

PUBLICATION

Tennessee Consumer Protection Act Limited to Individual Actions

Authors: Kristine L. Roberts

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In a significant ruling for businesses sued in Tennessee, the Tennessee Supreme Court recently held that class actions are not allowed in cases brought under the Tennessee Consumer Protection Act (TCPA).¹ In *Walker v. Sunrise Pontiac-GMC Truck, Inc.*,² the Court ruled that the unambiguous language of the TCPA only permits actions to be brought individually. The decision also reaffirms that class certification is generally inappropriate in fraud and negligent misrepresentation cases involving non-uniform oral communications. Baker Donelson's George T. Lewis and Kristine L. Roberts represented Sunrise Pontiac in the case.

The Tennessee Supreme Court's holding that the TCPA does not permit class actions is an important one. Because the TCPA allows for the potential recovery of treble damages and attorneys' fees, the possibility of a TCPA class action had carried with it the threat of a substantial monetary award. On top of that fact, the TCPA arguably covers a wide range of conduct, which means that TCPA claims are commonly brought. Notably, the ruling makes clear that Tennessee is among several other states, including Alabama, Georgia, Louisiana, and Mississippi, which have consumer protection statutes that permit individual private actions while prohibiting class actions.³

With respect to the fraud issue, the decision confirms that Tennessee jurisprudence is consistent with the general rule across the country that actions based on oral communications are generally inappropriate for class certification. In such cases, due to the individualized nature of the communications, the potential class members' claims are not sufficiently similar to permit class treatment.

The Case

The plaintiff, Bill Walker, filed a putative class action in Shelby County Circuit Court on September 23, 2004. He alleged that the defendant car dealer, Sunrise Pontiac-GMC Truck, Inc., fraudulently misrepresented certain costs to him when he purchased his car. Walker's claims against the dealership included common law fraud and negligent misrepresentation, as well as a claim under the TCPA.

On January 17, 2006, Sunrise Pontiac filed a motion for partial summary judgment with the trial court, urging the court to rule that Walker's claims could not be brought as a class action. The trial court denied the motion but permitted Sunrise Pontiac to seek interlocutory review. The Court of Appeals denied Sunrise Pontiac's application for interlocutory appeal. Sunrise Pontiac appealed the issue to the Tennessee Supreme Court, which granted the application.

The Holding

In its decision, the Supreme Court construed the language of the TCPA that establishes an individual's right to file a lawsuit: Any person who suffers an ascertainable loss . . . as a result of the use or employment by another person of an unfair or deceptive act or practice declared to be unlawful by [the TCPA], may bring an action individually to recover actual damages.⁴

The Supreme Court held that this language is unambiguous. Relying on dictionary definitions of the term "individual" and the statute's use of the words "individual" and "person" in singular form, the Court restated the familiar principle that when a statute is unambiguous, it must be enforced as written. The Court rejected

Walker's argument based on a 1991 amendment to the TCPA, which deleted the phrase "but not in a representative capacity" from after the word "individually." As the Court explained, "[t]he mere removal of the phrase 'not in a representative capacity' does not change the meaning of the word 'individually.'"

The Court also relied on *Tucker v. Sierra Builders*,⁵ a 2005 Court of Appeals' decision holding that the TCPA is limited to individual claims, as well as recent federal court decisions reaching the same result.⁶ Finally, the Supreme Court concluded that Walker's public policy arguments did not require a contrary result. The Court noted that the TCPA provides "several clearly articulated avenues by which the TCPA can fully protect and benefit consumers."

On the fraud and misrepresentation claims, the Supreme Court explained that these claims "are often not well suited for classaction certification because of differences in one or more of the specific elements necessary to prove the fraud." Cases involving oral rather than written statements, as in *Walker v. Sunrise Pontiac*, are inappropriate for class treatment, unless the plaintiff can prove that the oral representations were uniform. Because the facts of Walker demonstrated that there were no uniform representations, the Court ruled that questions common to the class did not predominate over questions affecting only individual members.

1. TENN. CODE ANN. § 47 18 101, *et seq.*
2. W2006-01162-SC-CV (Tenn. Feb. 13, 2008).
3. 3. See Ala. Code § 8-19-10(f); Ga. Code Ann. § 10-1-399(a); La. Rev. Stat. Ann. § 51:1409(A); Miss Code Ann. § 75-24-15(4).
4. TENN. CODE ANN. § 47 18 109(a)(1) (emphasis added).
5. 180 S.W.3d 109 (Tenn. Ct. App. 2005).
6. *Durant v. ServiceMaster Co.*, 208 F.R.D. 229, 233 (E.D. Mich. 2002); *Thomas v. LG Elec. U.S.A., Inc.*, No. 3:07-0444, 2007 WL 4293043 (M.D. Tenn. Dec. 6, 2007).