DECEPTIVE TRADE PRACTICES AND WARRANTY

DTPA CLAIM IS BARRED BY THE ECONOMIC LOSS DOCTRINE

Holubets v. Forest River, Inc., ___ F. Supp.3d ___ (W.D. Tex. 2022).
https://www.govinfo.gov/content/pkg/USCOURTS-txwd-1_21-cv-01004/pdf/USCOURTS-txwd-1_21-cv-01004-0.pdf

FACTS: Plaintiff Paul Holubets ("Holubets") purchased a new recreational vehicle ("RV") from a third-party seller. After purchase, he experienced defects with the materials and quality of the RV. Holubets sent the RV back to the manufacturer, Defendant Forest River, Inc. ("Forest River") three times for repairs. After the second repair, Holubets identified six repairs that were not addressed and sent the vehicle back to Forest River for a third and final time. As a result of the defects rendering the vehicle unavailable for use, Holubets and his wife rented a studio apartment. Holubets brought six causes of action against Forest River, including violation of the DTPA, seeking economic and actual damages. Additionally, Holubets sought to rescind the original sales contract. However, Forest River was not a party to the sales contract because it was merely the manufacturer of the RV.

Forest River moved to dismiss Holubets' claims under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Forest River further argued that Holubets' claims were barred by the economic loss doctrine.

HOLDING: Grant recommended.

REASONING: Forest River argued that Holubets' claims, including the DTPA claim, fell within the economic loss doctrine because the only loss or damage arising from these claims was the subject matter of the contract itself. Here, the subject matter at issue was the warranty and repair agreements included in the contract.

The court held these are claims that fall under a breach of contract, not violations of the DTPA.

The court held that Holubets' DTPA claim was barred by the economic loss doctrine because his claim rested on allegations that Forest River falsely advertised the RV to be both functioning and of high quality. The court held these are claims that fall under a breach of contract, not violations of the DTPA. The economic loss doctrine precludes recovery for economic losses resulting from the failure of a party to perform under a contract. The doctrine also precludes recovering from losses that are the subject matter of a contract between the parties. More specifically, the court emphasized the importance of the distinction between claims under a breach of contract and a claim constituting a deceptive act in violation of the DTPA. Without a clear distinction between the two, every breach of contract claim could convert into a DTPA claim. Thus, the court held the DTPA claim was barred by the economic loss doctrine because the only loss or damage arising from these claims were to the warranty and repair agreements.

DTPA AND INSURANCE CODE CLAIMS FAIL TO COMPLY WITH RULE 9(b)

Finger Oil & Gas, Inc. v. Mid-Continent Cas. Co. & Marsh USA, Inc., ___ F. Supp.3d ___ (W.D. Tex. 2022).
https://casetext.com/case/finger-oil-gas-inc-v-mid-continent-cas-co-2

FACTS: Plaintiff Finger Oil & Gas, Inc. ("Finger Oil") purchased an insurance policy with a coverage-modifying Oil and Gas Endorsement from Defendant Mid-Continent Causality Company ("Mid-Continent"). Co-Defendant Marsh USA, Inc. ("Marsh") brokered the insurance transaction. After one of Finger Oil's wells experienced a blow-out, Finger Oil inquired with Marsh about coverage of the incident. A commercial-lines manager with Marsh sent an email to Finger Oil confirming the "blowout and cratering coverage" included in the insurance policy, and its limits. Before coverage of the claim was final approved by Mid-Continent, Finger Oil interpreted Marsh's email as a representation of coverage for the claim and contracted to retain services for repairs. Mid-Continent subsequently denied Finger Oil's coverage claim, citing the policy's general exclusion of property damage and the Endorsement's exclusion. Finger Oil sued Mid-Continent and Marsh for misrepresentation in violation of the Texas Insurance Code and DTPA.

The district court ordered Finger Oil to file an amended complaint to clarify its factual allegations and conform with federal pleading requirements. Finger Oil failed to timely file an amended complaint. Marsh and Mid-Continent moved for summary judgment. The district court granted Marsh's motion in full and granted Mid-Continent's in part. Specifically, the district court dismissed Finger Oil's DTPA and Insurance Code claims against both defendants, for failure to comply with Federal Rule of Civil Procedure 9(b). Finger Oil filed a motion to reconsider its DTPA and Insurance Code claims premised on Mid-Continent's alleged misrepresentations.

