

THE FPTR NEWS

“... useful information for clients and prospective clients.”

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Attorneys at Law

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FPTR GOES GLOBAL

Affiliates with LawExchange Intern'l

Fischer Porter proudly announces it is now a correspondent firm with the LawExchange International, an association of mid-sized law firms serving clients doing business in major commercial markets across the globe.

Members of the LawExchange are independent, mid-sized law firms who serve middle-market and entrepreneurial businesses throughout Europe, North America, China, India, the Far East and Australia. Through the LawExchange, each firm provides readily accessible and informed legal advice within their countries for clients of member firms.

Within the LawExchange are the Special Interest Groups (SIGs). The SIGs provide a forum for individual lawyers with a common interest in a field of law or business sector. The SIGs are Corporate and Commercial, Intellectual Property/Information Technology, Employment, Real Estate, Insolvency, Tax, and Energy.

To become part of the LawExchange, our partners and the firm were subject to a vigorous evaluation and interview process. The LawExchange recognized our ability to provide quality, professional and cost effective litigation and transactional services

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MEADOWLANDS CHAMBER

Porter Leads Intern'l Business Council

Scott Porter, FPTR's Managing Partner, has taken an active role in the Meadowlands Regional Chamber of Commerce and is a Leader of the Chamber's International Business Council. In September, the Council sponsored a seminar called "International Opportunities: Insights to Building Your Business Globally," which was entirely attended by small businesses, professionals, and chamber members who are looking to expand. On January 10, 2012, the Council is sponsoring a seminar that will focus on the legal, financial, tax, and intellectual property aspects of international commerce. At the seminar, a group of distinguished panelists will share their inside tips on how they help their clients successfully navigate the global marketplace. These panelists work with clients of varying sizes, industries, and global experiences.

Any business that is seriously considering expanding its business globally or that would like to increase its global reach and take their company to the next level, regardless of company size, should consider attending. While geared to small and medium sized businesses, all attendees are guaranteed to walk away with action items that they can implement in their own companies.

The event will be at the Hilton in Hasbrouck Heights on January 10, 2012 from 8:00 – 10:00 a.m. To register, contact svallis@meadowlands.org or ssantana@fpmtlaw.com. By mentioning FPTR your \$25 registration fee will be waived. Bring plenty of business cards for networking opportunities. - ACT

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Fischer Porter Thomas & Reinfeld, PC is a multi-service law firm dedicated to providing high quality legal services with offices in Bergen County, New Jersey; Rockland and Westchester Counties, New York; and New York City. Our attorneys' experience and ability to handle a broad range of legal matters enables us to offer comprehensive legal assistance to new and existing clients. Visit our web site to learn more.

www.fpmtlaw.com

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to clients from around the world who have legal needs in the New York Metropolitan area. Similarly, the LawExchange believes that FPTR can be a platform for our clients, friends, associates and contacts to expand into the international business area through attorneys affiliated with the LawExchange.

The LawExchange will provide significant opportunities to the Firm and its clients. Recently, Scott Porter contributed an article to the Exchange's newsletter, "The Globe," entitled "International Center for the Settlement of Investment Disputes." This article addresses, among other things, the need for a reliable alternative dispute resolution system, which has the source of law, in emergent countries. Mr. Porter is now working on articles that explore the scope and impact the U.S. Bankruptcy Court system has upon foreign businesses outside the U.S.A.

A few of our clients have already benefited from the network of attorneys within the Exchange. One needed to evaluate contract implications under German law in connection with a license agreement. For another client, tax advice was needed for a U.S. citizen who resides overseas. Similarly, the Firm has handled disputes and law suits in New Jersey and New York for LawExchange-referred clients, from Belgium, Denmark and Israel, to name a few.

