference to the allegations were insufficient to meet the 9(b) standard. Rule 9(b) requires that the pleading standard must be heightened and include "who, what, when, where, and how" for claims of fraud. Plaintiff's DTPA claim was a claim of fraud and thus subject to the requirements of Rule 9(b), but Plaintiff didn't specify any statements by Defendants, indicate when they were made, or allege who made them. Therefore, the court found that Plaintiff failed to state a claim under the DTPA and granted Defendant's motion.

CONSUMER AWARDED A DEFAULT JUDGMENT UNDER DTPA MUST STILL PROVE DAMAGES

Lopez v. Aqua Fin., ___ F. Supp. 3d ___ (W.D. Tex. 2022).
https://www.casemine.com/judgement/us/61f295cf714d58535aaf647c

FACTS: Plaintiffs, three individual San Antonio homeowners (together "Lopez"), purchased water-treatment systems from Defendant Enerfuze LLC d/b/a Enerfuze Water Technologies ("Enerfuze"). This purchase was financed by Defendants Aqua Finance, Inc. ("Aqua Finance") and Connexus Credit Union. Lopez claimed Enerfuze performed misleading water-treatment tests, and falsely promised him greater safety and better water taste if he "purchased" a water-treatment system. The water-treatment system was marketed as being no added cost to Lopez. Enerfuze promised to cover the cost of the systems if Lopez permitted Enerfuze to use his yard for advertising. However, Enerfuze only intended to cover one such payment and failed to disclose that the water-treatment system would be financed through a loan with Aqua Finance taken out in Lopez's name.

Lopez sued and asserted DTPA violations, among other claims. Defendants did not answer or respond to the complaint. Lopez moved for default judgment against Defendants. The court ordered Lopez to file an amended motion that adequately briefed the factual and legal bases entitling them to the relief sought. Lopez amended their motion.
HOLDING: Denied.
REASONING: The court determined that Lopez must fully brief the legal and factual bases for their damage requests.

Though courts accept as true the complaint's well-pleaded factual allegations, damages are excepted. Generally, unliquidated damages are not awarded without an evidentiary hearing under a default judgment. Lopez's brief should identify: (1) the theory of recovery each Plaintiff seeks damages for against each Defendant, keeping in mind Texas's one-satisfaction rule; (2) the category of damages each Plaintiff requests against each Defendant along with a citation to the relevant legal authority that permits such a recovery and a brief explanation where necessary; (3) the amount requested against each Defendant for each category of damages; and (4) the evidence Plaintiffs will be presenting to support each category of requested damages broken down by category of damages where possible. As the party seeking relief, Lopez had the burden to fully brief the precise relief requested, as well as the legal and factual bases for it. Until the matter was briefed, the court could not hold an evidentiary hearing. Lopez's failure to fully brief the matter was detrimental to the outcome of his claims.

Unliquidated damages are not awarded without an evidentiary hearing under a default judgment.

DTPA CLAIM PROPERLY DISMISSED WHEN BASED ON $1MILLION PURCHASE

AN AWARD OF NO FEES IS IMPROPER IN THE ABSENCE OF EVIDENCE AFFIRMATIVELY SHOWING THAT NO ATTORNEY'S SERVICES WERE NEEDED OR THAT ANY SERVICES PROVIDED WERE OF NO VALUE

Murphey v. Old Dollar Props., LLC, ___ S.W.3d ___ (Tex. App.—Dallas 2022).
https://casetext.com/case/murphey-v-old-dollar-props-1

FACTS: Appellee/Cross-Appellant, Old Dollar Properties, LLC ("Old Dollar") purchased a mobile home park from Appellant/Cross-Appellee, Lyle B. Murphey. Murphey failed to disclose that the septic system serving the subject property lacked sufficient capacity to accommodate the mobile homes and feed store on the property.

Old Dollar filed suit against Murphey, alleging fraud, breach of contract, and violations of the Texas Deceptive Trade Practices Act ("DTPA"). The trial court entered a judgment in favor of Old Dollar. Murphey appealed. On cross-issue, Old Dollar argued that the trial court erred in failing to award Old Dollar's attorney's fees.
HOLDING: Reversed and remanded in part.
REASONING: Murphy argued that Old Dollar was not entitled to recover on its DTPA claim as a matter of law because the total considerations of the parties' transactions exceeded $500,000.

