New Jersey Supreme Court to Decide on Whether Consumer Fraud Act Was Properly Applied in Context of Commercial Dispute

In my prior blogs I've covered the dramatic changes in the law of late, where the New Jersey state courts have applied the New Jersey Consumer Fraud Act in any number of circumstances that would appear never to have been intended by the New Jersey Legislature. Opinions on this subject are mixed, with some arguing that the law is being expanded to provide greater protection to those who need it, and others arguing that these cases are setting dangerous precedents that will only end up costing the consumer more and deterring businesses from expanding in this State.

There are two cases pending decision by the Supreme Court, one of which will decide the appropriateness of a prior decision imposing personal liability under the CFA on officers of a defendant-corporation (Allen v. A&V), and the other of which will hopefully address the appropriateness of applying the CFA in a dispute between two commercial businesses.

In Pomerantz Paper Corp. v. New Community Corp., 2010 N.J. Super. Unpub. Lexis 1458 (App. Div. July 1, 2010), certif. granted, 205 N.J. 16 (2010), a janitorial supply products company sued a non-profit corporation organized to manage properties in Newark, NJ. The supply company learned the hard way how the CFA can be both a sword and shield, and was tagged with a treble damage award of $214,711 and made to pay a counsel fee award of $86,015 on what it thought was an ordinary book account case.

On appeal, the Appellate Division relied upon its decision in Marascio v. Campanella, 298 N.J. Super. 491 (App. Div. 1997) in holding that "[a] consumer transaction occurs whenever there is a 'sale of consumer goods regardless of who purchases those goods and for what purpose.'" The Court further held that while the word "consumer" has historically connoted an individual, the courts have expanded the definition "to include businesses that purchase goods for use in their business operations. '[S]o long as the disputed contract involves goods . . . generally sold to the public at large, the mere fact that a corporation purchases the goods for use in its business does not preclude invocation of the' CFA." The court defined a consumer as "one who diminishes or destroys the economic goods as opposed to one who purchases the goods and passes it on for the benefit of another." (Id. quoting Arc Networks, Inc. v. Gold Phone Card Co., 333 N.J. Super. 587 (Law Div. 2000)).

The Pomerantz case offers up further proof that the CFA can be either a sword or shield, and that a litigant suing in an ordinary business suit must be cognizant of the possibility of such a claim arising. With the coming months, perhaps there will be clarification from the Court in this rapidly expanding area of the law.