DECEPTIVE TRADE PRACTICES AND WARRANTY

BORROWING MONEY OR OBTAINING A CREDIT CARD DOES NOT CREATE DPTA CONSUMER STATUS

Dyer v. Capital One Nat'l Ass'n, 2023 U.S. Dist. LEXIS 88709 (S.D. Tex. 2023).
https://law.justia.com/cases/federal/district-courts/texas/txsdce/4:2020cv04230/1806474/86/

FACTS: Percival Dyer had multiple accounts with Capital One National Association. All of the accounts were subject to Capital One's user agreement that permitted account closure at any time for any reason permitted by law. Capital One noticed suspicious activity on three of Dyer's accounts and deemed it appropriate to close each one. Dyer asked Capital One to reopen her accounts, but Capital One refused to adhere to the request.

Dyer filed suit alleging violations of the Texas DPTA. Capital One moved for summary judgement, asserting Dyer had no evidence to support her claim.
HOLDING: Granted.
REASONING: To prevail on a DPTA claim, Dyer had to show that (1) she was a consumer, (2) Capital One engaged in false, misleading, or deceptive acts, and (3) the acts constituted a producing cause of Dyer's damages. The court held that the claim failed because Dyer's financial relationship with Capital One did not create the DTA's necessary "consumer" status.

The court held that borrowing money did not create consumer status because money is not a good, and the term "services" did not include credit or the borrowing of money. Even credit card accounts do not support the necessary DTPA consumer status required for standing. Further, Dyer presented no evidence of goods or services in connection with any of the accounts that could have potentially supported consumer status under Texas law. As such, the court granted Capital One's motion for summary judgement.

The court held that borrowing money did not create consumer status because money is not a good.

FRAUDULENT CONCEALMENT IS A DOCTRINE RELATING TO A STATUTE OF LIMITATIONS DEFENSE AND IS NOT AN INDEPENDENT CAUSE OF ACTION

NOT SEEKING ABATEMENT IS A WAIVER OF NOTICE UNDER THE DTPA

In re Recalled Abbott Infant Formula Prods. Liab. Litig., 2023 U.S. Dist. LEXIS 88881 (N.D. Ill. 2023).
https://www.aboutlawsuits.com/wp-content/uploads/2023-05-22-CMO-10.pdf

FACTS: Plaintiffs were consumers from different states who claimed they were harmed by certain infant formulas manufactured by Defendant Abbott, under the Similac, Alimentum, and EleCare brands. The FDA received reports of *Cronobacter* in an infant who had consumed the Abbott formula, which led to an inspection of Abbott's facility. Another report of the illness, including the death of an infant, led the FDA to inspect Abbott's facility again, where it tested positive for *Cronobacter*. Following the FDA's recommendation, Abbott recalled its infant formula and additional products after another reported infant death.

Abbott faced multiple lawsuits from Plaintiffs who claimed that its infant formula caused harm. The cases were consolidated and put before one judge. Abbott filed a motion to dismiss the personal injury complaints for lack of subject-matter jurisdiction and failure to state a claim. While Plaintiffs dismissed some of the claims, Abbott submitted appendices to support its motion, pointing out specific state laws that applied to each, including fraudulent concealment and DTPA claims.
HOLDING: Dismissed in part.
REASONING: Plaintiffs argued that if a defendant had a duty to disclose information, fraudulent concealment claims could be considered a valid cause of action in Texas. The court disagreed. The court held fraudulent concealment was an affirmative defense to a statute of limitation assertion, not an independent cause of action. Indeed, fraudulent concealment could only toll the statute of limitation against the defendant and is not an independent cause of action.
Abbott also argued that the Plaintiffs' DTPA claims should be dismissed because they did not provide requisite pre-suit notice. The court disagreed. The court held that insufficient notice should result in abatement, not dismissal. Therefore, Abbott's motion to dismiss was denied because Abbott's failure to seek abatement waived the notice requirement under the DTPA.

A MERE BREACH OF CONTRACT WITHOUT MORE, DOES NOT CONSTITUTE A "FALSE, MISLEADING OR DECEPTIVE ACT' IN VIOLATION OF THE DTPA."

Willis Alan Hizar & Roofmasters DFW, LLC v. Heflin, 2023 Tex. App. LEXIS 4933
https://caselaw.findlaw.com/court/tx-court-of-appeals/114579338.html

FACTS: Appellants Willis Hizar and his business, Roofmasters (collectively "Hizar"), entered a contract with Appellees Kenneth and Anna Heflin to refinish ceilings in their home. Halfway through the job, Hizar notified the Heflins that he could not complete the job without increasing the price. The Heflins requested Hizar complete the job using a different finish within the contracted price. Instead, Hizar abandoned the project without finishing. The Heflins paid another company to complete the job. When Hizar sought payment for the remainder of the contract, the Heflins disputed his provided balance and informed Hizar his incomplete work caused damage to their home.

The Heflins sued Hizar for breach of contract and violation of the DTPA. Hizar repeatedly provided inadequate discovery responses and failed to comply with court orders compelling discovery production. The trial court entered a default motion against Hizar and awarded the Heflins damages and attorney's fees. Hizar appealed.

HOLDING: Affirmed in part.
REASONING: Hizar argued the economic loss rule barred the Heflins from bringing or recovering on a DTPA claim by relying on a breach of contract claim. The Heflins argued the facts underlying their DTPA claim were distinguishable from those underlying their breach of contract claim.

