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Issues Related to Class Certification in Louisiana

Issues

1. Circumstances under which class certification is granted despite reliance issues and where defendants were guilty of omissions.
2. Identify the theories of common proof of reliance that have been rejected by Louisiana courts.
3. Circumstance under which Louisiana courts have supported certification even though there may be some individual proof required on damages.

Discussion

I. Circumstances Under Which Class Certification Is Granted Despite Reliance Issues And Where Defendants Are Guilty of Omissions.

Certification may be proper when a claim does not involve subjective knowledge or reliance, but rather objective inquiry into the omissions or failure to disclose by defendant. See, *Mire v. Eatelcorp, Inc.*, 849 So. 2d 608, 613-614 (La. App. 1 Cir. May 9, 2003). In *Mire, supra*, plaintiffs filed a class action against defendant, Eatel, on behalf of all consumers who purchased a PCS telephone from Eatel, alleging a cause of action redhibition. Plaintiffs alleged that Eatel did not adequately inform customers that their Eatel PCS phones could only be used on an Eatel PCS network, and if they canceled their Eatel PCS service, their phones could not be reprogrammed to work on another providers network unless they paid a fee for a reprogramming code, or subsidy lock. *Id.* at 611. Eatel opposed plaintiffs' motion to certify a class, contending that their fraud/misrepresentation case would require plaintiff-by-plaintiff

adjudication of liability and defense issues. *Id.* at 612. Following a certification hearing, the trial court granted plaintiffs' motion and certified a class. *Id.*

On appeal, Eatel argued that the trial court erred in certifying a class action because the "predominance" requirement could not be satisfied where issues of individual knowledge, reliance, and the applicability of individual defenses predominate over whatever common issues may exist. *Mire*, 849 So. 2d at 613. The plaintiffs argued that the predominant common factual and legal issue was Eatel's failure to adequately disclose to its customers that the telephones they purchased contain a subsidy lock that renders them useless and inoperable with any other service provider upon termination of their services with Eatel. *Id.* at 613-614. According to plaintiffs, the inquiry under a redhibition claim does not involve the buyer's subjective knowledge or reliance, but rather is an objective inquiry into the deficiency and whether it diminishes the product's value or renders it so inconvenient that the reasonable buyer would not have purchased it had he known of the deficiency. *Id.* at 614. The Court of Appeals agreed and affirmed the certification. *Id.*

Moreover, in *Feinberg v. Hibernia Corp.*, 1992 U.S. Dist. LEXIS 10872, 15 (E.D. La. 1992), the plaintiff investors sought recovery from the defendant bank and its officers for disseminating false and misleading statements about the bank's financial condition. *Id.* at 1. The bank opposed the plaintiffs' motion to certify arguing that under a common law fraud claim, each plaintiff must demonstrate his individual reliance upon the defendant's misstatements. *Id.* at 11. The court, however, agreed with plaintiff and affirmed the granting of certification stating that where the omissions and misstatements complained of are inextricably linked to a common course of misconduct (dissemination of positive statements regarding the business condition and affairs of defendant), class certification is appropriate. *Id.* at 12 citing *Longden v. Sunderman*, 123 F.R.D. 547 (N.D. Tex. 1988) (certification proper where defendants' common course of conduct through a uniform sales

plan involved written materials that were the same or very similar in their misleading or omitted information). See also, *Gudo v. Adm'rs Of The Tulane Educ. Fund*, 966 So. 2d 1069, 1076 (La. App. 4 Cir. 2007) (the test of commonality is not a demanding one in Louisiana, and requires only one issue, the resolution of which will affect all or a significant number of the putative class members).

