Loyola Consumer Law Review

Volume 9 | Issue 1 Article 13

1997

# Court Finds No Cause of Action under Illinois Consumer Fraud Act for Non-consumer Injured on Go-Cart

Bree Segel

# *Court finds no cause of action under Illinois Consumer Fraud Act for non-consumer injured on go-cart*

*by Bree Segel*

In ***Amon v. Harrison, 1994 WL 532025 (N.D. Ill.)***, the plaintiffs filed a consumer fraud act claim against the owners of Golf-A-Rama/Hot Spot ("Hot Spot") in Waukegan, Illinois. The United States District Court for the Northern District of Illinois dismissed the cause of action brought under the Illinois Consumer Fraud and Deceptive Business Practices Act ("Consumer Fraud Act"), 815 ILL. COMP. STAT. § § 505/1–505/11a, for failure to state a claim under which relief could be granted.

## Alleged camouflaged ownership of hot spot leads to consumer fraud claim

George and Beverly Amon ("plaintiffs") brought this action on behalf of their 16-year-old daughter, Debra Amon ("Amon"), who was injured while driving a go-cart at the Hot Spot. The plaintiffs originally filed suit against Anita Harrison ("Harrison") who, according to Illinois Department of Labor reports, appeared to be the Hot Spot's sole owner. However, the plaintiffs amended their complaint when they later discovered that Michael Palfresne and Michael Schiessle ("defendants") also owned the Hot Spot. The plaintiffs added these additional defendants to their complaint. The defendants subsequently moved to the Consumer Fraud Act claim.

In response to the defendants' motion to dismiss, the plaintiffs, in their complaint, alleged the defendants violated the Consumer Fraud Act when they intentionally and fraudulently deceived the public by concealing their identities as Hot Spot owners. The plaintiffs further alleged that the defendants purposely omitted their identities to avoid any liability in personal injury claims. The plaintiffs sought: 1) a declaratory judgment that the defendants violated Illinois filing and safety requirements; 2) a lien on the Hot Spot to prevent fraudulent conduct; 3) $100,000 in compensatory damages; 4) $2,000,000 in punitive damages; and 5) attorneys' fees and costs.

The court considered whether the defendants' failure to list all of the amusement park owners on reports filed pursuant to the Carnival and Amusement Rides Safety Act ("Carnival Act"), 85 ILL. COMP. STAT. §§ 85/2-1–85/2-19 (Illinois statute regulating amusement facilities), allowed the plaintiffs to state a claim under the Consumer Fraud Act.

## Court examines applicability of Consumer Fraud Act

The court noted the Consumer Fraud Act is intended to protect consumers against fraud, unfair methods of competition, and unfair or deceptive acts in the conduct of any trade or commerce. 815 ILL. COMP. STAT. § 505/1 (Historical and Statutory Notes). More specifically, the court concluded that the Consumer Fraud Act only applies to conduct which deceives or exploits consumers. The Consumer Fraud Act defines a "consumer" as "any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household." 815 ILL. COMP. STAT. § 505/1(e).

## Court finds reports are neither a commodity nor a service

Applying these principles, the court held that the Consumer Fraud Act provided no remedy for the plaintiffs' alleged injury. The court found that the plaintiffs did not act as consumers when they obtained the defendants' names from the Carnival Act reports as additional owners of the amusement park. Furthermore, the reports the plaintiffs consulted in order to obtain the defendants' names were neither a commodity nor a service. The plaintiffs did not know the defendants owned the Hot Spot until after they paid admission to enter the Hot Spot. The court further reasoned that, even if the plaintiffs were consumers when they paid admis-

sion, they ceased being consumers when they later obtained information in the Carnival Act reports.

In support of its position, the court discussed two cases. The first case, *Downers Grove Volkswagen, Inc. v. Wigglesworth Imports, Inc.*, 546 N.E.2d 33, 41 (Ill. App. Ct.1989), reaffirmed the court's awareness that Consumer Fraud Act standing requirements are to be liberally construed. In *Downers*, the court held that non-consumer causes of action are allowed if the conduct injures the general public. In the second case, *Breckenridge v. Cambridge Homes, Inc.*, 616 N.E.2d 615, 623 (Ill. App. Ct. 1993), an injured consumer maintained a cause of action even though the conduct injured a single consumer rather than the general public.

The court found that the principles articulated in *Downers* and *Breckenridge* do not authorize a non-consumer plaintiff to bring a cause of action under the Consumer Fraud Act where no consumer injury has occurred. Here, the plaintiffs acted as litigants, not as consumers. The plaintiffs used the Carnival Act reports to determine who to name in their complaint. The court concluded that the plaintiffs were not consumers when they obtained the incomplete reports. The court opined that the Consumer Fraud Act does not apply when, as here, the alleged misrepresentation was unknown to the plaintiffs until after they purchased services. Furthermore, the court held that a Consumer Fraud Act claim requires that the conduct injure at least one consumer. The court found that their complaint failed to state a claim under the Consumer Fraud Act since the plaintiffs were not consumers.