IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50554
(Summary Calendar)

GREGORY VANN SEELY,

Plaintiff-Appellant and Cross-Appellee,

versus

FIRST PIONEER CORPORATION,

Defendant-Appellee and Cross-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(A-93-CA-565-AA)

(September 26, 1995)

Before DUHÀ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:[*]

Appellant Gregory Vann Seely challenges the district court's jurisdiction and judgment for appellee First Pioneer on appellant's "Deceptive Trade Practices" (DTPA) claim. Seely asserted several bases for relief in the trial court. However, he has presented only the jurisdiction and DTPA claim for appellate review. For the reasons set forth below, we affirm.

Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

FACTS AND PROCEEDINGS

Appellant is a resident of Texas. On May 21, 1987, he purchased a lot in Hidden Hills, a residential/recreational development in Travis County, Texas. He bought the property from The Ranch Associates, a joint venture comprised of First Pioneer Partners, Ltd., a Florida limited partnership, and Stokes-O-Stein Communities, Inc., its general partner. Appellant executed a note in favor of The Ranch Associates and secured payment of the note by further executing a deed of trust and security agreement. He also signed a Founder Member Agreement which set forth his rights and benefits with respect to the country club, golf course, and entertainment facilities which were a part of Hidden Hills. Appellant alleges that before he signed that agreement, two officials of The Ranch Associates represented to him that use of the country club would be limited to members perpetually, even if the development came under different ownership. Appellant says that promotional materials he viewed also made these promises.

A series of transfers preceded this litigation. The Ranch Associates assigned appellant's note to First Pioneer, Ltd.; and it, in turn, assigned the note and the deed of trust to defendant First Pioneer Corporation. Appellee ultimately foreclosed on that part of Hidden Hills supporting the country club and golf course and sold the property. Following foreclosure, the club facilities were closed. They later re-opened as the Barton Creek Lakeside Country Club and the founder members, including appellant, were offered membership. Appellant signed a membership agreement with the new club, voluntarily relinquishing his legal rights against the successor entity that controls access to the country club. Because the new facilities were no longer exclusive, appellant stopped paying on his note, arguing that the fair market value of the lot had declined due to the loss of exclusive-use rights. First Pioneer, as assignee of the note, notified appellant that it intended to foreclose and to sell the property at a trustee's sale. First Pioneer designated Susan Mills, a Texas resident, as a substitute trustee under the deed of trust to foreclose on the property. Appellant sued in state court to prevent the foreclosure. First Pioneer removed the case to federal court. Although appellant and Mills are both residents of Texas, the district court denied appellant's remand motion.

DISCUSSION

Jurisdiction was proper

First Pioneer had removed this action from the Travis County, Texas, state court to the United States District Court in Austin, Texas. Appellant claims that because he had joined Mills, a Texas resident, as a co-defendant with First Pioneer, a Florida corporation, complete diversity did not exist and the district court lacked jurisdiction. We have held that subject-matter jurisdiction at the time of judgment controls. Smith v. Picayune, 795 F.2d 482, 485 (5th Cir. 1986). See also Local Union 598 v. J.A. Jones Constr. Co., 846 F.2d 1213 (9th Cir. 1988), aff'd, 488 U.S. 881 (1988). On the eve of trial, all parties agreed to dismiss Mills. Therefore, the district court had jurisdiction because complete diversity existed at judgment as well as throughout the trial.

Failure of claims under Texas's Deceptive Trade Practices Act

Appellant also appeals the district court's judgment for the appellee on his DTPA claim. The district court concluded that appellant waived any objections to the control of access to the golf course and adjacent facilities. Appellant signed a membership application with Barton Creek Lakeside Country Club that reads in part,

> . . . Applicant, Applicant's family and all of those claiming rights to the use of the membership in the Club [Hidden Hills Country Club] covenant not to sue, release, discharge and waive all rights to seek any damage, relief, encumbrance, or lien against the Club Property, HHCC Properties Inc. ("HHCC") or any parent, affiliate, subsidiary, successor, assign, officer, director, agent or employee for any claim, right, damage, loss, lien, debt, expense or cause of action of any nature, whether known or unknown, now existing or which might arise hereafter arising from agreements, representations, options or obligations of any nature made or to Applicant by any person or entity concerning membership in Hidden Hills or the purchase of property in Hidden Hills, including, but not limited to, club dues, value of lots, rights to lifetime or other membership rights. . . .

Appellant admitted at trial to signing this document. The district court concluded from the agreement that appellant "voluntarily relinquished his legal rights against the successor entity that controls access to the Country Club." We find no evidence contradicting the district court's interpretation that the agreement forecloses appellant's claim.

Furthermore, even assuming that the agreement is not binding, we agree that appellant

presented no evidence that the representations were deceptive at the time they were made. Seely seeks relief for the following DTPA violations:

> Tex. Bus. & Com. Code Ann. § 17.46(b) (West, Supp. 1995)
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> (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not; . . .
>
> (7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; . . .
>
> (12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; . . .

To recover under the DTPA a consumer must establish that "there were false, misleading, or deceptive acts or an unconscionable act, and that the act or acts constituted a producing cause of damage." Knowlton v. U.S. Brass Corp., 864 S.W.2d 585 (Tex. Ct. App. 1993). Appellant cites a Texas Supreme Court case stating that "[a] defendant may be held liable for . . . deceptive trade practices . . . even if the defendant did not know that the representations were false or did not intend to deceive anyone." Eagle Properties v. Scharbauer, 807 S.W.2d 714 (Tex. 1990). However, the claim still turns on evidence that the representations were false. Seely offered no evidence to that effect. He only tried to offer statements allegedly made to him by the representatives of The Ranch Associates when he initially purchased this interest in 1987. We agree with the district court that neither the note, the deed of trust, nor the Founder Member Agreement mention "rights of limited membership status at the Hidden Hills Country Club." On cross-examination at trial, appellant could not point to any provision in the Hidden Hills agreement stating that Hidden Hills would be a private club with use restricted to members.

In sum we conclude that the record amply supports the trial court's judgment rejecting Seely's claims.

AFFIRMED.