HOLDING: Re-affirmed.

REASONING: Finger Oil alleged it had contacted a commercial lines account manager for Marsh prior to contracting for repairs and that the manager had stated that the "blowout and cratering coverages" were included within the limits of insurance.

The district court found Finger Oil's pleadings insufficient, holding that Finger Oil's Original Petition, without more, failed to comply with Rule 9(b). Rule 9(b) requires plaintiffs to (1) articulate elements of fraud with particularity, (2) specify the statements contended to be fraudulent, (3) identify the speaker, (4) state when and where the statements were made, and (5) explain why the statements were fraudulent. The court determined Finger Oil's Original Petition did not comport with Rule 9(b) because it did not specify when Mid-Continent made the alleged misrepresentation or why it was false. Because the Original Petition did not include more detailed allegations, Finger Oil's DTPA and Insurance Code Claims were improperly pleaded under Rule 9(b), and the judgment was re-affirmed.

DTPA CLAIM IS PREEMPTED BY THE CARMACK AMENDMENT

Ahe v. 1-800-Pack-Rat, LLC, ___ F. Supp.3d ___ (N.D. Tex. 2022).
https://casetext.com/case/von-der-ahe-v-1-800-pack-rat-llc

FACTS: Tommy Von Der Ahe ("Tommy") and his mother, Emmy Von Der Ahe ("Emmy") (collectively, "the Von Der Ahes"), contracted with Defendant Zippy Shell for moving services from Alabama to Texas. The contract with Zippy Shell included an extra "Contents Protection Plan." Per the agreement, Zippy Shell would deliver a pod to Tommy's Alabama residence, where it would be loaded with belongings and then transported to Texas. The pod was to be delivered to an intermediary location and partially unloaded. Afterwards, the pod was to be stored in Dallas County until Tommy needed the pod at his new residence in Dallas.

The court agreed with Zippy Shell, citing previous Fifth Circuit precedent, holding claims for damages under the DTPA were preempted by the Carmack Amendment.

The pod was successfully delivered to the intermediary location where it was partially unloaded and then stored locally. Weeks later, the Von Der Ahes requested that the pod be delivered to Tommy's new residence. However, Zippy Shell could not locate the pod or Tommy's belongings. The Von Der Ahes received an email from a "1-800-Pack-Rat" email address that contained a photo of a pod found at Zippy Shell's Carrollton, Texas location with a request to confirm if the pictured pod belonged to the Von Der Ahes. When Tommy visited the Carrollton, Texas location and inspected the pod, all items of monetary value were missing.

The Von Der Ahes filed their original petition in state court claiming DTPA violations. Zippy Shell removed the action to federal district court and filed a motion to dismiss the original petition for failure to state a claim.

HOLDING: Granted.

REASONING: The Von Der Ahes' claimed Zippy Shell violated the Texas DTPA by "misrepresenting that the Contract conferred or involved rights and remedies it did not, and failing to disclose information about services that w[ere] known at the time of the transaction." Namely, misrepresenting the storage location as "safe and secure" and that the "content protection" was in place at the time of the transaction. Zippy Shell however, contended the claims arose out of a contract for shipment of interstate goods and were preempted by the Carmack Amendment, which holds a common carrier liable for actual loss or damages to goods arising from interstate transport of goods under 49. U.S.C. § 14706, not the DTPA.

The court agreed with Zippy Shell, citing previous Fifth Circuit precedent, holding claims for damages under the DTPA were preempted by the Carmack Amendment. Although some courts have found exceptions to the preemptions of DTPA claims by the Carmack Amendment, the exceptions are specific, statutory exceptions for when false, misleading, or deceptive practices occur before there is contract for interstate shipment of goods.

Here, the court finds that the Von Der Ahes' state law DTPA claim is preempted by the Carmack Amendment because, as presently pleaded, it arises from the interstate shipment of household goods. The Von Der Ahes' allegations that Zippy Shell was aware that the storage facility would not be safe and secure cannot be accepted as true because the claim is not backed by supporting facts. With no additional facts, the Von Der Ahes' DTPA claims do not meet any of the exceptions. Because the Von Der Ahes' DTPA claims did not meet any of the limited and narrowly applied exceptions, the court concluded the Von Der Ahes' DTPA claim was preempted by the Carmack Amendment.