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to disclose information about the rental situation.

Additionally, the court also dismissed Legg's argument that the Castruccios had a duty, under the deceptive business practices doctrine, to warn her of what would happen if she did not pay her utility bills. It determined that such a duty rightly belonged to the utility company. Moreover, the court also dismissed Legg's contention that the Castruccios' statement that "they would take care of it" meant Legg was not responsible for the upstairs tenants' share of the utility bill. The court ruled that this statement was simply a response to Legg's request for separate utility meters.

Claim fails test

Legg then asserted that, in violation of the CPA's proscription of unfair business practices, the Castruccios conditioned her continued tenancy on whether she accepted the burdens and liabilities of having other tenants' utility usage on her meter. In deciding this issue, the court employed the FTC's test for unfair business practices, finding it consistent with the goals and philosophy of the CPA. According to this test, an "unfair business practice" is one that is substantial, is not "outweighed by any countervailing benefits to consumers or competition that the practice produces", and causes "injury that consumers themselves could not have reasonably avoided."

Applying the FTC test, the court dismissed Legg's unfair business practices claim. It found that Legg could have reasonably avoided injury by moving out of the apartment. Moreover, considering her month–to–month lease and the availability of similar apartments in the area with separate utility metering, Legg could have done so with relative ease. Corrective action, the court explained, is only necessary to deter seller behavior that effectively prevents a consumer from making her own decisions.

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Minnesota statutes protect rent–to–own customers

By Aimee Latimer

In *Miller v. Colortyme, Inc.*, 518 N.W.2d 544 (Minn. 1994), the Supreme Court of Minnesota held that rent–to–own transactions are consumer credit sales as defined by the Minnesota Consumer Credit Sales Act ("CCSA"), sections 325G.15 and 325G.16 of the Minnesota Statutes. It also held that such transactions are subject to the interest rate limitations of the state's general usury statute. Furthermore, the supreme court found that the Rental–Purchase Agreement Act ("RPAA"), sections 325F.84 to 325F.98 of the Minnesota Statutes, did not repeal the CCSA but rather provides remedies, that in conjunction with the CCSA, are cumulative.

Rent–to–own customers pay more

D.E.F. Investments, Inc. ("DEF") and its subsidiaries operate several rent–to–own dealerships in Minnesota. DEF uses standard forms to lease a variety of consumer goods to its customers. Under these contracts, a customer agrees to rent an item on either a weekly or monthly basis. At the end of the selected term, the customer has the option to renew the contract. Additionally, if the customer has renewed the contract for a specified number of terms, she obtains title and ownership of the item. In such cases, the total rental price exceeds the fair market value price of the item.

Delilah Miller and Craig Stenzel each entered into rent–to–own agreements with DEF that extended over several years. Miller signed a DEF agreement for a used washer and dryer with a stated purchase price of $800.75. According to her contract, she could acquire ownership by making either 16 monthly payments of $84.40 for a total purchase price of $1,350.40, or 69 weekly payments of $21.10 for a total purchase price of $1,455.90. Stenzel signed a similar contract for a television with a market value of $470. According to the terms of his contract, Stenzel could obtain ownership by making either 18 monthly payments of $47.70, totaling a purchase price of $858.60, or 78 weekly payments of $12.75, totaling $994.50.

On April 7, 1992, Miller and Stenzel filed a class–action lawsuit in state court against DEF. In their complaint, they alleged that: (1) DEF's rent–to–own agreements were consumer credit sales as defined by the CCSA; (2) DEF violated the CCSA by failing to treat the agreements as consumer credit sales; and (3) DEF committed usury in violation of the state's usury statute.

Subsequently, Miller and Stenzel moved for partial summary judgment, requesting a declaratory judgment that DEF's contracts constituted credit sales. DEF then moved for partial summary judgment, asking the court to dismiss the usury claim.

The district court certified the plaintiff class and granted its motion for partial summary judgment, declaring that rent–to–own contracts constituted consumer credit sales. The court also granted summary judgment for the plaintiffs on the usury claim, reserving the amount of damages for the trier of fact.

After granting discretionary review, the court of appeals reversed the district court. It found that DEF's rent–to–own agreements were neither consumer credit sales nor usurious. Additionally, the appellate court suggested that the recently enacted RPAA substantially conflicted with the CCSA and that the RPAA was controlling. Miller and Stenzel then appealed to the Minnesota Supreme Court.

Court defines rent–to–own agreements

On review, the Minnesota Supreme Court first considered whether the CCSA defined rent–to–own agreements as consumer credit sales. The court noted that at common law, rent–to–own transactions were treated as leases, rather than sales. This was because the customer was never bound to pay the total purchase price of an item and could terminate the "lease" at any time by returning the item. The supreme court suggested that the state legislature indicated its intent to move away from this rule and subject such terminable leases to consumer credit sales protection laws when it amended the CCSA in 1981. This amendment defined certain terminable leases as a "sale of goods" if the contracts met three criteria: (a) the bailee or lessee has the option to renew the contract by making the payments specified in the contract, (b) the contract obligates the bailor or lessor to transfer ownership of the property to the bailee or lessee for no other or a nominal consideration upon full compliance by the bailee or lessee to renew the contract, and (c) the payments contracted for by the bailee or lessee, including those payments pursuant to the exercise of an option by the bailee or lessee to renew the contract, are substantially equivalent to or in excess of the aggregate value of the property and services involved.