More on the LawExchange can be found at www.lawexchange.org. - ACT

For more information or to learn about Fischer Porter Thomas & Reinfeld, P.C., and our firm's services and experience, see our website at www.fpmtlaw.com or call telephone number (201) 569-5959 and ask to speak with one of our partners:

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FPTR SAVES THE DAY
Couple Gets Their Dream House

Sometimes, it is the small case that brings great satisfaction to our work as lawyers. Recently, FPTR Partner, Joel J. Reinfeld, obtained a temporary injunction against individuals, who tried unlawfully to void a Contract of Sale and deprive our Clients of their dream house. Our Clients ("Buyers") signed a contract to purchase a home in Englewood, N.J. As is typical in New Jersey, the contract provided for the right to a home inspection and, Buyers right to cancel the Contract of Sale if the Seller refused to correct defects set forth in the inspection report. In this case, Buyers prior attorney specified in writing the defects that Buyers wanted corrected and Sellers agreed to make corrections or give a credit. Later, Sellers reneged on the agreement and tried to sell the house to someone else.

FPTR on behalf of Buyers sought an injunction to stop the sale to the third party and to compel Sellers to convey the property to Buyers. This required showing that Buyers will suffer irreparable harm unless the injunction is granted. Harm is generally considered irreparable if it cannot be redressed adequately by monetary damages. Historians generally agree that at the time that equity jurisdiction was evolving in England, the presumed uniqueness of land as well as its importance to the social order of that era led to the conclusion that damages at law could never be adequate to compensate for the breach of a contract to transfer an interest in land. Hence, specific performance (the act of requiring a seller to convey title) became a fixed remedy in this class of transactions. This principle of law made its way to America and even today there is now virtually an irrebutable presumption that, because of uniqueness of land and consequent inadequacy of monetary damages, specific performance is buyer's appropriate remedy for a seller's breach of contract to convey.

The Superior Court Judge agreed with the arguments of FPTR and entered the injunction, which prohibited the Seller from directly or indirectly selling or taking any other action to sell the property to any one other than Buyers. Shortly thereafter, Sellers agreed to afford FPTR's Clients a \$10,000.00 credit and to sell them the house. FPTR then closed the deal and our clients had their dream house. -ACT

Know Your Rights: YOU vs. Home Improvement Contractor

New Jersey's Consumer Fraud Act

New Jersey's Consumer Fraud Act (the "Act") is among the strongest consumer protection laws in the United States. Under the Act, a broad array of activities are regulated, and the Act permits a defrauded consumer to file a law suit against merchants who employ "unlawful practices" and to recover treble damages, attorney's fees and costs.

Home improvement practices are among the activities specifically regulated under the Act, and home improvement contractors are mandated to provide consumers with statutorily prescribed material information in writing. This Article discusses provisions of the Act pertaining to home improvement contracts, and will explain some of the basics of the Act and set forth some of the aforementioned writing requirements. Importantly, these statutory and regulatory protections apply to home renovations whether for \$500 or \$1,000,000.

Unlawful Practices

To be in violation of the Act, a contractor must have committed an "unlawful practice" as defined under the Act. Unlawful practices fall into three general categories: 1) affirmative acts, 2) knowing omissions, and 3) regulatory violations. A practice can be unlawful even if no person was in fact misled or deceived thereby. In other words, the consumer, does not have to prove fraud or misrepresentation by the contractor. You only need to prove that the contractor's conduct had the capacity to mislead you. For example, poor workmanship, substitution of inferior quality materials, in conjunction with a breach of contract, has been held to be a violation by a contractor under the Act.

Home Improvement Regulations

Regulatory violations are *per se* violations of the Act, and a contractor is strictly liable for any violations regardless of his or her intent. That is, if the contractor does not comply with all of the regulations, he is liable to you and will pay damages.

The Home Improvement Practices Regulations (the "Regulations") under the Act require that all home improvement contracts for more than \$500 must be placed in writing. The Regulations further require that contracts must be signed by all parties and must include the following in understandable

language: 1) the legal name and business address of the contractor; 2) a description of the work and the principal products and materials that will be used or installed; 3) the total contract price, including all finance charges, and when the contract is based on time, the hourly rate of labor; 4) the date or time period when work will begin and be completed; and 5) a statement of any guarantee or warranty relating to any materials, products, labor or services. The failure to include these "terms" is a *per se* violation of the Act, and your contractor will be liable to you for resulting damages.

