PRACTICING CONSUMER LAW IN OHIO

COMMON MISTAKES TO AVOID

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WHY CONSUMER LAW?

• It’s not complicated
  • Don’t need a large war chest

• Lots of Experience

• Large potential Recovery
  • Including attorney fees

• Huge client base
  • Daily violations
  • 7 violations in one transaction

• It’s fun!

LAWS YOU SHOULD KNOW

• Home Solicitation Sales Act (“HSSA”)
  • O.R.C. § 1345.21 et seq.

• Consumer Sales Practices Act (“CSPA”)
  • O.R.C. § 1345.01 et seq.

• There are others:
  • Lemon Law
  • Telephone Solicitation Sales
  • 25 Laws in Ohio alone
HOME SOLICITATION SALES ACT
O.R.C. §§ 1345.21 et seq.

- Applies to all “home solicitation sales”
  - Statutory Definition
  - 7 exceptions
  - Services, goods, construction, etc.
- 3-day cancellation rule
  - Written notice in written contract
  - “Notice of Cancellation”
  - Oral notice
- Remedies
  - Cancellation & Refund
  - 10 days

CONSUMER SALES PRACTICES ACT
O.R.C. §§ 1345.01 et seq.

- Prohibits unfair, deceptive, and unconscionable practices by “suppliers”
- Governs “consumer transactions” with “consumers”
- Many ways to violate
- Remedies
  - Revoking contract
  - Actual damages
  - Treble damages
  - Statutory damages
  - Attorney fees

EXAMPLES OF CSPA VIOLATIONS

- Violating the HSSA
- Quotations
- Receipts
- Subcontracting
- Disclaiming express warranties
- Knowingly breaching a contract
- Distress sales going too long
- Delays
- Failure to correct shoddy work
- Making misleading statements
- Etc.
COMMON HSSA MISTAKES

- Consumer Lawyers:
  - Failing to cancel the contract and demand a refund.
    - If Seller failed to meet all cancellation requirements, Consumer can cancel at any time.
    - Refund must be given with 10 days of cancellation receipt.

- Seller Lawyers:
  - Suing a homeowner
  - Forcing on a lien
  - Suing for breach of contract
  - No talk of early settlement

EXAMPLE #1 – CONSUMER’S LAWYER

- Homeowner hires concrete contractor
- Cost of services: $40,000
- Homeowner claims shoddy work
- Cost of repairs: $10,000
- Homeowner’s attorney sues for treble $10,000 damages and attorney fees.

WHY WAS THAT A MISTAKE?

<table>
<thead>
<tr>
<th>What you got:</th>
<th>What you should have got:</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,000</td>
<td>$40,000</td>
</tr>
<tr>
<td>x 3</td>
<td>x 3</td>
</tr>
<tr>
<td>$30,000</td>
<td>$120,000</td>
</tr>
<tr>
<td>Plus attorney fees</td>
<td>Plus attorney fees</td>
</tr>
</tbody>
</table>
EXAMPLE #2 – SELLER’S LAWYER

- Teeters Constr. v. Dort, 2006-Ohio-2754
- Construction company installed windows, siding, and performed roof work.
- Homeowners were unhappy and refused to pay balance on $10,000.
- Seller’s lawyer sued homeowners for breach of contract
- Homeowner’s counterclaimed

WHY WAS THAT A MISTAKE?

- Failed to counsel clients about actual risk of suing
- Cost his clients unnecessary legal fees to bring suit
- Homeowner may never have sued otherwise
  - Think they got a steal
  - Would not have consulted an attorney
- This should have been settled early

THE MAIN DEFENSE ATTORNEY MISTAKE

- Not focusing on prevention with your clients:
  - Many businesses don’t care
  - They have been operating “this way for years”
  - You need to scare them into doing it right
    - This will save them thousands
    - They need these forms, and you can easily make them for them
- Other benefits:
  - Lifelong client
  - They will pay you for it
COMMON CSPA MISTAKES

- Consumer’s Lawyer:
  - Statute of limitations
  - Election of remedies
  - Not maximizing violations
  - Pleading mistakes

- Supplier’s Lawyer:
  - Not counseling client on the risks
  - Failing to settle early
  - Mechanic’s lien counseling

EXAMPLE #3 – STATUTE OF LIMITATIONS & REMEDY ELECTION

- Construction work is done 12/1/2007
- Consumer moves in 8/1/2008
  - Discovers “defect”
- Consumer meets with Lawyer in summer 2009.
- Lawyer files CSPA lawsuit 2/1/2010
- Remedy elected: treble damages

WHY WAS THAT A MISTAKE?