The court agreed with this argument, stating that because Old Dollar's $1 million purchase exceeded the limit of $500,000, the claim was not viable. The DTPA generally allows a consumer to sue for damages caused by certain false, misleading, or deceptive acts or practices. However, the statute does not apply to a cause of action of more than $500,000. The purpose of this exemption is to maintain the DTPA as a viable source of relief for consumers in small transactions and to remove litigation between businesses over large transactions from the scope of the DTPA.

Old Dollar argued that, at trial, it presented sufficient evidence showing its requested fees were reasonable and necessary.

The court rejected this argument because Old Dollar did not submit any billing or time-keeping records detailing how many hours various tasks required. However, although the evidence was legally insufficient to establish an award of fees

under the lodestar method, the evidence did establish that the attorney's services were needed and of some value. Therefore, the court determined that the trial court erred in no attorney's fees to Old Dollar, and thus remanded the case.

COURT FINDS EVIDENCE WAS FACTUALLY SUFFICIENT TO SUPPORT DTPA CLAIM

Forst v. Neal, ___ S.W.3d. ___ (Tex. App. 2022).
https://casetext.com/case/forst-v-neal-5

FACTS: Appellant, Charlotte Forst, hired Appellee, Ava Neal d/b/a Texas Treasures Estate Sales ("Neal"), to sell her collectible items in 2018. The parties signed a contract that outlined Neal's commission, objectives, and the sale location. The parties later orally agreed to change the sale location, which was at Neal's house. The contract did not provide for the pricing of any of Forst's items, nor did the parties discuss it. This ultimately led to a disagreement over the method of pricing for the items, and Forst claimed that the pricing method difference caused $23,500 damage due to Neal's use of a daily discounting system.

Forst filed suit, alleging claims of four violations of the Texas Deceptive Trade Practices Act ("DTPA") and conversion by Neal. Neal filed a counterclaim for breach of contract. The trial court entered a take-nothing judgment. Forst appealed.
HOLDING: Affirmed.
REASONING: Forst argued that the trial court erred by failing to rule on her DTPA and conversion claims, as the evidence was factually insufficient to support this judgment.

The court disagreed with Forst, holding that each of the challenged findings was supported by evidence presented at trial. To prove a DTPA violation, one must show that (1) the plaintiff is a consumer, (2) the defendant committed a wrongful act by engaging in a false, misleading, or deceptive act that is enumerated in section 17.46(b) of the Texas Business and Commerce Code, or breached an express or implied warranty, or engaged in an unconscionable action or course of action; and (3) the act was a producing cause of the plaintiff's damages. To determine whether the evidence for the claim elements were sufficient, the court relied on the factual-sufficiency challenge standard. The standard states that the factual-sufficiency challenge will be sustained only if the trial court's findings are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Applying this standard, by reviewing the contract and trial testimonies, the court held that the trial court's findings were not against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Thus, the evidence presented at trial was factually sufficient to support the trial court's finding that Forst failed to prove Neal violated any DTPA provisions.

CLAIM FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING SHOWED ONLY A BONA FIDE COVERAGE DISPUTE

ABSENT AN AFFIRMATIVE MISREPRESENTATION, AN INSURED'S MISTAKEN BELIEF ABOUT THE SCOPE OF COVERAGE IS NOT ACTIONABLE UNDER THE DTPA OR THE TEXAS INSURANCE CODE

Jajou v. Safeco Ins. Co., ___ F. Supp. 3d ___ (W.D. Tex. 2022).
https://law.justia.com/cases/federal/districtcourts/texas/txwdce/5:2020cv00839/1102398/58/

FACTS: Plaintiff Nasrin Jajou purchased property insurance from Defendant Safeco Insurance Company of Indiana ("Safeco"). This insurance covered hail and windstorm damage but excluded nonstructural cosmetic damage or loss. Jajou's property was damaged after a hailstorm. Safeco sent multiple adjusters to inspect the roof, and they all determined the damage was cosmetic in nature; therefore, Jajou's claim to replace the roof was denied

Jajou brought suit against Safeco, claiming the inspections were made in bad faith and did not constitute fair dealing. Jajou also claimed that Safeco affirmatively misrepresented the extent of coverage under the policy by failing to include a cosmetic-damage exclusion in the quote.
HOLDING: Dismissed.
REASONING: Jajou argued that Safeco breached the duty of good faith and fair dealing and violated certain provisions of the DTPA and Texas Insurance Code by conducting an unreasonable investigation, because Safeco failed to reasonably inspect the roof and attic, it was unreasonable to inspect the roof with a drone rather than a lift, and Safeco violated its own inspection policy for inspecting hailstorm damage.