Home improvement contractors are further required to give homeowners timely written notice of any reason beyond a contractor's control for a delay in the performance and completion of the work and when the work will commence or be completed. Contractors are prohibited from misrepresenting that the home is defective, dangerous or in need of repair or replacement. Contractors are further prohibited from concealing any material fact or qualification if they are misleading to a homeowner. Thus, if a home improvement contractor exaggerates or overstates a condition to induce you to hire him/her, or if the contractor fails to tell you something important, he/she can be liable for your resulting damages.

Contractors Registration Act

Also, in 2004, New Jersey introduced the Contractors Registration Act (the "CRA"), which supplements and amends the Consumer Fraud Act. Under the CRA, as of 2004, all home improvement contractors must register as a contractor with the State of New Jersey and maintain at least \$500,000 of general liability insurance. As with violations of the Regulations, a failure to comply with any provision of the CRA constitutes a *per se* unlawful practice under the Consumer Fraud Act. Moreover, any person in knowing violation of any CRA provision is committing a fourth degree crime. The CRA, like the Regulations, requires that all home improvement contracts be in writing, signed and contain material terms and conditions. However, the CRA further requires that the contracts include a copy of the insurance certificate of the home improvement contractor, and even the telephone number of its

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insurance company. Under the CRA, a consumer has the right to cancel a home improvement contract within three (3) business days after receiving a copy of it. Home improvement contracts must contain the statutorily prescribed "Notice to Consumer" regarding this right to cancellation. Contractors must include their license registration numbers on contracts and invoices.

Consumer Fraud Damages

A plaintiff victimized by any unlawful practice under the Act is entitled to three times the damages sustained by way of "any ascertainable loss of moneys or property, real or personal." In other words, you can recover from your contractor the cost to repair improper work, excessive bills, and/or negligently performed work. However, if the contractor also violated or failed to comply with the Statute and Regulations, you can recover three times the amount of your losses, as well as attorneys' fees. An award of treble damages and attorneys' fees is mandatory if a consumer plaintiff proves both an unlawful practice under the Act and an ascertainable loss. Moreover, a consumer plaintiff can recover reasonable attorneys' fees, filing fees, and costs if that plaintiff can prove that the defendant committed an unlawful practice, even if the victim cannot show any ascertainable loss and thus cannot recover treble damages.

Conclusion

It is important to be aware of your consumer rights when engaging a home improvement contractor to work on your home. The types of conduct that may constitute an unlawful practice under the Act are many, and are unfortunately beyond the scope of this Article. Please contact our law firm for a more detailed discussion of the impact of the Act upon you or your business or if you believe that your home improvement contractor has violated the law. - *ALP*

CASE REPORT: *Dugan v. T.G.I. Fridays*

While we are discussing New Jersey's Consumer Fraud Act (the "CFA"), we would like to note that the CFA covers a variety of business activities, not just home improvement contractors. The law also covers the sale of any "merchandise" including car and truck sales, but excluding securities.

And now, we learn that a beer sold in a restaurant is considered "merchandise" under the CFA. In *Dugan*, the New Jersey Appellate Division ruled a customer could maintain a claim under the CFA against T.G.I. Friday's ("TGIF") for the restaurant chain's failure to list its drink prices on its menu or post them at the bar or at the table. It appears from the Complaint that Dugan paid \$2.00 for a Coors Lite while she stood at the bar, but was charged \$3.59 for the same size serving of the brew after she sat down at a table. She was not aware of the higher price at the table until the end of the evening when she received the check.

TGIF moved to dismiss the case at the pleadings stage, i.e., before trial and before any discovery or investigation had been conducted. Among other reasons, TGIF argued that restaurants are not covered by the CFA because selling beer is not selling "merchandise." The trial court sided with Ms. Dugan and the Appellate Division agreed. In its ruling, the appellate court reasoned that the CFA's broad definition of merchandise is designed to apply expansively to restrain fraudulent practices in sales to consumers, and to exclude food and beverages served at a restaurant would require legal gymnastics. Moreover, the State Legislature intended the CFA to be broadly applied and it knew how to exclude bars and restaurants from CFA coverage if it so intended.

The case is now headed to the New Jersey Supreme Court and the plaintiff seeks class action certification. We will monitor *Dugan's* progress through the courts. - *ACT*

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