- O.R.C. § 1345.10(C) – Two-year limitations period
  - Exceptions: Counterclaims & Rescission actions

R.C. 1345.10(C) sets forth an absolute two-year statute of limitations in which to file a suit to recover treble damages . . . . The very language . . . . would preclude the ‘discovery’ exception.
A SIDE NOTE ABOUT JUDGES

• Judges can be wrong:
  • Filed summary judgment
  • Summarily denied without reason
    • Our argument was that there is no discovery rule, so the SOL ran
    • Their argument was if the discovery did apply (they didn’t argue
      it did), then they were fine

EXAMPLE #4 – MAXIMIZING VIOLATIONS / PLEADING

• Repairman approaches homeowners with water damage in house
• Says he will fix it up and deal with insurance company directly, no quote, no written contract
• Repairman does work, and is paid by homeowners from proceeds of insurance - $21,000
• Work was defective
• Repairman says he is owed another $11,000 more than the $21,000
• Cost of fixing defects with another company: $4,000
• Consumer wants to sue for breach of contract
WHY WAS THAT A MISTAKE?

<table>
<thead>
<tr>
<th>What happens</th>
<th>What should happen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Award: $4,000</td>
<td>Award: $12,000 or $63,000</td>
</tr>
<tr>
<td>Less:</td>
<td>Less:</td>
</tr>
<tr>
<td>$10,000 – Atty fees</td>
<td>$15,000 (fees)</td>
</tr>
<tr>
<td>$1,500 – Expert fees</td>
<td>$2,000 ($200x10)</td>
</tr>
<tr>
<td>$250 – Other fees</td>
<td>$1,500 – Expert fees</td>
</tr>
<tr>
<td>$250 – Missed work</td>
<td>$250 – Other fees</td>
</tr>
</tbody>
</table>

Consumer will not sue because he will net a negative $8,000 – No client here.

Consumer will sue because he will net $27,000 to $78,000 – You have a new client.

EXAMPLE #5 – SETTLEMENT MISTAKES

- Insulation company (has no office) does $3,000 of work
- It causes damage to other portions of the house for $4,000
- No cancellation notice was provided
- Homeowner wants to settle for just the $4,000 in repairs
- Company’s lawyer balks, counsels them not to settle

WHY WAS THAT A MISTAKE?

- You need to know when you are going to lose, and give competent advice:
  - At trial company could lose and have to pay between $12,000 and $40,000. We did eventually settle for closer to $12,000.
  - Company would still have to pay the attorney to defend, too
  - Plaintiff is practically guaranteed at least $4,000 at trial plus attorney fees
  - Lawyer failed to be realistic with the client
EXAMPLE #6 – MECHANIC’S LIENS

- Aber v. Vilamoura, Inc., 2009-Ohio-3364
  - Defendants offered to build house for Plaintiff
  - No 3-day cancellation notice
  - Defendants abandoned job and Plaintiff stopped paying
  - Defendants’ attorney counseled them to file and did file a mechanic’s lien
  - Plaintiff sued Defendants

WHY WAS THIS A MISTAKE?

- Similar to Teeters, mechanic’s lien requires a contract
- Plaintiff told Defendants that the attorney malpractice, and Defendants intended to sue their attorney
- Attorney should have told them the mechanic’s lien would be no good—it was a waste
- What Plaintiff could have done: slander to title

LEGISLATIVE DEVELOPMENTS

- CSPA Right to Cure Amendment –
  - Ohio House Bill 275: Business would have 30 days after receiving Complaint in lawsuit to send a cure offer to consumer.
  - Cure Offer must include offer of cash, goods or services and attorneys fees equal or less than $2,500 to consumer.
  - Consumer can accept or reject within 30 days.
  - If accepted, Court will oversee the cure, but otherwise case is over.
  - If rejected, consumer cannot get 3x damages (treble) or attorneys fees after the offer is made if the offer was worth more than the actual damages awarded at trial.
RESOURCES

- **CSPA:**
  - O.R.C. 1345.01 – 1345.13
  - Ohio Administrative Code (O.A.C.) 109:4-3
  - Online Public Inspection File:
    - [http://www.opif.ag.state.oh.us](http://www.opif.ag.state.oh.us)

- **HSSA:**
  - O.R.C. 1345.21 – 1345.28

CONCLUSION

- This is a relatively easy, rewarding, and important area of practice, even if the law changes
- This area is ripe for solo and small firm practice
- Inexperienced and experienced lawyers alike mess it up—don’t mess it up
- Always be mindful when your client or potential client is or has dealt with a consumer

QUESTIONS?