Jajou had many opportunities to read and question the policy before she signed the contract.

The court disagreed, finding that Safeco acted reasonably in all of these instances and the evidence showed a bona fide coverage dispute. Because evidence establishing only a bona fide coverage dispute does not demonstrate bad faith, there was no genuine issue for trial on Jajou's claim for breach of the common law duty of good faith and fair dealing based on her argument that Safeco conducted an unreasonable investigation.

Jajou also argued that Safeco made an affirmative representation when it sent her an insurance quote containing material terms of the policy without a cosmetic damage exclusion included.

The court disagreed, holding that the evidence failed to show that Safeco's omission of a cosmetic-damage exclusion provision in the quote constituted an affirmative misrepresentation. Although Jajou claimed that she would not sign the contract if she had been informed that the policy would not cover cosmetic damages, the policy itself contained an explicit and clear exclusion statement, and Jajou had many opportunities to read and question the policy before she signed the contract. Therefore, the evidence indicated that Jajou was simply mistaken about the

scope of coverage, and this was a mistake not actionable under the DTPA or Texas Insurance Code.

JUDGE REJECTS ASSERTION THAT THE PHRASE "REEF FRIENDLY" LABELS WAS "MERE PUFFERY"

White v. Kroger Co., ___ F. Supp. 3d ___ (N.D. Cal. 2022).
https://casetext.com/case/white-v-the-kroger-co

FACTS: Plaintiff White, in a class action, alleged that sunscreen products sold by defendant The Kroger Co. (Kroger) were misleadingly labeled as being "reef friendly" despite the fact that the products contained ingredients that could potentially damage reefs. Plaintiff brought suit under the California Unfair Competition Law (UCL) and the California False Advertising Law (FAL), as well as the California Consumers Legal Remedies Act (CLRA).

Kroger moved to dismiss, arguing that the claim "reef friendly" was unactionable because it was "mere puffery."
HOLDING: Motion to dismiss denied.
REASONING: Kroger relied on cases where product labels such as "pet-friendly," "user-friendly," and "environmentally friendly" were held to be unactionable as mere puffery because they were so generalized, subjective, or exaggerated, that it would have been unreasonable for a consumer to rely on them.

The court rejected this argument based on the California Legislature codified the Green Guides, making it "unlawful for a person to make an untruthful, deceptive, or misleading environmental claim." The existence of the Green Guides undermined any argument that "reef friendly" could be dismissed as mere puffery, due to the apparent concern of the California Legislature with ensuring that no false statements related to the environment on product labels should be allowed. Given this context, "reef friendly" could reasonably be understood as implying defendants' products met such criteria. Accordingly, the complaint was not subject to dismissal because the alleged misrepresentations were mere puffery.

TWO OR MORE ENTITIES CAN BE HELD LIABLE FOR A CONSPIRACY TO VIOLATE THE DTPA BUT ANTICOMPETITION ALLEGATIONS RAISED IN A DTPA CLAIM MUST "BE HARMONIZED WITH FEDERAL ANTITRUST LAW"

Harris County v. Eli Lilly & Co., ___ F. Supp. 3d. ___ (S.D. Tex. 2022).
https://casetext.com/case/harris-cnty-v-eli-lilly-co-2

FACTS: Defendant, Eli Lilly, joined Novo Nordisk and Sanofi as one of three principal companies that manufactured, promoted, and distributed pharmaceutical drugs, including insulin ("Manufacturer Defendants"). These three principal companies produced the majority of diabetes medication. The diabetes products only cost the manufacturers $5 to produce, but they charge between $300 and $700. Plaintiff Harris County alleged the manufacturer Defendants had "in lockstep raised the reported prices of their respective diabetes drugs." Harris County alleged that together, Manufacturer Defendants created a secret spread known as the Insulin Pricing Scheme.

