Loyola Consumer Law Review

Volume 7 | Issue 3 Article 5

1995

Purchaser May Rescind Door-to-Door Sales Contract

Michael Sullivan

RECENT CASES

Purchaser may rescind door-to-door sales contract

By Michael Sullivan

In ***Rossi v. 21st Century Concepts, Inc.***, 618 N.Y.S.2d 182 (N.Y. Civ. Ct. 1994), the City Court of Yonkers, Westchester County declared that, under the Personal Property Law Article 10-A, Sections 425-431, a purchaser may rescind a door-to-door sales contract if the seller fails to properly inform the purchaser of her cancellation rights and the seller's refund policy. In addition, the court found that a purchaser may rescind the contract if the salesperson violates the common law and the Deceptive Business Practices Act by using misleading and deceptive sales tactics to induce the sale.

Salesperson induced sale

Plaintiff, Theresa Rossi ("Rossi"), attended a Bridal Expo featuring displays of products and services of interest to young brides. One of the exhibitors at the Expo was Royal Prestige, a direct marketing firm, owned by 21st Century Concepts, that sells a line of housewares door-to-door. Rossi stopped at the Royal Prestige booth and filled out a card with her name, address, and phone number. Royal Prestige gave this "lead" card to one of its salespeople, Larry Kieffer ("Kieffer"), who called Rossi to schedule an appointment. To entice her into meeting with him, Kieffer offered Rossi $100 in cash, a free facial, 100 free rolls of film, and a discount Caribbean vacation. Rossi was intrigued by the offer and invited Kieffer to her home. When Kieffer arrived, he presented Rossi with $100, a free facial, and one free roll of film. Kieffer then explained that, to obtain the remaining 99 rolls of film, Rossi had to have the first roll developed by a film processor chosen by Royal Prestige. Rossi would receive another roll of film once she paid for the prints. The discount vacation turned out to be of poor quality and location and was later rejected by Rossi.

Kieffer spent the next two and one-half hours touting the quality of Royal Prestige's line of products. During that time, Kieffer sold Rossi $1,505.63 in cookware, consisting of seven pots and 15 accessories known as the "Health System." He described the Health System as a "technically advanced means of retaining the nutritional value of cooked food," and implied that using the Health System would help produce healthier babies and prevent heart disease. He did not offer any support for these claims.

On the front of the sales contract signed by Rossi, dated September 28, 1994, the following language appears: "You, the Purchaser, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right." On the back of the contract, under "Notice of

Please see "Seller violated..." on page 114

Safety Act does not preempt

By Dana Rhodes

In ***Hernandez-Gomez v. Leonardo***, 884 P.2d 183 (Ariz. 1994), the Supreme Court of Arizona held that the National Traffic and Motor Vehicle Safety Act ("Safety Act"), 15 U.S.C. § 1381 (1966), did not preempt a state law tort action against a car manufacturer. Arizona's supreme court found that the preemptive reach of the Safety Act was limited to its express terms and that it was inappropriate to search for unarticulated congressional intent which may result in implied preemption.

No front seat lap belt

The plaintiff was in the front passenger seat of a 1981 Volkswagen Rabbit when the car, traveling between 30 and 35 miles per hour, ran down an embankment on the edge of the road. The car flipped over and landed on its roof. The plaintiff suffered spinal cord injuries when her head and shoulders collided against the roof of the car and is now a paraplegic.

The plaintiff alleged at trial that the car's safety restraint system failed to adequately protect her from a foreseeable flip because there was no lap belt. The restraint system consisted of a shoulder belt that automatically moved into place when the door was shut, a knee

Please see "State tort..." on page 114

Seller violated Door-To-Door Sales Protection Act

Continued from page 113

Cancellation," appeared a detailed description of the purchaser's cancellation rights, along with blanks for the date of sale, name and address of the seller, and the final date on which the purchaser may cancel the contract. Kieffer failed to fill in any of these blanks.

After receiving the Health System on October 27, 1993, Rossi decided to rescind the contract. Accordingly, she mailed the merchandise back to Royal Prestige, along with a letter requesting a full refund. Royal Prestige refused to refund her money and mailed the merchandise back to her, including a letter stating, "The quality of our cookware is considered by many experts to be the finest manufactured in the world today."

Seller violated act

To protect consumers from abusive sales practices frequently encountered in door-to-door sales, such as over-reaching, misrepresentation, and fraud, New York enacted the Personal Property Law Article ("PPL"), a statute similar to the Door-To-Door Sales Protection Act ("DTDSPA") passed in several other states. Like the DTDSPA, the PPL allows consumers to cancel a door-to-door sale during a three day "cooling-off" period following the sale. It also requires the seller to provide a Notice of Cancellation in the contract, complete with the names of the parties, the seller's address, the date of the transaction, and the final date on which the purchaser may cancel the contract. Finally, the PPL requires a seller to conspicuously display its refund policy in the contract.

