## DECEPTIVE TRADE PRACTICES AND WARRANTY

### PLAINTIFF'S WHOSE CLAIM ORIGINATES FROM REINSTATEMENT OF A LOAN, BASED ON THE REINSTATEMENT OF THE NOTE, IS NOT A CONSUMER UNDER THE DTPA

Muehlenhaupt v. PHH Mortg. Corp., 2025 U.S. Dist. LEXIS 375464 (N.D. Tex. 2025).
https://law.justia.com/cases/federal/district-courts/texas/txndce/3:2024cv03210/398163/15/

**FACTS:** Pete Muehlenhaupt ("Plaintiff"), defaulted on his mortgage loan with Defendant, PHH Mortgage Corporation ("PHH") by failing to keep up with monthly payments. As a result a foreclosure sale was scheduled. Plaintiff alleged PHH told him that if he paid roughly $17,400 before the sale, the note would be reinstated and the sale canceled. Plaintiff paid $19,700, but PHH proceeded with the foreclosure sale. Plaintiff sued PHH in state court for a violation of the Deceptive Trade Practices Act ("DTPA") and other claims. PHH removed the case to federal court and brought a motion to dismiss for failure to state a claim.
**HOLDING:** Granted.
**REASONING:** Plaintiff argued PHH breached the DTPA. However, the court found Plaintiff was not eligible to make a claim under the DTPA, holding that to pursue a claim under the DTPA the plaintiff must meet the statute's definition of a "consumer."

**His complaint did not arise from the purchase or lease of any "goods or services."**

The DTPA's definition of a consumer is an individual who purchases or leases any "goods or services."] "Goods" are defined as "tangible" or "real property" that is purchased or leased. Plaintiff's claim was based on the reinstatement of the loan on property he already owned, which was based on the reinstatement of the note. Therefore, his complaint did not arise from the purchase or lease of any "goods or services." Thus, Plaintiff was not a consumer under the DTPA.

### ECONOMIC LOSS RULE DOES NOT PRECLUDE RECOVERY OF MENTAL ANGUISH DAMAGES AND TREBLE DAMAGES UNDER THE DTPA WHEN PLAINTIFFS PROVE MORE THAN A MERE BREACH OF CONTRACT

### EXPERT TESTIMONY IS NOT REQUIRED TO ESTABLISH THE NECESSITY AND REASONABLENESS OF HOME REPAIRS WHEN THE REPAIRS ARE NOT SO TECHNICAL OR COMPLEX AS TO BE BEYOND JURORS' COMMON UNDERSTANDING

### LAY TESTIMONY CAN BE SUFFICIENT TO ESTABLISH THE REASONABLENESS OF REPAIR COSTS

Shafaii Invs., Ltd. v. Rivera 2025 Tex. App. LEXIS 322202 __S.W. 3d__ (Tex. App. –Houston [1st] 2025).
https://law.justia.com/cases/texas/first-court-of-appeals/2025/01-21-00731-cv.html

**FACTS:** Rivera and Angelino ("Appellees") bought townhomes from Shafaii Investments, Ltd and Raj Shafaii ("Appellants"). Appellants told Appellees they would need to purchase insurance for their townhomes through them and pay a monthly fee. After flooding damaged the townhomes Appellees attempted to use the insurance, but Appellants never purchased insurance for either property. Since Appellees had no coverage, they paid for repairs themselves. Appellees then brought a consolidated suit against Appellants, Shafaii Investments, Ltd and Raj Shafaii, claiming breach of contract, fraud, negligence, misrepresentation, and violations of the Texas Deceptive Trade Practices Act ("DTPA"). A district court jury found for the Appellees and awarded damages for repair costs, treble damages under the DTPA, mental anguish damages, and attorney's fees. Appellants appealed.
**HOLDING:** Affirmed.
**REASONING:** Appellants argued the economic loss rule barred recovery for mental anguish and treble damages under the DTPA and that there was insufficient evidence, including no expert testimony, to support the damages awarded by the jury.

The court rejected Appellant's argument because Appellees proved that the Appellants engaged in false, misleading or deceptive acts when they collected money from the Appellees for insurance without actually purchasing the insurance. The court held the economic loss rule did not bar Appellees from recovering damages for mental anguish and treble damages due to the DTPA violation.

The court also rejected Appellants argument that there was insufficient evidence to support the damages. Expert testimony is only required when the damage at issue is beyond the jurors' common understanding. The cost of repairs to the townhomes were not so technical or complex as to be beyond the common understanding of the jurors. Therefore, the lay testimony of Appellees was sufficient in supporting the awarded damages.

