NOT FOR PUBLICATION [Dkt. No. 23]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

MIRIAM HASKINS, *et al.*, Plaintiffs, v. FIRST AMERICAN TITLE INSURANCE CO., Defendant.	Civil No. 10-5044 (RMB/JS) **OPINION**

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BUMB, United States District Judge:

I. Introduction

Plaintiffs, a class of New Jersey homeowners who refinanced their home mortgages, allege in their Amended Class Action Complaint (the "Amended Complaint") that Defendant First American Title Insurance Company ("Defendant") systematically cheated New Jersey homeowners by misrepresenting the amount of money "due and owing for title insurance." Plaintiffs claim that Defendant was

bound by statutory title insurance rates, but overstated those fees on HUD-1 settlement forms at closing, deceiving consumers who "ha[d] no idea how much they should be paying for title insurance" and instead relied on title insurers, like Defendant, to fill in the appropriate rates.

Defendant moved to dismiss the Amended Complaint and, after oral argument, this Court dismissed four of Plaintiffs' six claims, allowing Plaintiffs' unjust enrichment claim to go forward and reserving decision on Plaintiffs' claim under the New Jersey Consumer Fraud Act (the "NJCFA") pending further briefing by the parties. That briefing is now complete.

For the reasons that follow, Defendant's motion to dismiss Plaintiffs' NJCFA claim is DENIED.

II. Analysis

Defendant argues that Plaintiff's NJCFA claim should be dismissed for three reasons:

(1) title insurance is not a consumer product;

(2) the learned professional or semi-professional exemption bars Plaintiffs' NJCFA claim; and

(3) Plaintiffs have failed to plead that their alleged loss resulted from unlawful conduct by Defendant.

This Court address each argument in turn.

Defendant initially argues that title insurance is not a consumer product because, first, it is not marketed to consumers and, second, the insurance is for the benefit of the lender, not

plaintiffs. These arguments are not persuasive. Applying New Jersey law as established by the State's highest court, as this Court is obligated (In Schering Plough Corp. Intron/Temodar Consumer Class Action, No. 2:06-cv-5774, 2009 WL 2043604, at *31 n. 24 (D.N.J. July 10, 2009), the title insurance at issue qualifies as a consumer product, within the ambit of the NJCFA. The Amended Complaint is replete with allegations that Defendant offered, through its agents, title insurance to consumers. Moreover, the New Jersey Supreme Court's decision in Lemelledo v. Beneficial Mgmt. Corp. of Am., forecloses Defendant's argument that it is material that the title insurance was for the benefit of lenders.

In Lemelledo, the New Jersey Supreme Court held that the NJCFA covered the sale of credit insurance, for the lenders' benefit, made in conjunction with a student loan. Lemelledo, 150 N.J. 255, 266 (N.J. 1997). It reasoned that: "[b]ecause the broad language of the CFA appears to include both lending and insurance-sales practices, we conclude that its terms also include the sale of insurance in conjunction with lending, that is, loan packing" - even where the insurance at issue was one "that the borrower does not want" and was for the benefit of the lender. Id. at 260, 266. That same reasoning controls here,

where title insurance, for the lenders' benefit, is similarly packaged with the provision of a loan.[1]

Defendant relies broadly upon Centrum Fin'l Servs., Inc. v. Chicago Title Ins. Co., which it argues addressed this precise issue and came to the opposite conclusion. That case, however,

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[1] Lemelledo contains a discussion of whether the plaintiff there believed, despite being informed otherwise, that she was obligated to purchase credit insurance. Lemelledo, 150 N.J. at 261. The court noted that plaintiff there alleged that several factors led her to this belief, including that the insurance and loan contract were presented as a single transaction, that the insurance was not discussed separately from the loan itself, and that no one addressed her specific need, or lack thereof, for the insurance. Id. This discussion, combined with the court's subsequent admonition that its "sole inquiry is . . . whether the CFA applies to defendant's actions as they are alleged by plaintiff" (Id. at 265) could support a less robust interpretation of Lemelledo than adopted by this Court: that the NJ Supreme Court has thus far only recognized NJCFA loan packing claims when there is an allegation that the plaintiff believed that the insurance product was required. There is no such allegation here, only an allegation that homeowners are "almost always" (Am. Compl. ¶ 30) required to purchase title insurance as part of a refinancing. The New Jersey Supreme Court's broader language later in the opinion, however, militates in favor of the interpretation this Court has adopted. Lemelledo, 150 N.J. at 265 ("Because the broad language of the CFA appears to include both lending and insurance-sales practices, we conclude that its terms also include the sale of insurance in conjunction with lending, that is, loan packing."). Even if Lemelledo itself supported only the more limited holding described above, this Court's task would then be to predict whether the New Jersey Supreme Court would refuse to recognize an NJCFA claim based on loan packing, absent an allegation that the plaintiff believed he was required to purchase the insurance product. This Court can think of no reason as to why the New Jersey Supreme Court would so limit the NJCFA's ambit. The NJCFA hinges on whether products or services are marketed to consumers, not whether they are required to buy them. Id. at 263 ("The CFA is intended to protect consumers by eliminating sharp practices and dealings in the marketing of merchandise and real estate.")(quotation omitted).

