



NJ Appellate Court Affirms Dismissal of TCCWNA / Consumer Fraud Act Putative Class Action

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On August 22, 2017, New Jersey's Appellate Division affirmed a trial court's 2015 dismissal of a putative class action alleging that Lumber Liquidators' sales invoices violated New Jersey's Truth-in-Consumer-Contract, Warranty and Notice Act ("TCCWNA") and Consumer Fraud Act ("CFA"). Riker Danzig, which successfully moved to dismiss the claims against Lumber Liquidators in the trial court, thus prevailed in its client's defense on appeal.

Plaintiffs alleged no defects in the hardwood flooring they had purchased from Lumber Liquidators and no damages, but sought statutory civil penalties of \$100 under TCCWNA for each putative class member, as well as attorney's fees, based on the allegation that Lumber Liquidators' sales invoices violated the New Jersey Furniture Delivery Regulations (the "Regulations"). Those Regulations require sellers of "household furniture" in New Jersey to include in their sales invoices certain disclosures not included in Lumber Liquidators' invoices. Like the trial court below, however, the Appellate Division rejected plaintiffs' argument and confirmed that the Regulations do **not** apply to sales of hardwood flooring in New Jersey.

The question presented was thus one of first impression: whether hardwood flooring falls within the definition of "household furniture" under the Regulations, which includes, without limitation, "furniture, major electrical appliances, and items such as carpets and draperies." N.J.A.C. 13:45A-5.1(d). The Appellate Division agreed with the lower court's interpretation of the plain meaning of this definition as excluding non-moveable improvements to real property, such as hardwood flooring and wall-to-wall carpeting. Agreeing with the decision below and applying well-established canons of statutory construction, the Appellate Division held that the items included in the Regulations' definition of "household furniture" "clearly exclude items such as hardwood floors," which, as the lower court

found, constitute “permanent improvements to property.” The Appellate Division thus limited the scope of the Regulations to exclude non-moveable improvements to real property, such as hardwood flooring and wall-to-wall carpeting, and affirmed the trial court’s dismissal of plaintiffs’ class action against Lumber Liquidators.

The decision is thus an important one, as a win for plaintiffs would have expanded the scope of the Furniture Delivery Regulations beyond sales of “household furniture” to apply to sales of raw building materials in New Jersey. The Court’s reasoning in this case also serves as a useful reminder that the starting point for defending claims of a statutory or regulatory violation is the wording of the statute or regulation itself. In refusing to credit plaintiffs’ overly broad reading of the Furniture Delivery Regulations, the Appellate Division affirmed that consumer protection regulations promulgated under the Consumer Fraud Act – despite being remedial in nature – must nevertheless be applied in accordance with the plain meaning of their language.

Riker Danzig’s [Brian E. O’Donnell](#) argued the appeal on behalf of Lumber Liquidators, with the assistance of [Michael P. O’Mullan](#) and [Jeffrey M. Beyer](#). Riker Danzig also received *amicus* support from the New Jersey Civil Justice Institute and the U.S. Chamber of Commerce, as the matter presented issues of significance to the business community.

A copy of the Appellate Division’s opinion may be downloaded [here](#).

If you have any questions about this decision, please contact:

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