### UNLESS UNAMBIGUOUSLY DECEPTIVE, AMBIGUITY ON THE FRONT LABEL CAN MISLEAD REASONABLE CONSUMERS UNDER THE CLRA AND UCL

McGinity v. P&G, 69 F.4th 1093 (9th Cir. 2023).
https://cdn.ca9.uscourts.gov/datastore/opinions/2023/06/09/22-15080.pdf

**FACTS**: Plaintiff-Appellant Sean McGinity ("McGinity") purchased Pantene Pro-V Nature Fusion shampoo and conditioner from Defendant-Appellee, The Procter & Gamble Company ("P&G"). McGinity believed that the "Nature Fusion" label meant the products were natural. In reality, the products contained synthetic ingredients. McGinity claimed he would not have purchased the products if he had known this and sued P&G under California's Unfair Competition Law, False Advertising Law, and Consumers Legal Remedies Act.

P&G moved to dismiss McGinity's complaint for failure to allege sufficient facts. The district court granted the motion to dismiss with leave to amend. McGinity's amended complaint was also dismissed by the court for failure to allege sufficient facts. McGinity appealed.

**HOLDING**: Affirmed.
**REASONING**: McGinity argued the front label of Nature Fusion products were ambiguous and insinuated an entirely natural product. He further argued the survey impressions proved reasonable consumers were also deceived by the label. P&G argued that a reasonable consumer would not be deceived by the label because there was no specific language stating that none of the ingredients were synthetic.

The court determined that the ambiguity of the front label of the Nature Fusion products could be resolved by consumers checking the ingredients list on the back label. The court previously held that consideration of the back label could only be precluded if the front label was unambiguously deceptive. The Nature Fusion label indicated natural ingredients, but it did not promise that the product was entirely natural. A reasonable consumer confused by the front label could have turned to the back label to see that the product contained both natural and synthetic ingredients. The survey participants did not have the option to view the back label of the products. Therefore, the survey only demonstrated that the Nature Fusion front label was ambiguous, not misleading. The court concluded that no reasonable consumer would have thought that the products were completely or substantially natural.

## TEXAS DECEPTIVE TRADE PRACTICES ACT SPECIFICALLY ALLOWS CONSUMERS TO MAINTAIN AN ACTION FOR BREACH OF EXPRESS OR IMPLIED WARRANTY

Taylor Plaza, LLC v. Lucy's Kitchen #2 LLC, 2025 LX 328581 (Tex. App.— 2025).
https://law.justia.com/cases/texas/seventh-court-of-appeals/2025/07-25-00013-cv.html

**FACTS:** Plaintiff-Appellee, Lucy's Kitchen #2 LLC ("Lucy's"), entered a commercial lease as tenant with Defendant-Appellant, Taylor Plaza LLC ("Taylor"). Lucy's paid a security deposit and first month's rent before beginning renovations to open a restaurant. The premises had a defective and leaking roof that Taylor failed to repair despite repeated requests, preventing Lucy's from completing renovations and opening for business. As a result, Lucy's terminated the lease and filed suit against Taylor, alle

**The court determined that Lucy's DTPA claim arose from the implied warranty of suitability.**

Lucy's terminated the lease and filed suit against Taylor, alleging violations of the Deceptive Trade Practices Act ("DTPA") and other claims. The jury rendered a verdict in favor of Lucy's. Taylor appealed.
**HOLDING:** Affirmed.
**REASONING:** Taylor argued Lucy's DTPA claims were barred as a matter of law because they were contractual in nature.

The court rejected this argument, explaining that §17.50(a)(2) of the Texas Business and Commerce Code expressly authorized consumers to maintain an action for breach of express or implied warranty when such breach was a producing cause of economic damages. Here, the court determined that Lucy's DTPA claim arose from the implied warranty of suitability. Taylor breached this warranty when it failed to repair the leaking roof, rendering the property unfit for restaurant operations. Therefore, the court held that Lucy's properly maintained its DTPA claim for breach of implied warranty.

