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Texas Supreme Court Denies Homeowners' Implied Warranty and Unconscionabiltiy Claims Under State's Deceptive Trade Practices-Consumer Protection Act

Raquel Villanueva

strength wars. The Court acknowledged the "overall irrationality" of the current label regulation in light of the more effective, and unchallenged, advertising regulation. The Court found Coors' argument persuasive, which focused on the different treatment of alcohol disclosure in malt liquor.

As the Court recognized, even though the regulation advanced the state's interest in a "direct and material way," it failed the First Amendment test that required a "fit" between the regulation and its articulated goals. Alternatives exist which accomplish the government's goals more effectively. For example, Coors suggested directly limiting the alcohol content of beer or limiting the ban to "malt liquor." The Court recognized that the label ban was too broad and concluded that it violated the First Amendment's protections of commercial speech. Therefore, the Court invalidated the label ban and affirmed the Tenth Circuit's opinion.

Justice Stevens disagrees with analysis

Justice Stevens, concurring, disagreed that beer labels qualify as commercial speech because the label regulation does not prevent misleading speech or protect consumers from incomplete information — the essential reasons for regulating commercial speech.

Justice Stevens based his position on Coors' desire to disclose truthful, accurate information about the alcohol content of its beer. Justice Stevens argued that the majority failed to articulate why the lower protection standards afforded commercial speech should apply to beer labels. In any other context, truthful statements about alcohol content would receive full First Amendment protection. Justice Stevens reasoned that commercial speech guidelines should be limited to speech that may mislead consumers. Here, Coors merely wished to present "truthful, unadorned, informative speech." Therefore, Justice Stevens argued the higher protections given to speech under general First Amendment guidelines should have applied to nullify the label ban.

Nevertheless, the majority's position that commercial speech guidelines govern led to the invalidation of the federal label ban on alcohol content disclosure on beer labels in those states that do not mandate it themselves.

Texas Supreme Court denies homeowners' implied warranty and unconscionability claims under state's Deceptive Trade Practices-Consumer Protection Act

by Raquel Villanueva

In ***Parkway Co. v. Woodruff*, 901 S.W.2d 434 (Tex. 1994)**, the Supreme Court of Texas held that homeowners suing their developer under the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA") had no cause of action based upon either an implied warranty or unconscionability theory. The court further held that the lower court's judgment allowing the homeowners to recover both the cost of repairs and the diminution in value of the home improperly granted them double recovery and ruled that the homeowners failed to evidence compensable mental anguish. Therefore, the court modified the judgment by denying double recovery and damages for DPTA claims and attorneys' fees.

Homeowners sue developer under state consumer protection act

In 1981, Ray and Constance Woodruff (the "Woodruffs") purchased a home in a real estate development known as Sugar Creek. The house had two previous owners and had been built and originally sold by Harrington Homes ("Harrington"). The real estate developer, Parkway Company ("Parkway"), prepared the land upon which the house was built by platting, surveying, regrading, building roads, and dealing with local regulatory and utility authorities. In 1983, Parkway began to develop Section 34 of Sugar Creek, which was located immediately east of the Woodruffs' lot and a commercial tract of land known as the Kaneb tract, which lay directly north of the Woodruffs' property. Parkway then began constructing a wall along the line which divided Section 34 from the Woodruffs' land and the Kaneb tract .

During the construction of the wall, Ray Woodruff wrote a letter to Parkway objecting to the erection of the wall and informing the developer that the wall might alter drainage patterns on his lot. The construction, however, continued. After a heavy storm, the Woodruffs noticed that regrading activity on the new development diverted runoff from the Kaneb tract onto their land. Although Parkway's engineers proposed a new drainage system, Woodruff objected and installed another type of drainage system. Parkway then offered to pay for the drainage system if Woodruff released it from any future liability. However, Woodruff rejected the offer and covered the costs himself.

After Parkway completed the wall, run off from the Kaneb tract flooded the Woodruffs' house on three occasions resulting in structural damage to their home. The Woodruffs then sued Parkway for negligence, gross negligence, nuisance, trespass, and Water Code violations. The Woodruffs also alleged that Parkway violated the DTPA by: 1) acting unconscionably; 2) engaging in false, misleading, or deceptive acts or practices; and 3) knowingly breaching an implied warranty to perform developmental services in a good and workmanlike manner. The Woodruffs subsequently amended their complaint suing the engineers, the owners of the Kaneb tract, and Harrington.

Jury renders judgment for homeowners

The trial court granted a directed verdict for Harrington and Parkway's engineers and the jury did not find the owners of the Kaneb tract negligent. The jury, however, found Parkway negligent and in violation of the Water Code, that Parkway knowingly breached an implied warranty, and that it acted unconscionably. Yet the jury failed to find that Parkway was grossly negligent, that it had engaged in any false, misleading, or deceptive acts or practices, or that it had intentionally caused a trespass of the plaintiff's property. The court entered a judgment for actual damages of $220,000: $120,000 for diminution in value, and $100,000 for house repairs. The court further rendered judgment for additional damages, attorneys' fees, and mental anguish. In the ensuing appeal, the Houston First Judicial District Court of Appeals affirmed most of the district court's judgment but denied recovery for mental anguish and added $14,000 to the judgment for the Woodruffs' out-of-pocket expenses. On appeal to the Supreme Court of Texas, Parkway asserted that it did not violate the DTPA by either breaching an implied warranty or acting unconscionably. Furthermore, Parkway asserted that the homeowners had received a double recovery although they failed to establish compensable mental anguish.