is clearly distinguishable on its facts. It was brought against a title insurance company by the lender beneficiary of a title insurance policy, and not the actual purchaser of the policy. Centrum, No. 09-3300, 2010 WL 936201, at *2 (D.N.J. Mar. 12, 2010). It also dealt with "a complex product [(a $15 million title insurance policy)] that does not reflect services generally sold to the public". Id. at *4. Plaintiffs allege here, in contrast, that they are the actual policy purchasers and the product is a simple title insurance policy governed by statutorily set rates. To the extent that Centrum contains more sweeping language, indicating that title insurance, as a general matter, is not marketed to the consuming public but to experts who guide homeowners in their decision-making, Id. ("Rather, while title insurance may be purchased as part of an ordinary consumer's home purchase, the insurance purchase is done by an expert, typically a real estate attorney."), the Court cannot adopt that proposition at this juncture. The Amended Complaint alleges that homeowners lack expert guidance and are instead routinely victimized by the allegedly deceptive practices of Defendant. (Am. Compl. ¶ 42, "Homeowners have no idea how much they should be paying for title insurance. They simply sign the [form] at the closing, naturally and reasonably relying on the title insurer, through its agent . . . ."). This Court must credit those allegations for purposes of the motion to dismiss.

Pocono Mountain Charter School v. Pocono Mountain School Dist., No. 10-4478, 2011 WL 3737443, at *2 (3d Cir. Aug. 25, 2011).

Second, contrary to Defendant's argument, the learned professional/semi-professional exemption does not apply. That exemption excludes insurance brokers, acting within the scope of their professional license, from liability, not insurance companies selling insurance, like Defendant. Call v. Czaplicki, No. 09-6561, 2010 WL 3724275, at *9 (D.N.J. Sept. 16, 2010)("The 'learned professionals' exemption applies only to insurance brokers and not insurance companies."); Compare Chassen v. Fidelity Nat. Fin'l, Inc., No. 09-291, 2009 WL 4508581, at *2, 8-9 *D.N.J. Nov. 16, 2009)(finding that title insurance agents were immune under the learned professionals exception for alleged overcharges related to closing service fees for recording deeds and mortgages) with Macedo v. Dello Russo, 178 N.J. 340, 346 (N.J. 2004)("That is not to suggest that Dr. Dello Russo would be insulated from the restraints of the CFA if he acted outside his professional capacity. Like the architect in Blatterfein, if Dr. Dello Russo were to engage in the merchandising of a golf course, a vacation time-share or a medical office building, he would be subject, as all merchandisers are, to the CFA.").

Finally, the Court rejects Defendant's third argument because Plaintiffs have sufficiently alleged that their alleged loss resulted from unlawful conduct by First American. "In order

to maintain a claim under the CFA, a plaintiff must show a causal relationship between the unlawful practice and the ascertainable loss[.]" Franulovic v. Coca Cola Co., No.07-539, 2007 WL 3166953, at *9 (D.N.J. Oct. 25, 2007)(quotation and citation omitted). This requirement may be satisfied by an allegation that the plaintiff purchased the product at issue because of a false representation. Id. Plaintiffs here have satisfied this requirement by alleging that Defendant misrepresented the cost of title insurance and that they were induced to purchase the title insurance based on the mistaken belief that the listed rates matched the applicable regulated rates (Am. Compl. ¶ 105). Charles v. Lawyers Title Ins. Corp., No. 06-2361, 2007 WL 1959253, at *8-9 (D.N.J. July 3, 2007)(finding that an insurer's misquoting of title insurance rates on a HUD-1 form constituted an affirmative misrepresentation); Doherty v. The Hertz Corp., No. 10-cv-00359, 2010 WL 4883487, at *7 (D.N.J. Nov. 24, 2010)("Finally, Doherty has asserted facts that show a causal connection between the unlawful conduct and the ascertainable loss when she averred that she was charged for non-disclosed and misrepresented fees and charges through the pretext of her rental agreement with Hertz.").

III. Conclusion

For all these reasons, Defendant's motion to dismiss Plaintiff's NJCFA claim is DENIED.

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge

Dated: October 25, 2011