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Jennifer L. Fitzgerald

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regulation of insurance exemption, the circuit court acknowledged that the ERISA preemption clause has limits, the principal one reserving state authority to regulate insurance. However, after reviewing the definitions of "insurance" and "regulation," the circuit court found Anderson's argument unpersuasive. Because ERISA failed to define either "insurance" or "regulation," the court turned to a similar statute, the McCarran-Ferguson Act, which also permits state regulation of insurance, for guidance. On the basis of this statute, the court determined that "insurance" requires a risk pooling

component and state regulation is restricted to this domain.

Anderson, however, had not relied on any state law regulating the methods of pooling risks or prices to be charged in her complaint. Rather, she had based her argument on an all-purpose truth-in-business statute. Finding this statute more applicable to used car salesmen and promotional literature for vacuum cleaners than HMOs, the court reasoned that the truth-in-business statute did not directly apply to insurance at all. Therefore, it held that her complaint did not fall within

an exception to ERISA preemption on the basis of the state authority to regulate insurance.

The court concluded that Anderson's state law claim, relating to a medical benefits package regulated by ERISA, was preempted by federal law. Furthermore, the circuit court did not find any exemption to federal preemption based on state authority to regulate insurance. It affirmed the district court's dismissal of Anderson's claim for failure to state a claim upon which relief may be granted.

Car lessees' early-termination rights spelled out

By Jennifer L. Fitzgerald

In *Highsmith v. Chrysler Credit Corp.*, 18 F.3d 434 (7th Cir. 1994), the Seventh U.S. Circuit Court of Appeals held that a cause of action under the Illinois Consumer Fraud Act accrues when an automobile lessee knows or reasonably should have known that the lessor misrepresented its rights and liabilities to the lessee. Moreover, the court found that a lessee, demonstrating no intent to terminate an automobile lease, lacks standing to seek a declaratory judgment on whether an early termination provision violates state law. However, the court recognized a lessee's right to state a claim for inadequate disclosure of the contract's termination formula and any manufacturer's warranties under the Consumer Leasing Act.

Harmful provisions

The plaintiffs in this consolidated action, Kevin and Macita Highsmith and Joseph Villasenor, each signed a consumer automobile lease with the Chrysler Credit Corporation ("Chrysler"). In both cases the disputed lease stated that the lessee, on either condition of default or early termination, would be liable for early termination charges calculated according to the provisions of the lease.

Kevin and Macita Highsmith signed a four-year lease for a Plymouth Sundance on March 10, 1987. Eighteen months later they filed a Chapter 13 bankruptcy petition and named Chrysler as one of their creditors. The bankruptcy court entered an order rejecting the lease and Chrysler repossessed the automobile. On April 25, 1989, Chrysler, having sold the automobile, determined that the Highsmiths had terminated their lease. It contended that the Highsmiths were liable for an additional \$5,400 in penalty fees under the early termination provisions of their lease.

Chrysler subsequently filed suit in state court to recover the alleged deficiency. However, after the Highsmiths refiled their bankruptcy petition, Chrysler dismissed its complaint to comply with the conditions of the bankruptcy proceeding. The Highsmiths then brought an adversary action against Chrysler, alleging that the automobile lease violated both federal and state law. The bankruptcy court found these claims beyond the scope of its jurisdiction, and the suit was moved to federal court.

Subsequently, the Highsmiths amended their complaint, adding Joseph Villasenor as a plaintiff. Villasenor, like the Highsmiths, had signed a four-year lease with Chrysler. However, he did not seek to terminate this lease nor did he express any intent to do so. Rather, Villasenor only sought a declaratory

judgment regarding the consequences of early termination of the automobile lease.

In the amended complaint, the Highsmiths alleged that: (1) the automobile lease violated provisions of the federal Consumer Leasing Act; (2) the lease violated the Illinois Consumer Fraud Act and its Michigan counterpart; and (3) the early termination penalties of the lease were unenforceable under Illinois law. In addition to these allegations, Villasenor contended that the lease violated the Consumer Leasing Act's disclosure requirements under 15 U.S.C. § 1667a.

The United States District Court for the Northern District of Illinois dismissed all of the Highsmith's claims. It held that all of their federal claims were time-barred. The court then used its discretion and dismissed the state claims without prejudice. Turning to Villasenor's claims, the district court held that he lacked standing to raise issues about the early termination provisions of the lease and dismissed these claims. It also dismissed his claim regarding the lease's disclosure violations for failure to state a claim. Finally, the district court dismissed all of Villasenor's state claims because no federal claims remained.

The Highsmiths then appealed to the United States Court of Appeals for the Seventh Circuit. On appeal, they only challenged the dismissal of their claim under the Illinois Consumer Fraud Act. Villasenor challenged the dismissal of his federal and state claims for lack of standing as well as the dismissal of his claim of disclosure violations under 15 U.S.C. § 1667a.