Court denies recovery under DTPA action

The Supreme Court of Texas held that Parkway did not violate the DTPA by breaching an implied warranty to perform future developmental services in a good and workmanlike manner. Although the DTPA prohibits the breach of an express and implied warranty,

it does not create warranties. Any actionable warranties under the DTPA must be recognized under the common law or by statute. The court first considered whether an implied warranty was recognizable where service, rather than sales transactions, were involved and found that common law creates an implied service warranty. In support of this finding, the court cited *Melody Homes v. Barnes*, 741 S.W.2d 349 (Tex. Ct. App. 1987), which recognized an implied warranty to repair or modify existing tangible goods or property in a good and workmanlike manner, but which also limited the judicial imposition of the warranty to situations where there is a demonstrated need. *Melody Homes* also limits the implied warranty "to services provided to remedy defects existing at the time of the relevant consumer transaction."

Applying these principals, the court then decided whether consumers who are injured by substandard service may recover under an implied warranty theory, even if they neither sought nor acquired the service about which they complain. The Woodruffs' claim depended upon whether future developmental services were promised as part of the initial transaction between Harrington and Parkway. The Woodruffs claimed that future developmental services were promised under the "master planned community," and the court of appeals interpreted a "master planned community" as an implied promise to never adversely affect any homeowner in the community. The Woodruffs also argued that the scale model of the community represented an express warranty of future developmental services. However, the supreme court rejected the Woodruffs's expansive interpretation of "master planned community" and found that Parkway did not use that term to form an implied promise to provide future services; rather, "master planned community" indicated that homeowners had a common interest in ownership in Sugar Creek. Since the transaction did not involve services, Parkway did not breach a service-related warranty and therefore no implied warranty to perform future developmental services existed. In response to the Woodruffs' scale model argument, the court ruled that the model only represented where the homes were going to be within the community, not an express warranty.

The court also rejected the Woodruffs' alternative DTPA claim that Parkway acted unconscionably. The DTPA defines an "unconscionable action" as one which "takes advantage of the lack of knowledge or capacity of a person to a grossly unfair degree." An act may also be considered unconscionable if it "results in a gross disparity between the value received and the consideration paid in a transaction involving transfer of consideration." The Woodruffs asserted that Parkway maintained exclusive control over the drainage on the adjacent lots, which deprived them of their "ability or capacity" to protect their interests. They further asserted that the diminution in the value of their home constituted an unconscionable act because the flooding created a gross disparity between the value and consideration paid for the home. Parkway countered that the homeowners failed to show evidence that Parkway either took advantage of its special skills and training or caused a gross disparity in value at the time of the sale. The court agreed with Parkway, concluding that the Woodruffs failed to support their claim of unconscionability. Therefore, the court reformed the judgment, excluding damages based upon the DTPA and attorneys' fees.

Court denies homeowners double recovery

The court supported Parkway's contention that the court of appeals granted a double recovery, which Texas law prohibits. The court of appeals erroneously awarded the Woodruffs both the cost of repairs and the diminution in the value of the home. Since the diminution in value was calculated based on the assumption that they had made no repairs rather than on a comparison of the original value of the property and the value after they made repairs, the Woodruffs effectively recovered twice.

Texas law requires that the Woodruffs choose between the two alternative measures of damages: 1) the

diminution in market value of the house; or 2) the cost of repairs. If the prevailing party fails to choose among alternatives, the court should render the judgment affording the greatest recovery. Therefore, the court reduced the judgment for actual damages by $100,000.

Court holds that anger and frustration are not compensable

The Woodruffs appealed the deletion of the award for mental anguish, but they failed to present direct evidence at trial regarding the nature, duration, and severity of this anguish. Thus, the court applied the traditional "no evidence" standard to decide whether the record supported a finding of a "high degree of mental pain and distress" which could be compensable. The supreme court found no direct evidence on the record establishing that the Woodruffs suffered mental anguish resulting from the flooding and therefore denied recovery. In affirming and modifying the court of appeals' judgment, the court ruled that the Woodruffs' anger and frustration did not rise to a level of compensable mental anguish and deleted damages for DTPA claims, the Woodruff's attorneys' fees, and double recovery.

Use of standard form does not preclude TILA violation

by Jane Cady

In ***Shields v. Lefta*, 888 F.Supp. 894 (N.D. Ill. 1995)**, the United State District Court for the Northern District of Illinois ruled on a class action suit alleging violations of the Federal Truth In Lending Act ("TILA"). In ruling on the defendant's motion to dismiss, the court held that the defendant's use of the Federal Reserve Board's model disclosure form did not preclude it from violating the TILA. Furthermore, the court held that the placement of the service contract price among nonnegotiable items did not violate the TILA or the Illinois Consumer Fraud and Deception Act ("CFA"). Therefore, the defendant's motion to dismiss was denied in part and granted in part.

TILA requires creditors to disclose financial information

The purpose of the TILA is to provide meaningful disclosure of credit terms so consumers may compare available credit terms; to avoid the uninformed use of credit; and to protect consumers against inaccurate and unfair credit billing. To achieve these goals, Congress granted the Federal Reserve Board authority to expand the legal framework governing commerce in credit by promulgating Regulation Z. Regulation Z requires a creditor to disclose certain information for each transaction conducted. A creditor must separately itemize the amount a consumer finances for each transaction and also identify any other person it pays on behalf of the consumer.

In this case, each class member purchased a car from the defendant , Lefta, Inc., and financed the transaction through a motor vehicle installment sales contract. Each car buyer also purchased an extended warranty or service contract from the defendant. The plaintiffs claimed that the defendant inadequately revealed the costs included in the installment sales contract for two reasons. First, the defendant listed the entire amount charged to the plaintiffs for a purchased service contract under the category "Amount Paid to Others." Second, the defendant placed the