II. Theories Of Common Proof Of Reliance That Have Been Rejected By Courts.

In *Young v. Ray Brandt Dodge*, 176 F.R.D. 230, 251 (E.D. La. 1997), plaintiffs filed a motion for class certification asserting fraud-based claims that arose out of an alleged conspiracy that involved defendant corporations' violation of the federal RICO statutes and the state fraud law. The plaintiffs alleged that defendants fraudulently sold to plaintiffs, who financed automobile purchases, insurance in the event of death or disability at inflated premium prices. *Id.* at 232. In support of certification, the plaintiffs' argued that this was merely a "form case" and that the Court need only look at the insurance disclosures made on the retail installment contracts that were signed by the plaintiffs. *Id.* at 233. Plaintiffs' further argued that because of material omissions, proof of reliance is not necessary. *Id.* The defendants argued that the case was not just a form case and that individual reliance must necessarily be shown to prove fraud. *Id.*

In denying certification, the court agreed with the defendants and found that the plaintiffs were not "all mute automatons who were told nothing, participated in no financing discussions, had false papers thrust before them, and unthinkingly signed them." *Young*, 176 F.R.D. at 233. As a result, the court held that because individual reliance is patently an issue, this was not a case that could be determined by looking simply at the retail installment contracts the plaintiffs signed when they purchased their vehicles. *Id.*

In *In re Ford Motor Co. Bronco II Prod. Liab. Litig.*, 177 F.R.D. 360, 366 (E.D. La. 1997), on behalf of over 650,000 owners in 51 jurisdictions, car owners asserted claims for

fraud, breach of express and implied warranty and sought money damages alleging that Ford knew that a car it manufactured was unreasonably prone to roll over in normal driving conditions, that it sought to deceive the public, and that it marketed the vehicle as free of dangerous defects. In support of certification, plaintiffs argued that Ford's misrepresentations concerning the defect and plaintiffs' reliance on them were common fact issues. *Id.* at 373. Plaintiffs further argued that individualized inquiry on the reliance issue could be avoided by use of a class wide presumption of reliance. *Id.* at 374. The court, however, rejected these arguments noting that the cases on which plaintiffs relied for invoking a presumption are federal securities fraud cases in which courts have recognized the availability of the presumption. *Id.* On the other hand, the cases before it involved state law fraud claims, not federal securities fraud claims. *Id.* The court further noted that the theory of presumptive reliance has generally been limited to the securities market where the courts can presume a nearly perfect market in information. *Id.* As a result, under plaintiffs' common law fraud/misrepresentation theory, each class member would have to demonstrate his individual reliance upon the alleged misrepresentations, causing individual, not common, fact issues to predominate. *Id.*

III. Circumstance Under Which Louisiana Courts Have Supported Certification Even Though There May Be Some Individual Proof Required On Damages.

“Proof of causation with respect to questions of individual damages is not part of the criteria for class certification. The fact that varying degrees of damages may result from the same factual transaction and same legal relationship or that class members must individually prove their right to recover does not preclude class certification.” *Davis V. Am. Home Prods. Corp.*, 844 So. 2d 242, 251 (La.App. 4 Cir. Mar. 26, 2003). See also, *Schexnayder v. Entergy La., Inc.*, 899 So. 2d 107,118 (La.App. 5 Cir. Mar. 29, 2005) (“It is well settled that the existence of individual damage issues is not a bar to class certification. The mere fact that varying degrees of damages may result from the same factual transaction and legal

relationship or that class members must individually prove their right to recover does not preclude class certification.”).

In *Bertulli v. Indep. Ass'n of Cont'l Pilots*, 242 F.3d 290, 293 (5th Cir. 2001), plaintiffs were pilots that filed suit against Continental Airlines and the Independent Association of Continental Pilots alleging that they were injured when they lost seniority after the defendants agreed to restore the seniority of eleven pilots who had lost their seniority when they participated in a strike in 1983-85. The District Court granted certification and on appeal to the Circuit Court the defendants argued that common issues did not predominate because damages under both the Railway Labor Act and the Labor-Management Reporting and Disclosure Act must be calculated in a highly individualized manner. *Id.* at 298. In affirming the certification order, the Circuit Court held that although calculating damages will require some individualized determinations, virtually every issue prior to damages was a common issue. *Id.* The plaintiffs' suit boiled down to one basic factual claim: the defendants' Association took a single act that caused every plaintiff to lose seniority. *Id.* Because every aspect of liability in the case involved this common issue, the issue of damages would not defeat certification. *Id.* See also, *Mullen v. Treasure Chest Casino, L.L.C.*, 186 F.3d 620 (5th Cir. 1999) (because the common issues pertaining to class members theories of liability are independently sufficient to establish commonality, it is irrelevant whether the class members uniformly allege damages).