The court reasoned that reliance on a mere breach of contract claim, without more, could not constitute a DTPA. However, because the Heflins based their DTPA claim on facts distinct from their breach of contract claim, the Heflins were entitled to recover damages and attorney's fees under both claims. The Heflins' DTPA claim against Hizar was premised upon Hizar breaching his duty not to make misrepresentations to the Heflins under the law, which the court identified as separate from Hizar's failure to perform under his contract. Furthermore, the court held the economic loss rule did not bar the Heflins' DTPA claims either since such allegations independently created DTPA liability regardless of whether a contract existed between the parties. Accordingly, the court affirmed the trial court's judgment awarding damages and attorney's fees for Hizar's alleged DTPA violation.

AIRBAG RECALL ENOUGH TO MOOT WARRANTY SUIT

Solak v. Ford Motor Co., No. 23-CV-10064, 2023 WL 4628456 (E.D. Mich. July 19, 2023)
https://caselaw.findlaw.com/court/us-dis-crt-e-d-mic-sou-div/114662232.html

FACTS: Plaintiff John Solak ("Solak") initiated a putative class action against Defendant Ford Motor Company ("Ford") on behalf of individuals who purchased or leased a 2022 Ford Maverick or any other Ford vehicle equipped with similar faulty safety canopy side-curtain bags. Before Solak filed suit, the National Highway Traffic Safety Admin ("NHTSA") assessed Ford's airbag systems and uncovered a breach of federal government standards characterized by excessive airbag displacement.

After conveying these findings to Ford, Ford issued a voluntary safety recall of the implicated vehicles. Ford then informed vehicle owners of its intention to conduct complimentary repairs and reimburse those who had incurred expenses for independent repairs. Following these actions, Ford subsequently filed a motion to dismiss, contending that the Court should deem the case prudentially moot because Solak filed suit after the safety recall's implementation.
HOLDING: Granted.
REASONING: Solak advanced the position that the recall did not render irrelevant the claims for monetary compensation arising from the excessive amounts the putative class had paid for the defective vehicles, bolstered by legal precedent from Michigan courts. However, the court rejected Solak's argument, holding that Ford's recall measures effectively rectified the defect upon which the claims of diminished-value injury rested.

The court embraced Ford's assertion, holding "[t]hese remedial measures, coupled with [the National Highway Traffic Safety Administration's] authority to ensure they are fully implemented, renders Solak's claims prudentially moot." The court observed that Ford's communication of the defect to NHTSA and its subsequent declaration of a recall should have sufficed to nullify the controversy.

VIOLATIONS OF THE INSURANCE CODE AND DTPA ACCRUE AT THE TIME OF THE PURCHASE OF POLICY.

IF ALLEGED INJURIES ARE NOT "INHERENTLY UNDISCOVERABLE" THE DISCOVERY RULE DOES NOT APPLY

Wooten v. The Nw. Mut. Life Ins. Co., No. 05-20-00798-CV (Tex. App.—Dallas 2023).
https://casetext.com/case/wooten-v-the-nw-mut-life-ins-co

FACTS: Appellant Wrenn Wooten purchased insurance policies from Northwestern Mutual Life Insurance Company through its employee and agent Jim Zara and Patrick Matthews (collectively "Appellees"). The policies included three disability income policies and four whole-life policies. Over a decade later, Wooten filed a lawsuit against Appellees for fraud, negligent misrepresentation, breach of fiduciary duty, and violations of the Texas Insurance Code and the DTPA. Wooten asserted that he filed his claims within a reasonable time after discovering his injury, so the applicable statute of limitations did not bar his claim under the discovery rule.

Appellees filed motions for summary judgment and the trial court granted the motions. Wooten appealed.
HOLDING: Affirmed.
REASONING: Wooten argued that the discovery rule delayed the accrual of his claims. The court rejected this argument, stating that Wooten's injury was not "inherently undiscoverable," and that the discovery rule did not apply because the policies did not provide the coverage or the payout appellees allegedly misrepresented. Summary judgment evidence demonstrated that Wooten had reviewed the policies, indicating that he knew or should have known at the time he bought the policies that they did not provide the coverage or benefits Appellees allegedly misrepresented.

Wooten also argued that he relied on Appellees, who were under their formal and informal fiduciary duties. The formal fiduciary argument failed because Wooten was responsible for ascertaining when an injury occurred. When Wooten purchased the policies, Wooten "knew, or exercising reasonable diligence, should have known of the facts giving rise to the cause of action." Additionally, Wooten's evidence of a long-standing business relationship with Appellees was not evidence of an informal fiduciary relationship of trust and confidence.

Wooten argued that the limitation provisions of the Texas Insurance Code and the DTPA allowed him to apply the discovery rule to his statutory claims. Although the statutes did not require the alleged injury to be "inherently undiscoverable" for the discovery rules to apply, the court concluded that Wooten "discovered" or by "the exercise of due diligence, should have discovered" the alleged misrepresentations when he received and reviewed the policies.

The court concluded that Wooten's claims accrued at the time Wooten purchased each policy. The court emphasized that an insured has a duty to read the policy and must be charged with knowledge of its terms and conditions if the insured failed to do so.