

Fighting Website Suit, Vita-Mix Points To Similar Dismissal

Law360

10.19.2016

Related People:

Edward J. Fanning, Jr.

David R. Kott

Acting on behalf of blender maker Vita-Mix, Mr. Kott told a New Jersey federal judge on Wednesday that the recent dismissal of a similar suit by a judge citing the U.S. Supreme Court's Spokeo ruling casts a shadow on the class action against the company over its website terms of use.

Kott wrote to U.S. District Judge Michael Shipp, who's overseeing the Vita-Mix suit under the Truth In Consumer Contract, Warranty and Notice Act, to let him know of a colleague's recent decision.

On Oct. 12, that colleague, fellow New Jersey federal judge Peter Sheridan, dismissed a TCCWNA suit against Croscill Home LLC, finding that the grounds for the Croscill suit came up short, including its viability under Spokeo, a precedent that dealt with the level of injury plaintiffs must have for standing.

Kott argued that the same logic should apply to his client's suit, given the similarities in the two cases' claims and jurisdictions.

"The plaintiff's attorney in Russell submitted a supplemental brief on these two issues, arguing that the plaintiff had standing under Spokeo, and that the plaintiff qualified as an 'aggrieved consumer' under TCCWNA ... Judge Sheridan specifically rejected plaintiff's argument in Russell and held: 1. The plaintiff did not have standing under Spokeo; and 2. The plaintiff was not an 'aggrieved consumer' under TCCWNA," Kott said.

Vita-Mix is represented by McCarter partners David Kott and Edward Fanning, Jr.