



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Sleepy's Tries To Put Customer Refund Class Action To Bed

By Jeannie O'Sullivan

Law360 (November 5, 2019, 7:45 PM EST) -- The former Sleepy's LLC and its successor company urged a New Jersey federal court to toss a proposed class action alleging it unlawfully denied a refund to a customer and limited its own liability, arguing Tuesday the customer's dissatisfaction with his merchandise doesn't mean he was actually harmed.

During an oral argument before U.S. District Judge Michael A. Shipp in Trenton, an attorney for Sleepy's and Mattress Firm Inc. invoked case law establishing that an "aggrieved customer" under the state's consumer laws is one that was injured as a result of a company's allegedly unlawful consumer terms.

Sleepy's and Mattress Firm attorney N. Ari Weisbrot reasoned that, in the current suit, plaintiff Jeffrey Gundell got the mattress and mattress base he ordered, and they were delivered in a timely fashion. The fact that the mattress and base didn't end up being compatible doesn't meet the definition of nonconforming or damaged under the state's furniture delivery regulations requiring merchandise to be delivered exactly as ordered, he told the court.

Further, Gundell had already been compensated through a settlement with TemperPedic, the manufacturer of the mattress base, Weisbrot said.

"You really actually have to say something bad happened," Weisbrot told the court.

The New Jersey Supreme Court said as much in April 2018 when it **weighed in** on two consolidated Third Circuit cases that also challenged retailers' delivery terms, [David Spade v. Select Comfort Corp. and Christopher Wenger v. Bob's Discount Furniture LLC](#). The justices' ruling clarified that a customer seeking monetary damages under the New Jersey Truth in Consumer Contracts Warranties and Notices Act must show they were harmed as a result of purportedly offensive contract terms.

Retailers including **Forever 21** and **Sears** saw TCCWNA cases against them dismissed by judges who cited the Spade and Wenger ruling. Weisbrot noted Tuesday that the ruling extinguished several pending TCCWNA cases in New Jersey courts.

An attorney for Gundell disputed that the merchandise he received wasn't nonconforming. Gundell had understood that the mattress and base would be compatible, and he ordered a base with one adjustable bar, but it arrived with two, attorney Lisa R. Considine of The Wolf Law Firm LLC told the court.

"It was a misrepresentation from the outset," Considine said.

Gundell's 2015 lawsuit against Sleepy's and Mattress Firm asserted claims under TCCWNA and the New Jersey Consumer Fraud Act. The dispute stems from his purchases of a mattress and a mattress base, respectively, in 2013 and 2015 from a former Sleepy's location in East Brunswick, New Jersey.

He claimed when he discovered the base wasn't compatible with the mattress, he spoke with several Sleepy's employees who acknowledged the incompatibility, but that the ultimate decision-maker denied him a refund.

This denial ran afoul of furniture delivery regulations requiring that items be delivered exactly as ordered, Gundell claimed, in violation of the CFA. His TCCWNA claim challenged the liability disclaimers on the sales receipts and customer invoices, alleging they unlawfully force customers to waive their right to sue.

TemperPedic was also a defendant in the suit. The settlement terms were confidential, Considine said in court Tuesday.

Gundell is represented by Andrew R. Wolf, Lisa R. Considine, Mark A. Fisher and Matthew Scott Oorbeek of The Wolf Law Firm LLC.

The defendants are represented by N. Ari Weisbrot of the Law Office of N. Ari Weisbrot LLC.

The case is Jeffrey Gundell, on behalf of himself and others similarly situated, vs. Sleepy's LLC et al., case number 3:15-cv-07365 in U.S. District Court for the District of New Jersey.

--Editing by Amy Rowe.

All Content © 2003-2019, Portfolio Media, Inc.