Fraud alleged

In their appeal, the Highsmiths alleged that Chrysler violated the Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois Consumer Fraud Act"), chapter 815, sections 505/1-505/12 of the Illinois Compiled Statutes, because it "imposed unreasonable termination charges" and "misrepresented the lessee's rights and responsibilities." The Illinois Consumer Fraud Act requires that a plaintiff bring a claim for violation of the act within three years of the date the cause of action accrues. The Highsmiths argued that the cause of action accrued on April 25, 1989, the date that they suffered pecuniary harm from Chrysler's conduct. However, Chrysler contended that the limita-

tions period began the date the Highsmiths signed their lease.

In ruling that the cause of action accrued on March 10, 1987, the date of the lease, the district court relied on *Van Gessel v. Folds*, 569 N.E.2d 141 (Ill. App. Ct. 1991). In *Van Gessel*, the Illinois Appellate Court held that the discovery rule does not apply in those situations where a plaintiff discovers a cause of action within the limitations period and has a reasonable time to file suit. Applying the appellate court's reasoning to the present case, the district court determined that the Highsmiths discovered their cause of action within the limitations period. Moreover, the court stated that the Highsmiths could have reasonably filed a claim within the statutory period.

On appeal, the Seventh Circuit reversed the lower court's decision, preferring the "discovery rule" articulated in *Knox College v. Celotex Corp.*, 430 N.E.2d 976 (Ill. 1981). According to this standard, a cause of action accrues when a plaintiff knows or reasonably should have known that an injury exists. Turning to the present case, the circuit court held that the Highsmiths' cause of action accrued when they knew or reasonably should have known that Chrysler had misrepresented their liability. It therefore concluded that whether the Highsmiths had discovered the alleged misrepresentations between October, 1988, and October, 1991, when they filed suit, was a question of fact to be determined by the district court.

On appeal, Villasenor sought a declaratory judgment on whether his lease provision, which called for an immediate acceleration of all monthly payments due without a discount to present value, was an unenforceable penalty under Illinois law. The Seventh Circuit dismissed this claim for lack of standing. The circuit court agreed that Villasenor lacked standing to seek a declaratory judgment because he failed to meet the constitutional mandate requiring federal courts to adjudicate only actual "cases" or "controversies." In order to meet the case-or-controversy requirement, he needed to plead clearly that he had sustained, or was in immediate danger of sustaining, a direct injury caused by Chrysler's wrongful conduct. Since Villasenor had not terminated his lease, he could not plead such injury and thus failed to satisfy this requirement.

Villasenor also appealed the district's court dismissal of his claim that the early termination provision,

requiring acceleration of all payments due without a discount reflecting the time value of money, violated 15 U.S.C. § 1667b(b). After its review of the claim, the circuit court affirmed the lower court's decision and held that Villasenor failed to state a cause of action. Specifically, the Seventh Circuit recognized that the statute requires a factual basis to demonstrate that the early termination charge was unreasonable in light of anticipated or actual harm. Because Villasenor had not terminated his lease, there was no basis for an allegation of harm.

Disclosures required

Finally, Villasenor alleged that Chrysler violated the Consumer Leasing Act in two respects. First, he contended that Chrysler had not disclosed the complete formula it used in calculating early termination charges, thus violating 15 U.S.C. § 1667a(11). Second, he contended that Chrysler failed to identify all warranties provided by the manufacturer to the lessee, thus violating 15 U.S.C. § 1667a(6). On review, the Seventh Circuit reversed the district court on both of these counts, holding that Villasenor stated a valid claim under both sections.

Villasenor, on appeal, contended that the formula Chrysler used for the early termination charge disclosed

in the lease differed from the formula it used regularly in practice. Specifically, he claimed that the formula given in the lease contained a reduction not utilized in the actual computations made by Chrysler when a penalty was assessed.

In its analysis of this issue, the circuit court first turned to the statutory provision in question. The Consumer Leasing Act, 15 U.S.C. § 1667a(11), requires every lessor to provide a statement describing the amount or method for determining any penalty or other charge for delinquency, default, late payment or early termination in each consumer lease. Although determining whether such a discrepancy existed was a matter for the district court, the circuit court recognized that the failure to disclose the entire formula for calculating early termination charge was a technical violation of the disclosure provision found in 15 U.S.C. § 1667a(11) and other regulations. As such, dismissal of the claim had been improper and the issue was remanded.

Villasenor also contended that Chrysler failed to identify the warranties provided by the manufacturer to the lessee, thus violating federal law. Specifically, he contended that the Consumer Leasing Act, 15 U.S.C. § 1667a(6) requires the lessor to provide a statement identifying all express warranties and guarantees made by the manufacturer.