## THE STATE OF TEXAS IS THE REAL PARTY IN INTEREST IN SUIT FILED BY ATTORNEY GENERAL

## THE DTPA EXPLICITLY GRANTS THE ATTORNEY GENERAL AND THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, TO BRING SUITS AGAINST PERSONS ENGAGING "IN ANY ACT OR PRACTICE TO BE DECLARED UNLAWFUL" ON BEHALF OF THE STATE OF TEXAS

Texas v. 3M Co., 2025 U.S. Dist. LEXIS 189519 (N.D. Tex. 2025).
https://law.justia.com/cases/federal/district-courts/texas/txndce/3:2025cv00122/398789/44/

**FACTS**: Defendant 3M sold products to Defendants Old DuPont, New DuPont, and Corteva (collectively, "Defendants") that were then used in a variety of consumer goods. Upon selling, Defendants emphasized the products' resistance to heat, oil, stains, grease, and water. The State of Texas ("Plaintiff") alleged that the companies knew these products posed health and environmental risks and engaged in deceptive trade practices by failing to disclose those risks and by marketing the products as "safe." Plaintiff sued in state court under the Deceptive Trade Practices Act ("DTPA").

Plaintiff filed suit in state court and Defendants removed the action to federal district court. Plaintiff filed a Motion to Remand to state court, claiming that there was no diversity of citizenship.
**HOLDING**: Remanded.
**REASONING**: Plaintiff argued the State of Texas was the real party in interest because it was seeking to regulate its economy and marketplace, enforce the laws of Texas, and obtain penalties and injunctive relief against 3M. Plaintiff further argued that because the State of Texas is the real party in interest, it is not a citizen for diversity purposes and the case should be remanded to state court.

Defendants argued that when a state is asserting personal claims of its citizens, it is not the real party in interest, and that the injunction would only benefit Texas consumers who have purchased the Defendants' products, therefore the real party in interest was the people of Texas.

The court found in favor of Plaintiff holding that an entity is the real party in interest when it is statutorily authorized to bring suit to enforce a claim. The DTPA provides "the consumer protection division may bring an action in the name of the state against" persons that have engaged in unlawful practices. Plaintiff seeking redress for the Defendants alleged deceptive practices on behalf of people in Texas does not make the people of Texas the real parties in interest. Because the DTPA explicitly granted the authority to the Attorney General and the Consumer Protection Division to file suit, the State of Texas is the real party in interest.

### MERE RECITATION OF THE STATUTORY DTPA LANGUAGE DOES NOT SATISFY RULE 9(b)'S HEIGHTENED PLEADING REQUIREMENT

### UNDER TEXAS LAW, GENERAL MARKETING MATERIALS ARE INSUFFICIENT TO CONSTITUTE A WARRANTY

Quinones v. REV Renegade, LLC, 2025 U.S. Dist. LEXIS 165598 (N.D. Ind. 2025). https://law.justia.com/cases/federal/district-courts/indiana/inndce/1:2025cv00182/122243/23/

**FACTS:** Plaintiffs, Josh Quinones and Nila Hatmi Madani (collectively, "Plaintiffs"), purchased an RV assembled by Defendant REV Renegade, LLC ("REV"). Defendant Firefly ("Firefly") manufactured components of the RV and Defendant Cummins Inc. ("Cummins") manufactured the engine. Plaintiffs claimed the RV had several defects upon delivery and developed others over time.

Plaintiffs sued all three Defendants alleging several causes of action including a violation of the Texas Deceptive Trade Practices Act ("DTPA") and breach of warranty claims. Plaintiffs' complaint asserted Firefly and Cummins violated the DTPA and listed the relevant DTPA statutory provisions. For the breach of express warranties, the complaint broadly claimed that Defendants' "advertisements and statements in written promotional and other materials" amounted to a warranty.

Plaintiffs filed a complaint in state court against REV, Firefly, and Cummins with the same three claims. Defendants Firefly and Cummins both filed a motion to dismiss for failure to state.

**HOLDING:** Granted.

**REASONING:** Plaintiffs argued the DTPA violation section of the complaint was sufficiently pled. The court rejected this argument by noting that Rule 9(b)'s heightened pleading standard applied to Texas DTPA claims. To satisfy rule 9(b), "a plaintiff must specify the statements contended to be fraudulent, identify the speaker, and state when and where the statements were made, and explain why the statements were fraudulent." The court held the complaint recited elements of the DTPA but provided no specific facts on how the Defendants supposedly committed a false, misleading, or deceptive act. Because Plaintiff's complaint was conclusory and did not allege specific facts relevant to a claim against any individual defendant, it did not meet Rule 9(b)'s heightened pleading standard and was, therefore, deficient.