Harris County sued the Manufacturer Defendants for claims under the federal Racketeering Influenced and Corrupt Organization Act ("RICO"), the Sherman Act, the Texas Free Enterprise and Antitrust Act ("TFEAA"), the Texas Deceptive Trades Practices Consumer Protection Act, common law fraud, money had and money received, unjust enrichment, and civil conspiracy. Defendant moved to dismiss all of Plaintiff's claims.
HOLDING: Dismissed.
REASONING: Defendants argued that Plaintiff no longer alleged an underlying DTPA violation against it because it "no longer allege[d] that it had a relationship with [Defendants]." Plaintiff appeared to concede this, but it argued that its DTPA claim against Defendant might still proceed because it had sufficiently alleged that Defendant conspired with the other Defendants.

The court disagreed, stating, Plaintiff's conspiracy allegations "masquerade" as "consumer protection" claims despite mirroring "prohibited antitrust" claims under federal law. For Plaintiff's anticompetition DTPA conspiracy claims against Defendant to survive, there would have to be a co-conspirator exception to the indirect purchaser bar. No co-conspirator exception was recognized by the Fifth Circuit or the Supreme Court, so the claim was dismissed.

"AS IS" DEFENSE DOES NOT PRECLUDE CAUSES OF ACTION IF THERE IS PROOF OF FRAUDULENT MISREPRESENTATION, CONCEALMENT OF INFORMATION, OR IMPAIRMENT OF INSPECTION

DEFENDANT REPRESENTED AN AGREEMENT CONFERS OR INVOLVES RIGHTS OR REMEDIES, WHICH IT DOES NOT HAVE OR INVOLVE AND FAILED TO DISCLOSE INFORMATION CONCERNING GOODS WHICH WERE KNOWN AT THE TIME OF THE TRANSACTION

CONSUMER ALLEGED MORE THAN A MERE BREACH OF CONTRACT

AN INDIVIDUAL—EVEN ONE WHO ALSO SERVES AS AN INDEPENDENT EXECUTOR—CAN BE HELD LIABLE FOR HIS OWN FRAUDULENT ACTS OR VIOLATIONS OF THE DTPA

Christians v. Flores, ___ S.W.3d ___ (Tex. App.—Houston [1st Dist.] 2022).
https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=f4e164c4-a5de-4e6c-b860-1d8cc756381f&coa=coa01&DT=Opinion&MediaID=c31a91ac-221e-4cbe-b050-9427114bda7e

FACTS: Appellee Sergio Flores was gifted one-third interest in a property from his mother, and he then entered into an agreement with Appellant, the Estate of Dale Christians, to purchase the remaining two-thirds. Appellant Douglas Christians maintained the exterior of the property, including the roof. The property had a storm-damaged roof, and it was accepted "As Is." Flores was unaware of the roof damage and was told that an inspection was a waste because his family would tell him if anything was wrong with the house. Flores asked Douglas to file an insurance claim for the roof with USAA. USAA had determined that the roof could not be repaired and needed to be replaced, but Douglas did

not tell Flores. Consequently, Flores did not discover the USAA recommendations until after closing, when he requested them directly from USAA himself.

Flores filed suit against Douglas Christians and in his capacity as executor for the Estate of Dale K. Christians, and the Estate of Dale K. Christians (collectively, "Christians"), alleging breach of contract, violations of the DTPA, negligent misrepresentation and misrepresentation by nondisclosure, fraud in a real-estate transaction and fraud in the inducement, among others. Christians filed a counterclaim alleging frivolous and groundless lawsuit. The trial court found in favor of Flores and rendered judgment awarding him actual damages, exemplary damages under the DTPA, and attorney's fees. Christians appealed.

HOLDING: Affirmed.

REASONING: Christians argued that the "as-is" provision in the Purchase Agreement barred Flores's recovery by negating the essential element of causation in his DTPA claim. The court disagreed, reasoning that the "as-is" clause was not binding because Christians fraudulently represented information. Because Douglas had actual knowledge of the damage and failed to disclose it to Flores before entering into a contract, he fraudulently induced Flores to purchase the property. This fraudulent conduct made the as-is provision nonbinding.

