
N E W S

PRACTICE

LE T T E R

POINTERS

July 2007

Michigan Supreme Court rules that the Michigan Consumer Protection Act does not apply to the work of residential builders.

***CARDELLI, LANFEAR
& BUIKEMA, P.C.***

322 W. Lincoln
Royal Oak, Michigan 48067
(248) 544-1100
(248) 544-1191 (FAX)

5537 Glenwood Hills Parkway, SE
Suite 201
Grand Rapids, Michigan 49512
(616) 285-3800
(616) 285-1150 (FAX)

Practice Pointers is published seasonally as a service to our clients and friends.
Your comments and articles are invited.

July 2007

Anthony F. Caffrey III

Attorney Caffrey manages the firm's appellate group, and specializes in appellate law, insurance coverage, dispositive motion practice, and research/writing.

Ahmed M. Hassouna

Attorney Hassouna is a member of the firm's appellate group, but also specializes in trial litigation.

Summary:

Residential home builders are exempt from the Michigan Consumer Protection Act.

In a recent opinion, the Michigan Supreme Court ruled that work performed by residential builders is shielded from liability under the Michigan Consumer Protection Act (MCPA). *Liss v Lewiston-Richards, Inc*, ___ Mich ___ (2007). The Court thereby overruled two prior rulings by Court of Appeals panels to the contrary, most notably *Forton v Laszar*, 239 Mich

App 711; 609 NW2d 850 (2000).

In *Liss*, the plaintiffs entered into a contract with a residential builder for the construction of a new home. Ultimately, the plaintiffs sued the residential builder for allegedly failing to complete construction timely, and completing work in a non-workmanlike manner.

Among other claims pleaded in their Complaint, the plaintiffs alleged that the defendant violated the MCPA. The trial court denied the residential builder's motion for summary disposition, holding that it was bound by precedent established in *Forton, supra*, and its progeny. The Supreme Court granted the defendant's application to hear this matter directly without review by our Court of Appeals.

The Supreme Court focused its

PRACTICE LETTER POINTERS

July 2007

attention on the issue of whether the exemption written into the MCPA that bars the Act's application to any "transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of [Michigan] or the United States" applied to the work of residential builders. The *Liss* Court began its analysis by noting the MCPA prohibits "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct or trade of commerce," but also noted the explicit exemption codified in the Act.

The Court recognized residential home builders are licensed by the Michigan Occupational Code, "and are regulated by the Residential Builders' and Maintenance and Alteration Contractors' Board, which oversees

licensing and handles complaints filed against residential builders." Thus, it follows that residential builders are "specifically authorized" by law to engage in the activity of residential building, which triggers the MCPA exception. As a result, the Supreme Court reversed the trial court's ruling denying the residential builder's motion for summary disposition.

In summary, a party may not successfully sue under the Michigan Consumer Protection Act for a violation arising out of residential home building activities.