

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ESHON HOWARD

Plaintiff

v.

RICHLAND CORRECTIONAL INST.

Defendant

Case No. 2007-09577-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Eshon Howard, an inmate incarcerated at defendant, Richland Correctional Institution (“RiCI”), filed this complaint alleging defendant violated the Ohio Consumer Sales Practices Act (“CSPA”) under R.C. 1345 et seq. when he purchased two cans of imitation crab at the RiCI commissary that had allegedly been represented as genuine crab. Plaintiff recalled he went to the RiCI commissary on May 1, 2007 and purchased two cans of imitation crab meat for \$3.00. Plaintiff noted the imitation crab meat had been labeled crab and he made his purchase under the impression that he was buying genuine crab meat. Plaintiff contended defendant, by not clearly marking the cans of crab as imitation, engaged in a deceptive sales practice which constituted a violation of the CSPA, specifically R.C. 1345.02 and 1345.03. Based on the remedy provided by R.C. 1345.09(B)¹, plaintiff seeks damages in the amount of \$200.00.

¹ R.C. 1345.09(B) provides:

“For a violation of Chapter 1345. of the Revised Code, a consumer has a cause of action and is entitled to relief as follows:

“(B) Where the violation was an act or practice declared to be deceptive or unconscionable by rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based, or an act or practice determined by a court of this state to violate

{¶ 2} The CSPA was enacted to provide remedies to enforce prohibition of deceptive and unconscionable acts and practices by “suppliers” in connection with consumer transactions. See *Brown v. Market Development, Inc.* (1974), 41 Ohio Misc. 57, 60, 68 O.O. 2d 276, 322 N.E. 2d 367. In order to violate the CSPA, a supplier must commit an unfair, deceptive or unconscionable act. See R.C. 1345.02 and 1345.03². Plaintiff, in the instant claim, has contended the CSPA applies to defendant as a supplier of consumer goods in the RiCl commissary. In specific part the CSPA defines a supplier as: “[a] seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person

section 1345.02, 1345.03, or 1345.031 of the Revised Code and committed after the decision containing the determination has been made available for public inspection under division (A)(3) of section 1345.05 of the Revised Code, the consumer may rescind the transaction or recover, but not in a class action, three times the amount of the consumer’s actual economic damages or two hundred dollars, whichever is greater, plus an amount not exceeding five thousand dollars in noneconomic damages or recover damages or other appropriate relief in a class action under Civil Rule 23, as amended.”

² R.C. 1345.02(A) provides:

“(A) No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.”

Specifically, in regard to the instant action, R.C. 1345.02(B)(2) states:

“(B) Without limiting the scope of division (A) of this section, the act or practice of a supplier in representing any of the following is deceptive:

“(2) That the subject of a consumer transaction is of a particular standard, quality grade, style, prescription, or model, if it is not;”

Also, R.C. 1345.03(A) and (B) state in reference to unconscionable sales acts or practices:

“(A) No supplier shall commit an unconscionable act or practice in connection with a consumer transaction. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

“(B) In determining whether an act or practice is unconscionable, the following circumstances shall be taken into consideration:

“(1) Whether the supplier has knowingly taken advantage of the inability of the consumer reasonably to protect the consumer’s interests because of the consumer’s physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement;

“(2) Whether the supplier knew at the time the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtainable in similar consumer transactions by like consumers;

“(3) Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction;

“(4) Whether the supplier knew at the time the consumer transaction was entered into that there was no reasonable probability of payment of the obligation in full by the consumer;

“(5) Whether the supplier required the consumer to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier;

“(6) Whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to the consumer’s detriment;

“(7) Whether the supplier has, without justification, refused to make a refund in cash or by check for a returned item that was purchased with cash or by check, unless the supplier had conspicuously posted in the establishment at the time of the sale a sign stating the supplier’s refund policy.”

deals directed with the consumer.” R.C. 1345.01(C). Additionally, under the CSPA, a “person” includes a “government, governmental subdivision or agency” (R.C. 1345.01(B)) and a “consumer” is defined as a “person who engaged in a consumer transaction with a supplier” (R.C. 1345.01(D)). Furthermore, under the CSPA (R.C. 1345.01(A)), a “consumer transaction” includes “a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household.” Plaintiff asserted he engaged in a consumer transaction with defendant, supplier and defendant violated the CSPA by knowingly selling him goods that were misrepresented, consequently constituting a deceptive trade practice. Therefore, plaintiff argued he is entitled to recover statutory damages in the amount of \$200.00. See R.C. 1345.01(B)(1). Payment of the filing fee was waived.