Christians next argued that the trial court erred in rendering judgment under the DTPA. The court disagreed, confirming that the evidence of his actual knowledge and fraudulent conduct was sufficient to show that Christians "represented that an agreement confers or involves rights or remedies, which it does not have or involve" pursuant to section 17.46(b)(12).

Douglas Christians argued that he couldn't be found personally liable as a matter of law under the purchase contract because he was acting solely as the executor of the Estate.

Christians then argued that no DTPA violation occurred because Flores' claims constituted a breach-of-contract action and not a DTPA violation. The court disagreed, reasoning that Flores alleged more than a mere breach of the oral agreement to use the USAA proceeds to repair the roof. Flores provided evidence indicating that Christians concealed the damaged condition of the roof, fraudulently induced Flores into closing on the sale by promising to use insurance proceeds to fix the roof, concealed communications from the insurance company, and misused the funds from the insurance company. The court concluded that these facts rose above the allegation of a mere failure to perform a promise and that Douglas's misrepresentations caused more damage than just a breach of the agreement.

Finally, Douglas Christians argued that he couldn't be found personally liable as a matter of law under the purchase contract because he was acting solely as the executor of the Estate. The court disagreed, holding that Douglas was personally liable because, at times, he acted on his own behalf and not as executor of the Estate. The court specified that an individual—even one who also serves as an independent executor—can be held liable for his own fraudulent acts or violations of the DTPA. Moreover, Flores did not assert that Douglas owed him a duty regarding handling Estate funds; instead, Flores argued that Douglas, both individually and in his capacity as executor for the Estate, committed DTPA violations.

A LENDING TRANSACTION IN WHICH A BORROWER SEEKS ONLY TO REFINANCE A LOAN CANNOT GIVE RISE TO A DTPA CLAIM

Aguocha v. Newrez LLC, ___ S.W.3d ___ (Tex. App.—Houston [14th Dist.] 2022).
https://law.justia.com/cases/texas/fourteenth-court-of-appeals/2022/14-20-00797-cv.html

FACTS: Plaintiff-Appellant Samuel Aguocha executed a note after refinancing his home mortgage loan secured by a deed of trust made for the benefit of Defendant-Appellee, Newrez LLC f/k/a New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing ("Newrez"). The assignee of the deed of trust was The Bank of New York Mellon ("Bank"). Aguocha defaulted on the loan, and the Bank sent Aguocha a Repayment Plan Agreement including terms that required six monthly payments followed by a seventh larger lump sum payment. Aguocha made the first six payments but missed the seventh. After other attempts to cure Aguocha's delinquency failed, the Bank sent him a notice that his home would be sold at a foreclosure sale.

Aguocha filed suit seeking a permanent injunction to stop the foreclosure, alleging breach of contract and violation of the DTPA, among other claims. The Bank moved for summary judgment, and the trial court granted the Bank's motion. Aguocha then appealed by challenging the trial court's ruling on the Bank's motion for summary judgement.

HOLDING: Affirmed.

REASONING: Aguocha alleged that the Bank made certain misrepresentations that were actionable under the DTPA. In the Bank's motion for summary judgment, the Bank argued that Aguocha was not a consumer under the DTPA because his claim did not arise out of any transaction where goods or services were sought or acquired.

The court agreed with the Bank, confirming that Aguocha must have sought or acquired either "goods" or "services " to qualify for consumer status." For purposes of the DTPA, "goods" is defined as "tangible chattels or real property," and "services" is defined as "work, labor, or service purchased or leased for use." Money is neither a good nor a service under these definitions, and therefore, a lending transaction in which a borrower only seeks to refinance a loan cannot give rise to a DTPA claim.

The Bank produced sufficient evidence that Aguocha did not seek or acquire any services and Aguocha did not argue in his brief that his claim arose out of a transaction where he sought anything other than money. Because of this, the court concluded that Aguocha failed to raise a fact issue and that the trial court correctly granted summary judgment in favor of the Bank on Aguocha's DTPA claim.