**Under Texas law, general marketing materials are insufficient to constitute a warranty.**

For the breach of warranty claim, Plaintiffs argued Cummins and Firefly's advertisements and promotional materials amounted to a warranty. The court disagreed with this argument, finding again that Plaintiffs' complaint did not identify any specific warranties that Cummins or Firefly provided. Under Texas law, general marketing materials are insufficient to constitute a warranty. Because the complaint neither differentiated between Defendants nor identified any warranties that either Defendant specifically provided, Plaintiffs did not properly state a claim against Defendants. Therefore, their general marketing materials were insufficient to constitute a warranty under Texas law.

### HOMEOWNER ESTABLISHES VIOLATION OF DTPA AGAINST CONTRACTOR
### CONTRACTOR IS DENIED BANKRUPTCY DISCHARGE

Lindeman v. Nooruddin (In re Lindeman), 2025 Bankr. LEXIS 2711 (Bankr. N.D. Tex. 2025).
https://www.txnb.uscourts.gov/sites/txnb/files/opinions/176051206062.pdf

**FACTS:** Plaintiff Mansoor Nooruddin ("Nooruddin") hired Defendant Dennis Lindeman ("Lindeman") as his contractor to perform renovations on a home he purchased. Their "Construction Contract" stated Lindeman would renovate the home to "current market standards" within eight weeks. The payment schedule provided that $80,000 would be paid in two-week intervals until the project was completed. Nooruddin obtained a loan from American National Investors Corporation, which created a construction trust to make payments to Lindeman upon his request. With each request, Lindeman included detailed accounts of the tasks completed. However, Nooruddin checked the property multiple times and found that several of those tasks were not done, partially done, or not up to standard. Months after the project was supposed to be finished, Nooruddin terminated the Construction Contract and hired other contractors to finish the renovations and fix what Lindeman had done poorly.

Lindeman filed for relief under the Bankruptcy Code for debts owed to Nooruddin and others, but the United States Trustee filed suit to object. The court sustained the objection and denied Lindeman a discharge. Nooruddin brought suit against Lindeman for several claims, including a DTPA violation for the misuse of construction trust funds.

**HOLDING:** Sustained.

**REASONING:** Nooruddin argued Lindeman committed a wrongful act under the DTPA and falsely represented that work or services have been performed.

A DTPA claim requires a plaintiff to establish that (i) they were a consumer, (ii), the defendant committed a qualified wrongful act, and (iii) the defendant's actions were the cause of the plaintiff's economic damages. A "consumer" is defined by the DTPA as "an individual who seeks or acquires by purchase or lease, any good or services." Nooruddin paid for Lindeman's services to renovate his home, therefore he was a consumer.

Upon Nooruddin's inspection of the home, he found peeling paint, unevenly installed light switches, and laminate flooring instead of hardwood, despite Lindeman's contrary representations. Consequently, Nooruddin had to pay other contractors and incur out-of-pocket expenses to complete and fix Lindeman's work.

Therefore, Nooruddin, as a consumer, suffered economic damages as a direct result of Lindeman's wrongful misrepresentation. The court held the facts satisfied a DTPA violation.

**PLAINTIFFS FAILED TO PLAUSIBLY ALLEGE THAT METROPOLIS' EFFORTS TO ENFORCE THE TERMS OF THE POSTED PARKING AGREEMENTS WERE UNCONSCIONABLE, THAT METROPOLIS FALSELY IMPERSONATED OR IMPLIED AN AFFILIATION WITH A GOVERNMENT AUTHORITY, OR THAT IT ILLEGALLY THREATENED TO TOW OR BOOT PLAINTIFFS' VEHICLES.**

**COMPLAINT LACKS SUFFICIENT FACTUAL ALLEGATIONS ENABLING A REASONABLE INFERENCE OF RELIANCE ON CONDUCT OF DEFENDANT, OR THAT ITS ACTIONS ARE UNCONSCIONABLE UNDER THE DTPA PLAINTIFFS FAIL TO PLAUSIBLY ALLEGE THAT METROPOLIS IS A DEBT COLLCTOR AS DEFINED BY THE FDCPA**

Frankfort v. Metropolis Techs., Inc., 2025 U.S. Dist. LEXIS 182447 (N.D. Tex. 2025).
https://scholar.google.com/scholar_case?case=13100362320608484408&hl=en&as_sdt=6&as_vis=1&oi=scholarr

**FACTS:** Goodban, Frankfort, and Gutierrez (collectively, "Plaintiffs"), filed a class action against Metropolis Technologies, Inc. ("Metropolis"), after they incurred violation fines at a Texas Metropolis garage for failing to pay parking fees. In their complaint, Plaintiffs alleged Metropolis used inconspicuous signs and undisclosed fines to induce non-compliance, then charged penalty fees. They asserted claims under the Fair Debt Collection Practices Act ("FDCPA"), the Texas Debt Collection Act ("TDCA"), and the Texas Decceptive Trade Practices Act ("DTPA"). Metropolis moved to dismiss all claims.

