Unfair and Deceptive Claims: Attractive, But Hard to Prove

June 8, 2015

North Carolina's Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. § 75-1.1, et al) (the "Act") prohibits a variety of conduct, and punishes their occurrence with stiff, sometimes devastating sanctions if the plaintiff can prove their case.

?Unfair? or ?Deceptive? Conduct:

Courts in North Carolina have struggled to define what exactly ?unfair conduct? means, or what actions may fall within that definition and, as such, the ?unfair? prong of this claim is rather broad. In fact, the North Carolina Court of Appeals has gone so far as saying that unfair practices are not subject to a single definition. Whether an act or practice is unfair or deceptive is to be determined by all the facts and circumstances surrounding the transaction. This classification of conduct, when found, is often applied by courts in a conclusory manner.

Deceptive conduct is easier to define: acts that have the capacity or tendency to deceive. However, since the North Carolina Supreme Court ruled in the Bumpers case (Bumpers v. Community Bank of Northern Virginia), plaintiffs must show an actual and reasonable reliance on such deceptive conduct in order to recover.

Other 75-1.1 Claims

North Carolina also recognizes 75-1.1 claims involving aggravated breaches of contract and unfair methods of competition. Even though most breach of contract cases filed in North Carolina courts will include a claim for violation of 75-1.1, a breach of contract on its own will not violate the Act. Where there are substantial aggravating circumstances accompanying the breach, the plaintiff may be able to state a claim for a violation of the Act.

Unfair methods of competition involves acts that inhibit free competition, in or affecting commerce, which would be similar to federal anti-trust law. While it is possible to plead facts that would fall within this category, courts in North Carolina don?t often decide cases involving unfair methods of competition.

Why So Appealing?

If a plaintiff succeeds in proving their case under the Act, he can look forward to having their damages trebled and may also have their reasonable attorney fee taxed against the defendant, in the judge?s discretion. The trebled damages is enticing enough for a claim under the Act to find its way into most business litigation lawsuits, including fiduciary duty claims, although success those on claims is hard to find.

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