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ILLINOIS LAW MANUAL

CHAPTER VI

OTHER CAUSES OF ACTION

F. CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES

1. Basic Law

The Illinois Consumer Fraud and Deceptive Business Practices Act ("Act"), 815 ILCS 505/1, et seq., is comprehensive legislation designed to protect consumers, borrowers, and businessmen against fraud, unfair methods of competition, and unfair or deceptive practices in the conduct of trade or business.

For example, the Act outlaws "chain letter" sales techniques and "pyramid" schemes. 815 ILCS 505/2a. The Act specifically regulates "door-to-door" type sales (505/2b); certain forms of advertising (505/2j, 505/2m, 505/2r); certain collection practices (505/2h, 505/2i); and other areas of consumer relations that were formerly rife with potential for abuse by the unscrupulous.

The Act provides for civil and criminal liability, and a private cause of action to all persons who suffer damage as a result of a violation of the Act. Ashkanazy v. I. Rokeach & Sons, Inc., 757 F. Supp. 1527 (1977); Bank One Milwaukee v. Sanchez, 336 Ill. App. 3d 319 (2d Dist. 2003).

Violations of the Act include the use of any deception, fraud, false pretense, false promise, misrepresentation, or concealment

of facts in the conduct of trade or commerce. 815 ILCS 505/2. A defendant's good faith in making a representation to another is irrelevant; even an innocent misrepresentation is actionable. Duran v. Leslie Oldsmobile, Inc., 229 Ill. App. 3d 1032 (1992). See also Priebe v. Autobarn, Ltd., 240 F.3d 584 (7th Cir. 2001). However, any action based upon the Act must be filed within three years after the cause of action accrued. 815 ILCS 505/10a.

2. Elements of the Cause of Action

The elements of a private cause of action under the Act are:

- (1) a deceptive act or practice by the defendant;
- (2) the defendant intended the plaintiff to rely on the deception;
- (3) the deception occurred in the course of conduct involving trade or commerce; and
- (4) actual damages to the plaintiff proximately caused by the deception.

The terms of the Act are liberally construed. Malooley v. Alice, 251 Ill. App. 3d 51 (1993); see also Kirkruff v. Wisegarver, 297 Ill. App. 3d 826 (1998); Cuculich v. Thomson Consumer Electronics, Inc., 317 Ill. App. 3d 709 (2000); Avery v. State Farm Mut. Auto Ins. Co., 216 Ill 2d 100 (2005). As such, there are few clear

guidelines as to what constitutes a deceptive business practice. However, the Act affords broader protection than the common law action for fraud by prohibiting any deception or false promise. The plaintiff does not have to establish reliance on the defendant's deception. The plaintiff does not have to prove the defendant intended to deceive the plaintiff to prevail under the Act.

Examples of acts that have been held to constitute unfair or deceptive business practices are:

providing a false termite inspection report (Warren v. LeMay, 142 Ill. App. 3d 550 (1986));

threatening to rip out a homeowner's newly installed pipes and to turn off water service in an attempt to collect an unpaid plumbing bill (Ekl v. Knecht, 223 Ill. App. 3d 234 (1991));
and

failing to disclose to purchasers that a car had suffered extensive damage in an accident (Totz v. Continental DuPage Acura, 236 Ill. App. 3d 891 (1992)).

Expressions of opinion will generally not support an action under the Act. Sohaey v. VanCura, 240 Ill. App. 3d 266 (1992), affirmed, 158 Ill. 2d 375 (1994). For example, a builder's statement to new home purchasers that a home would be built with "expert workmanship" and "custom quality" were not actionable.

Breckenridge v. Cambridge Homes, Inc., 246 Ill. App. 3d 810 (1993). Sellers are allowed some latitude in "puffing" their products, but they may not ascribe virtues to a product that the product does not possess. Totz v. Continental DuPage

Acura, 236 Ill. App. 3d 891 (1992); see also Perona v. Volkswagen of America, Inc., 292 Ill. App. 3d 59 (1997); Smith v. American Arbitration Assoc., Inc., 233 F.3d 502 (7th Cir. 2000).

3. Recoverable Damages

A plaintiff may recover both compensatory and punitive damages. Black v. Lovino, 219 Ill. App. 3d 378 (1991); Check v. Clifford Chrysler Plymouth of Buffalo Grove, Inc., 342 Ill. App. 3d 150 (1st Dist. 2003). A successful plaintiff may also obtain an award for attorney's fees under the Act, which may not be available for common law fraud actions. 815 ILCS 505/10a; Ekl v. Knecht, 223 Ill. App. 3d 234 (1991); Krautsack v. Anderson, 329 Ill. App. 3d 666 (1st Dist. 2002). A successful defendant may obtain an award of attorneys fees if the defendant can establish the claim was filed in bad faith.

4. Proximate Cause

The proximate cause element is not established where a party is not deceived. Oliveira v. Amoco Oil Company, 201 Ill. 2d 134 (2002). A plaintiff asserting deceptive advertising under the Act must prove that he has been deceived by the advertising to establish proximate causation. Damages are proximately caused if they are in fact caused by a method or practice that is unlawful under the Act, that is, if the damages would not have occurred but for the violation of the Act. Shannon v. Boise Cascade, 208 Ill. 2d 517 (2004). Deceptive advertising may cause damages where the plaintiff or his agent relies on the advertising to his detriment. However, where the plaintiff was not deceived by the advertisement in some manner, he cannot maintain a claim under the Act, even if the advertisement was in fact wrong.