Turning to the case at hand, the court found that DEF's rent–to–own contracts satisfied each of the above requirements and therefore constituted a "sale of goods." Furthermore, it held that such transactions were consumer credit sales because the buyer was not required to make full payment when acquiring possession of an item, but could pay for it over a period of time. Moreover, the court stated that the term "credit" must be interpreted liberally to further the goal of the CCSA, which is consumer protection. It concluded that the legislature, in amending the Act to include the definition of certain terminable leases as "sales," intended for these transactions to be protected under the CCSA.

Company violated usury law

The Minnesota Supreme Court then addressed the issue of whether DEF violated Minnesota's usury law. On its behalf, DEF argued that its rent–to–own transactions were not usurious because the first two common law elements of usury, forbearance of debt and an absolute obligation to repay a principal amount, were not involved in the disputed contracts. Furthermore, DEF contended that the rent–to–own customer neither incurred any debt nor was required to pay a principal amount.

Although the court agreed with DEF's assertions, it nonetheless concluded that DEF's transactions were usurious. It declared that by amending the CCSA to define rent–to–own agreements as consumer credit sales for all purposes, the Minnesota legislature intended to extend to rent–to–own consumers the same benefits of consumer protection laws, including the usury statute, extended to those who entered into ordinary credit agreements or installment sales plans. The court stated that rent–to–own agreements were analogous to ordinary credit agreements "in that they must either forfeit possession of a good or continue paying for it." Therefore, the first two elements of common law usury were met by operation of statute under the CCSA.

Additionally, the court found that the third and fourth elements of common law usury, charging an excessive rate of interest and intending to "evade the law at the inception of the transaction," were also met in the present case. DEF acknowledged the large difference between the price its customers paid to

purchase goods through the rent–to–own agreements and the actual value of the goods. However, it argued, that it offered services, such as free delivery and maintenance, which justified the higher cost, and this presented a factual issue as to whether it charged excessive interest. The court, however, found that DEF offered no real evidence of the value of such services. As a result, the court concluded that no reasonable factfinder would find that the large disparity between the prices DEF charged and the value of the goods and services DEF offered fell within the amount allowed by the usury statute.

Addressing the fourth element of usury, the court stated that while DEF did not intend to violate the usury law, it did intend to charge an excessive rate of interest, which is all that is required by the statute. Therefore, the supreme court concluded that that lower court correctly found no genuine issue of material fact as to whether DEF violated the usury statute and therefore properly granted summary judgment for the plaintiffs on their usury claim.

RPAA and CCSA offer choice of remedies

Finally, DEF contended that the RPAA, enacted in 1990, effectively repealed the CCSA. In analyzing this issue, the supreme court examined both the language and legislative history of the RPAA and concluded that it did not expressly repeal the CCSA. In so ruling, the court noted in particular that the RPAA that stated that the remedies offered "shall not be construed as restricting any remedy that is otherwise available." The court also observed that while the legislature had considered repealing the CCSA and had even included such wording in the original statute, it later adopted amendments that deleted such provisions. Because the legislature did not expressly state its intent to repeal the CCSA or restrict the consumer's remedies to those listed in the RPAA, the court held that the plaintiffs were not barred from seeking a remedy under the CCSA. Furthermore, the court did not find that the two laws were in irreconcilable conflict with one another. Rather, it held that the two laws could be interpreted to offer cumulative remedies for consumer protection.

In concluding, the Minnesota Supreme Court held that all rent–to–own transactions must be treated as consumer credit sales, as defined by the CCSA, and that rent–to–own customers were entitled to statutory protections. It affirmed summary judgment for the plaintiffs and remanded the case to the trial court for the determination of damages.

Lanham Act does not cover consumer claims

By Travis Ketterman

In *Serbin v. Ziebart Int'l Corp., Inc.*, 11 F.3d 1163 (3d Cir. 1993), the Third U.S. Circuit Court of Appeals held that consumers do not have standing to bring false advertising claims under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Additionally, the court held that the 1988 amendment to the Lanham Act did not broaden its jurisdiction to include consumer claims.

The Lanham Act, as enacted in 1946, regulates and protects trademarks; in addition, it protects persons engaged in commerce from the "deceptive and misleading use of the marks." The 1946 statute provided a cause of action for persons engaged in commerce when another person knowingly uses false advertising in the merchandising of goods and services. In 1988, Congress modified Section 43(a) to authorize "any person who believes that he or she is likely to be damaged by such acts" to bring a cause of action under the Lanham Act in federal court. In a consolidated appeal, the Third Circuit addressed whether the original Lanham Act, or its more recent modification, was sufficiently broad to give standing to consumers who did not assert any commercial interest or injury.

In 1990, Sara Serbin and George Baker purchased new automobiles in separate transactions. At the time of these purchases, each also purchased a "Super Rust Protection" policy from the defendants, Ziebart International Corporation and Ziebart Company (collectively referred to as Ziebart). Subsequently, Serbin and Baker brought suit against Ziebart in the U.S. District Court for the Western District of Pennsylvania, alleging that defendants' advertisements about "Super Rust Protection" contained false representations which misled them into purchasing the additional policy. Moreover, they