Please see "Lessee's rights" on page 36

Requirement to split utility expenses actionable

By Michael Sullivan

In *Legg v. Castruccio*, 642 A.2d 906 (Md. 1994), the Maryland Court of Special Appeals held that a landlord commits a deceptive or unfair business practice under the Maryland Consumer Protection Act ("CPA"), section 13-102 of the Commercial Law Article of the Maryland Code, by requiring a tenant to obtain utility services measured by a meter that, unknown to the tenant, also services another rental unit. However, a tenant waives her cause of action if she learns of the arrangement and

consents to it. Moreover, the court held that a tenant may sustain a cause of action against her landlord for breach of covenant of quiet enjoyment, provided the tenant complains about the situation and the landlord fails to respond after a sufficient period of time.

Separate accounts

In spring 1987, Deborah Legg leased the first floor of a two-story house from Sadie and Peter Castruccio on a verbal, month-to-month basis. At that time, the Castruccios informed Legg that she

would have to establish her own gas and electric account with the local utility company. However, they failed to inform her that her utility bill would include charges for both the first and second floor apartments.

Subsequently, the Castruccios leased the previously unoccupied second floor apartment to David Bushell, who orally agreed to pay Legg one-fourth of her utility bills. Throughout his tenancy, Bushell regularly paid his share for utilities.

In summer 1988, the Castruccios leased the second floor apartment to Julie Pabilon and Vinnie Harcourt. The landlords orally informed the

prospective tenants that they would have to pay one half of Legg's utility bills. Papilon and Harcourt subsequently made an oral promise to Legg to pay one-half of her utility bills. The Castruccios documented this agreement by recording a note in their rent ledger.

Tenants decide to leave

Beginning in July 1990, about two years after the initial agreement with Legg, Papilon and Harcourt stopped paying for most of their utility usage. Between July 1990 and December 1991, they accumulated \$2,155.36 in utility expenses. Papilon and Harcourt paid Legg \$140 of this amount.

During this period, Legg complained to the Castruccios, asking that separate meters be installed in the house. Although the landlords stated that they "would take care of it," they took no action against Papilon and Harcourt and did not install separate meters.

In early November 1991, Papilon and Harcourt moved out of their apartment. They left an outstanding utility bill of \$2015.36. At that time, Legg was in arrears with the utility company, in part because of the upstairs tenants' delinquency.

Subsequently, the Castruccios brought suit against Legg in the Circuit Court for Anne Arundel County for repossession of rented property. On the day of trial, Legg filed a counterclaim against her landlords. In her amended complaint, she sought rent abatement, damages, and attorney fees from the Castruccios, alleging that they had illegally leased her an unsafe

apartment in an unlicensed multiple dwelling. She also alleged that the Castruccios had engaged in unfair or deceptive trade practices in the rental of consumer property by representing that the upstairs tenants in her building would pay one-half of the utility expenses.

On May 5, 1991, both parties resolved all of the disputed issues except whether the Castruccios had any responsibility for Legg's unpaid utility bills. On this issue, the trial court held that the Castruccios refusal to pay for the utilities of the upstairs tenants did not: (1) create a dangerous defect; (2) create an illegal appropriation of utility charges; (3) breach the covenant of quiet enjoyment; (4) breach an agreement to pay for such service; or (5) violate the CPA as a deceptive or unfair trade practice or the Federal Trade Commission ("FTC") consumer unfairness doctrine.

Legg appealed the lower court's ruling, presenting three questions for review by the Maryland Special Court of Appeals. These included: whether a landlord's failure to inform a tenant that she was responsible for all charges on her utility meter, including those of other tenants, violated the CPA; whether a landlord's burdening of one tenant with the potential utility bills of another tenant violated the CPA; and whether a landlord, through such a burdening, breached the covenant of quiet enjoyment.

Actual loss required

The CPA was designed to protect consumers from unfair or deceptive business practices, including certain practices involved in apartment

leasing. For a private consumer to sustain a cause of action under the CPA, she must demonstrate an actual injury or loss resulting from an activity prohibited by the statute. This requirement serves, in part, to discourage consumers from bringing CPA claims to harass or coerce merchants.

Legg first asserted that the Castruccios deceived her by leasing the first floor apartment without notification that her utility bill would include the usage of the second floor apartment. She contended that such behavior constituted a "failure to disclose a material fact," and violated the CPA's proscription of deceptive business practices. Citing *Golt v. Phillips Bros. & Assocs.*, 517 A.2d 328 (Md. 1986), Legg contended that a fact was material if "a significant number of unsophisticated consumers would attach importance to the information in determining a choice of action."

In its analysis, the court agreed with Legg, concluding that a significant number of unsophisticated consumers would attach importance to whether their utility bill would include the utility usage of other tenants. It held that the Castruccios, by not disclosing this fact to Legg prior to the beginning of her tenancy, had violated the CPA for failing to state a material fact. Nevertheless, the court dismissed the claim, finding that Legg had waived her right to recover by remaining on the premises and consenting to the billing arrangement. Because of this waiver, any injury that Legg sustained resulted from the other tenants' delinquency, and not from the landlords' failure