**Plaintiffs alleged Metropolis used inconspicuous signs and undisclosed fines to induce non-compliance, then charged penalty fees.**

**HOLDING:** Granted.

**REASONING:** In support of their claims, Plaintiffs argued the amount of the fine charged by Metropolis was undisclosed and unconscionable. Plaintiffs also alleged that Metropolis illegally threatened to tow or boot their vehicles and Metropolis illegally impersonated a government authority.

Metropolis argued generally against Plaintiffs claims and also argued that Plaintiffs failed to plausibly allege that Metropolis qualified as a debt collector under the FDCPA, which only regulates the actions of debt collectors and explicitly excludes any person collecting self-originating debts. The court agreed with Metropolis, finding that Plaintiffs failed to plead any credible facts to support their claim and that Plaintiffs' reliance on hypothetical or abstract facts did not satisfy the "plausibility" requirements of TDCA.

Additionally, the court rejected the Plaintiffs' claim that Metropolis illegally threatened to tow or boot their vehicles, reasoning that Texas law allows Metropolis to do so if drivers refuse to pay their parking fees. Similarly, the court did not accept Plaintiff's premise that Metropolis impersonated a government authority since the parking signs specifically stated the garage was operated by a private party.

Finally, the court held Plaintiffs failed to plead reliance or unconscionability under the DTPA, nor could the court infer it from the presented facts. While Plaintiffs alleged that Metropolis's actions violated the DTPA, they failed to plead reliance on those alleged violations which caused their injuries. In order to bring a claim under the DTPA, Plaintiffs must have relied on a deceptive business practice which led to their injury.

**A CLAIM UNDER THE DTPA INCLUDES ITS OWN SET OF ELEMENTS—WHICH ARE INDEPENDENT OF THE ELEMENTS REQUIRED FOR A BREACH-OF-CONTRACT ACTION.**

**DTPA CAUSE OF ACTION MAY BE MAINTAINED WHEN DECEPTIVE ACT IS "PRODUCING CAUSE" OF ECONOMIC OR MENTAL ANGUISH DAMAGES.**

Mock v. St. David's Healthcare P'ship, 2025 Tex. App. LEXIS 8614 (Tex. App.—Austin 2025).
https://law.justia.com/cases/texas/third-court-of-appeals/2025/03-22-00708-cv.html

**FACTS:** Plaintiff Melanie Mock ("Mock") sought medical treatment from Defendant St. David's Healthcare Partnership, LP (the "Hospital"). After Mock received treatment, the Hospital provided a form (the "Contract"), outlining potential outpatient services and procedures. A month later, Mock received a bill from the Hospital that included an Evaluation and Management Services Charge (the "Charge").

Mock filed suit, alleging the Hospital did not disclose the Charge before she consented to treatment, violating the Deceptive Trade Practices Act ("DTPA") and breaching the Contract. The Hospital moved for summary judgment and the trial court granted the motion, dismissing all of Mock's claims. Mock appealed.

**HOLDING:** Reversed.

**REASONING:** The Hospital argued Mock's DTPA claim could not survive because the trial court granted summary judgment on her breach of contract claim, and both claims arose from the same conduct. The court rejected this argument, reasoning that no controlling precedent requires a breach of contract finding before bringing a DTPA claim for failure to disclose. To qualify for summary judgment in Texas, the movant must prove no material fact issue exists as to one or more essential elements of the plaintiff's claim. Here, while the two causes of action arose from the same conduct, the DTPA claim included its own set of elements that were independent of the elements required for the breach of contract action. The DTPA claim required the plaintiff to prove that a deceptive act was the "producing cause" of damages. The Hospital's motion did not address this required element or demonstrate why Mock could not meet her burden to prove it.

The court concluded that the Hospital failed to meet its burden to show the absence of a genuine issue of material fact on Mock's DTPA claims and was not entitled to judgment as a matter of law.