THE ECONOMIC LOSS RULE GENERALLY PRECLUDES RECOVERY IN TORT FOR ECONOMIC LOSSES RESULTING FROM A PARTY'S FAILURE TO PERFORM UNDER A CONTRACT WHEN THE HARM CONSISTS ONLY OF THE ECONOMIC LOSS OF A CONTRACTUAL EXPECTANCY

THE ECONOMIC LOSS RULE DOES NOT APPLY IF A PERSON NEGLIGENTLY PERFORMS A CONTRACT IN A WAY THAT INJURES PROPERTY OR PERSONS INCIDENTAL TO THE CONTRACT WORK BEING DONE

THE DTPA DOES NOT DEFINE THE TERM "ENTITY" IN § 17.45(4)

TEXAS LAW HAS NOT DEVELOPED SUFFICIENTLY FOR THE COURT TO REASONABLY CONCLUDE THAT AN INDIVIDUAL QUALIFIES AS AN "ENTITY" WITHIN THE MEANING OF THE STATUTE

Aircraft Holding Sols., LLC v. Learjet, Inc., ___ F. Supp. 3d ___ (N.D. Tex. 2022).
https://casetext.com/case/aircraft-holding-sols-v-learjet-inc-1

FACTS: Plaintiffs Aircraft Holding Solutions, LLC ("AHS") and CH300, LLC ("CH300") executed a proposal with Defendant Learjet Inc. d/b/a Bombardier Aircraft Services ("BAS") for routine maintenance and inspection services to be performed on Plaintiff's Bombardier Challenger 300 aircraft. While Defendants were in possession of the aircraft for maintenance, the aircraft fell off its maintenance jacks, resulting in "substantial damage" to the fuselage and wings. Defendants concluded that high wind gusts caused the aircraft to lift, resulting in the failure of the jacks. Defendants entered into a Services Agreement with Plaintiffs that allowed Defendants to complete the work necessary to return the aircraft to service. While making the repairs, Defendants caused further damage to the aircraft. Plaintiffs refused to allow Defendants to complete any further repairs and sold the aircraft to a third party.

Plaintiffs filed suit against Defendants and Bombardier Aerospace Corporation, alleging various claims under Texas law. After Defendants removed the case to District Court, Plaintiffs filed a second amended complaint, alleging claims for breach of contract, DTPA violations, negligence, gross negligence, and breach of implied bailment. Defendants asserted counterclaims against Plaintiffs for breach of contract, quantum meruit/unjust enrichment, and declaratory judgment, along with affirmative defenses such as the economic loss doctrine and contractual limitations.

HOLDING: Motion denied.

REASONING: Defendants argued that Plaintiff's claim against them for negligence and gross negligence was barred by the economic loss rule. Defendants also argued that the DTPA claim was barred because CH300 is a business consumer, owned and controlled by Ricardo Orrantia, who qualified under the statute as an entity with assets of $25 million or more, as his net worth exceeds $25 million.

The court disagreed with Defendants' economic loss rule argument. The economic loss rule generally precludes recovery in tort for economic losses resulting from a party's failure to perform under a contract when the harm consists only of the economic loss of a contractual expectancy. To determine whether the economic rule loss bars a tort claim, the court must analyze both (1) the source of the duty and (2) the nature of the remedy. However, the rule does not apply if a person negligently performs a contract in a way that injures property or persons incidental to the contract work being done. Here, the court held that the source of the duty allegedly breached was tort-based and not contract-based. The damage was caused by negligent conducted unrelated to Defendant's performance of the contracted-for services. Thus, the economic loss rule does not bar Plaintiff's claim for negligence and gross negligence against Defendants.

Douglas Christians argued that he couldn't be found personally liable as a matter of law under the purchase contract because he was acting solely as the executor of the Estate.

The court also disagreed with Defendant's argument that the DTPA claim was barred. A plaintiff must be a "consumer" to maintain a private action under the DTPA. The DTPA statute states that the term consumer does not include a business consumer with assets of $25 million or more, or one owned or controlled by a corporation or entity with assets of $25 million or more. However, the DTPA does not define the term "entity" in § 17.45(4). The court held that since Texas law has not developed sufficiently for the court to reasonably conclude that Orrantia qualifies as an "entity" within the meaning of the DTPA statute, the court would not grant Defendant's summary judgment dismissing the DTPA claim.