

Spade/Wegner: Supreme Court Delivers Crushing Blow to TCCWNA Plaintiffs by Enforcing “Aggrieved Consumer” Requirement as Written

Related People:

Gregory H. Horowitz
Edward J. Fanning, Jr.

Products Liability, Mass Torts and Consumer Class Actions Alert

04.17.2018

Late last year, McCarter reported on the New Jersey Supreme Court’s ruling in *Dugan/Bozzi* and predicted that the Supreme Court would soon hold that consumers filing suit under New Jersey’s Truth-in-Consumer Contract Warranty and Notice Act (TCCWNA) must suffer some adverse consequence in order to recover the statutorily prescribed \$100 penalty. ([Dugan/Bozzi Alert](#).) Today, that prediction came true in *Spade v. Select Comfort Corp.*, signaling defeat for baseless TCCWNA claims that have become all too common in the past several years. The Supreme Court’s 7-0 opinion, which followed extensive briefing and oral argument – including briefing and argument by McCarter as an *amicus curiae* for the New Jersey Business & Industry Association – enforces TCCWNA as intended by the Legislature, requiring that a consumer asserting a TCCWNA claim be adversely affected by the alleged violation. *Spade* offers much-needed protection to New Jersey businesses from the frequent abuse of this unique consumer protection statute.

This Alert provides an overview of the *Spade/Wegner* decision and its impact on future TCCWNA claims.

The *Spade/Wegner* Decision

In *Spade v. Select Comfort Corp.* (consolidated for appeal with *Wenger v. Bob’s Discount Furniture LLC*), the Court addressed two questions from the Third Circuit:

1. whether a consumer who receives a contract that violates a regulation but has not suffered any adverse consequences from the noncompliance is an “aggrieved consumer” under TCCWNA; and
2. whether a violation of a regulation can, on its own, constitute a violation of a “clearly established legal right” under TCCWNA.

In each of the cases, the plaintiff entered into a furniture sales contract that the plaintiff alleged violated the New Jersey Delivery of Household Furniture and Furnishing Regulations, which contain rules for timely furniture delivery and prescribe language that must be included in every furniture sales contract. Although the plaintiffs received their furniture deliveries as ordered and on time, they

claimed that the terms of their respective contracts violated TCCWNA, because they did not comply with the Furniture Regulations. The District of New Jersey dismissed both complaints, finding that neither plaintiff was an “aggrieved consumer” under TCCWNA because they had not “suffer[ed] the effects of a violation,” and therefore, neither could state a claim for relief under TCCWNA. *Spade v. Select Comfort Corp.*, No. 15-1826 (D.N.J. Feb. 29, 2016). On appeal, the plaintiffs argued that they were not required to establish actual harm in order to recover under TCCWNA and, instead, needed only to establish that the contracts did not comply with the Furniture Regulations (i.e., a bare regulatory violation).

Also at issue on appeal was whether the Furniture Delivery Regulations embodied a “clearly established” legal right of a consumer or responsibility of a seller, as required by TCCWNA. In the absence of guiding precedent as to whether the plaintiffs could seek relief under TCCWNA based only on a bare regulatory violation, such as the Furniture Delivery Regulations, the Third Circuit certified these questions to the New Jersey Supreme Court.

Court Agrees That Aggrieved Consumers Must Have Suffered an “Adverse Consequence”

As to the “aggrieved” requirement, the Court found that a plaintiff consumer (or putative class member) can be “aggrieved” only if he or she has suffered an adverse consequence as a result of the alleged TCCWNA violation. By contrast, “[a] consumer who receives a contract that includes language prohibited by N.J.A.C. 13:45A-5.3(c), but who suffers no monetary or other harm as a result of that noncompliance, is not an ‘aggrieved consumer’” entitled to a remedy under the TCCWNA. Significantly, although the Court’s holding necessarily addressed the specific violations alleged by the plaintiffs in *Spade/Wegner*, the Court’s analysis is applicable to all TCCWNA claims involving plaintiffs who have suffered no harm.

In interpreting TCCWNA as requiring actual harm to the consumer, the Court embraced the arguments asserted by McCarter, including our argument that the Legislature’s use of the term “aggrieved” to modify “consumer” reflects a clear intention to differentiate between all consumers and those who have suffered actual harm. (“That word distinguishes consumers who have suffered harm because of a violation of N.J.S.A. 56:12-15 from those who have merely been exposed to unlawful language in a contract or writing, to no effect.”) Consistent with McCarter’s position, the Court concluded that principles of statutory construction require a showing of harm to state a TCCWNA claim.

The Court reemphasized that the “harm” required need not be compensable by damages to warrant a civil penalty under TCCWNA. In this regard, Justice Patterson, writing for the Court, explained:

If, for example, a furniture seller fails to timely deliver a consumer’s furniture, **and** the consumer would have sought a refund had he or she not been deterred by the “no refunds” language prohibited by N.J.A.C. 13:45A-5.3, that consumer **may** be an “aggrieved consumer” entitled to a civil penalty under [TCCWNA]. (Emphasis added.)

The Court’s example makes clear the limiting effect of the Court’s interpretation of the “aggrieved consumer” requirement.

Regulations May Serve as a Source of “Clearly Established” Legal Rights

With respect to the “clearly established legal right” requirement of TCCWNA, the Court concluded that “[t]he inclusion of language prohibited by N.J.A.C. 13:45A-5.3(c) in contracts of sale or sale orders for the delivery of household furniture may give rise to a violation of a ‘clearly established legal right of a consumer or responsibility of a seller’ for purposes of the TCCWNA.”

Significantly, the Court’s clarification that regulations can create a clearly established legal right of a consumer does not alter its holding in *Dugan* that not every regulatory violation will

be a violation of a clearly established right. *Dugan v. TGI Fridays, Inc.*, 171 A.3d 620, 647 (N.J. 2017) (stating that “[t]he ‘clearly established’ standard accordingly requires a case-specific evaluation whether a ‘written consumer contract[,] ... warranty, notice or sign’ violates a legal right or responsibility that was ‘clearly established’ by ‘State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed.’”). In other words, the issue of whether a “clearly established right” has been implicated will still be decided on a case-by-case basis.

Also of note, the Court in *Spade/Wegner* did not reach the issue of whether a seller’s omission of a provision required by N.J.A.C. 13:45A-5.2 or -5.3 would give rise to a TCCWNA claim.

What Does the *Spade/Wegner* Decision Mean for My Business?

The Court’s ruling in *Spade/Wegner* considerably limits the applicability of the TCCWNA statute by requiring a showing of harm. The decision will surely curtail “no injury” TCCWNA lawsuits against New Jersey businesses. Nevertheless, clients should continue to review all consumer-facing literature and websites for possible TCCWNA violations.