{¶ 3} Defendant denied any liability initially asserting that the CSPA has no application in this claim. Defendant argued that the RiCI commissary “does not fall within the definition of ‘supplier’ under the Ohio Consumer Sales Practices Act.” Therefore, defendant reasoned plaintiff cannot recover the statutory damages requested under the CSPA. Defendant pointed out the CSPA defines a supplier as a “sellor, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions.” According to defendant, RiCI is not a supplier engaged in effecting consumer transactions and is not subject to the provisions of the CSPA.

{¶ 4} Alternatively, defendant has contended that if it is determined the CSPA applies to the present action, plaintiff is not entitled to recover damages claimed under the parameters of R.C. 1345.09(B). Defendant explained damages available to a consumer under R.C. 1345.09(B) are confined to situations where “an act or practice that has previously been declared deceptive or unconscionable by the Ohio Attorney General or an Ohio court.” Defendant offered that the claim presented by plaintiff where the RiCI commissary misrepresented the ingredients of a food item for sale is not a circumstance that has previously been declared deceptive or unconscionable by either a rule promulgated by the Attorney General or a determination made by an Ohio court. Defendant acknowledged RiCI erroneously listed imitation crab as crab on the RiCI Commissary Shopping List in use on May 1, 2007. Defendant maintained that

assuming the CSPA violation occurred in regard to the controversy involving plaintiff's commissary purchase on May 1, 2007, then the correct remedy available is contained in R.C. 1345.09(A)³, which permits the consumer to recover his actual economic damages (the purchase price of the crab) plus a capped amount of noneconomic damages. and has therefore, asserted plaintiff's damage claim should be limited to the purchase price of one container of imitation crab, \$1.50. Apparently, plaintiff was unable to provide a second container of unopened imitation crab. Defendant stated an offer has been made to plaintiff to rescind the transaction of May 1, 2007 and reimburse him for one container of unused imitation crab. Seemingly, defendant admitted liability in this matter in the amount of \$1.50.

{¶ 5} Plaintiff filed a response insisting that the relevant sections of the CSPA apply to his claim. Plaintiff maintained defendant is a supplier under the CSPA and violated this statute by selling him imitation crab without clearly marking the food items as imitation. Plaintiff explained he originally filed this action against defendant in the Richland County Common Pleas Court and the claim was dismissed for lack of subject matter jurisdiction. Plaintiff submitted a copy of the court order dismissing his claim.

{¶ 6} R.C. 1345.04 of the CSPA states: "The courts of common pleas, and municipal or county courts within their respective monetary jurisdiction, have jurisdiction over any supplier with respect to any act or practice in this state covered by sections 1345.01 to 1345.13 of the Revised Code, or with respect to any claim arising from a consumer transaction subject to such sections." Consequently, this court lacks jurisdiction to determine an action under the CSPA. R.C. 2743.02(A)(1) provides in part: "The state hereby waives its immunity from liability and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties ***. To the extent that the state has previously consented to be sued, this chapter has no applicability." Therefore, if by some other prior statutory provision the state has consented to be sued, the Court of Claims is without jurisdiction.

³ R.C. 1345.09(A) states:

"(A) Where the violation was an act prohibited by section 1345.02, 1345.03, 1345.031 of the Revised Code, the consumer may, in an individual action, rescind the transaction or recover the consumer's actual economic damages plus an amount not exceeding five thousand dollars in noneconomic damages."

{¶ 7} Before the Court of Claims statute was enacted the legislature enacted R.C. 1345, the CSPA, which includes “government, governmental subdivision or agency” (R.C. 1345.01(B)) and rests jurisdiction for actions under the CSPA in “[t]he courts of common pleas, and municipal or county court” (R.C. 1345.04). Therefore, based on the language of R.C. 2743.02(A)(1), this court lacks jurisdiction to determine claims under the CSPA.

{¶ 8} Since damage claims under the CSPA cannot be heard in this court, plaintiff’s particular damage claim is limited to the purchase price of two containers of imitation crab, \$3.00. Defendant has offered to rescind the May 1, 2007 transaction and reimburse plaintiff for one container of imitation crab. Defendant has essentially admitted liability under the facts of this claim. As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239, 577 N.E. 2d 160. The court determines plaintiff has sustained damages in the amount of \$3.00, the purchase price of two containers of imitation crab. Defendant is liable to plaintiff in the amount of \$3.00.

{¶ 9} In his response, plaintiff requested the court grant a declaratory judgment on the issue that defendant violated statutory law by misrepresenting food items sold in the RiCI commissary. Plaintiff also requested defendant be enjoined from misrepresenting food items on the “commissary price sheet.” The relief sought by plaintiff is not within the province of the Administrative Determination division of this court. The Administrative Determination division is confined to rendering judgments for monetary damages.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$3.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
12/9
Filed 12/24/08
Sent to S.C. reporter 3/13/09