Applying the PPL to the facts of this case, the court concluded that, by failing to fill in the blanks under the Notice of Cancellation, Kieffer had failed to properly inform Rossi of her cancellation rights. His failure to do so meant that the three day cooling-off period had not yet begun, enabling Rossi to rescind the contract. The court also noted that, even if Royal Prestige had later informed Rossi of her cancellation rights, she would, nevertheless, be entitled to a reasonable time to cancel. The court additionally found that Royal Prestige had violated the PPL by failing to conspicuously display its refund policy in the contract. Instead of providing a coherent refund policy, Royal Prestige offered an oblique promise of "fair and honorable treatment."

Please see "Seller failed..." on page 115

State tort action survives against manufacturer

Continued from page 113

bolster, and a seat designed to prevent a passenger from becoming lodged under the dashboard. The plaintiff claimed that the safety restraint system as designed made the car unreasonably dangerous. The defendant argued that the passive restraint system complied with federal design and performance standards set forth by the Safety Act, which did not require a lap belt. The defendant further argued that under the Supremacy Clause of the United States Constitution, the Safety Act preempted state common law causes of action.

Design complied with safety standards

The Supreme Court of Arizona agreed with the trial court's determination that the design in question complied with the Safety Act. The Safety Act was passed in 1966 "to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents." The court further explained that the "Occupant Crash Protection" safety standard (known as "Standard 208") allowed manufacturers to choose among three safety restraint options including airbags, automatic two-point shoulder belts with no lap belt and three-point seatbelts with a lap belt. By giving carmakers a choice of safety restraint options, Congress hoped to stimulate research, development and competition. The lap belt was merely one of the three options and therefore, not required by Standard 208.

Court adopts *Cipollone* preemption test

The key issue in the case was whether the Safety Act preempted state common law causes of action. The relevant portion of the preemption clause of the Safety Act provides:

Please see "Court decides..." on page 118

Smoker blames cancer related death on manufacturer

By J. David Gorin

In ***Grinnell v. American Tobacco Co.,*** 883 S.W.2d 791 (Tex. Ct. App. 1994), the Texas Court of Appeals reversed a trial court's decision to dismiss a variety of state and federal claims brought by the survivors of a smoker against a tobacco manufacturer. It found that state law claims against a cigarette manufacturer were not preempted by the Federal Cigarette Labeling and Advertising Act ("Labeling Act"). Furthermore, the court held that a manufacturer was not excused from its duty to warn consumers of dangers associated with cigarette smoking in instances where such dangers and hazards were not common knowledge.

Trial court dismisses all claims

In July 1985, physicians diagnosed Wiley Grinnell, Jr. with lung cancer. In October of that year, he and his wife brought suit against the American Tobacco Company ("ATC") for personal injuries and damages suffered by Grinnell as a result of smoking cigarettes designed, manufactured, marketed, and sold by the defendant. In April 1986, ATC deposed Grinnell for trial. He subsequently died later that year. Early the following year, Grinnell's wife, parents, and son filed an amended petition and were added as plaintiffs (hereafter collectively referred to as "Grinnell") in the suit. The amended complaint sought actual and punitive damages under the Texas Wrongful Death Act, the Texas Survival Statute, and several additional theories, including strict liability, negligence, and misrepresentation involving relevant state and federal provisions.

In May 1987, the trial court granted ATC partial summary judgment, dismissing Grinnell's claims challenging both the adequacy of a congressional statute pertaining to cigarette packaging and the propriety of ATC's advertising and promotional practices from January 1, 1966. The court granted a second motion for partial summary judgment for ATC in April 1989,

Please see "Court recognizes..." on page 116

Seller failed to disclose cancellation rights

Continued from page 114

The court found this language to be insufficient to amount to a proper refund policy.

Contract void

The court held that, notwithstanding Rossi's statutory right to rescind under the PPL, her contract with Royal Prestige was unconscionable because of Royal Prestige's gross misrepresentations and the exorbitant price it charged for the Health System

Seller violated New York's General Business Law

New York's General Business Law Section 349 ("GBL") forbids business practices which are: (1) materially deceptive or misleading; and (2) the proximate cause of injury to the plaintiff. The GBL does not require the plaintiff to show intent, recklessness, or fraud. Similarly, the plaintiff need not show reliance on the defendant's actions.

The court ruled that Royal Prestige's failure to disclose Rossi's cancellation and refund rights, pursuant to the PPL, constituted an unfair business practice under the GBL. Further, its dubious assertions regarding the nutritional value of food cooked by the Health System and the Health System's ability to fight heart disease and produce healthier babies were misleading and deceptive. Finally, the court held that the inducements Kieffer used to persuade Rossi to meet with him were also misleading and deceptive. Kieffer never delivered 99 of the 100 free rolls of film he promised. Moreover, the discount vacation did not live up to its billing because of its poor quality and location.

Court awards damages and costs to consumer

The court awarded Rossi the full amount of the contract price, including taxes and shipping costs; $100 for Royal Prestige's refusal to refund the contract price; $1000 for Royal Prestige's violation of GBL; and $344.66 in attorneys fees and costs.