

(e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;...

(l) Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions;

Defendant contends that it is entitled to judgment as a matter of law on this issue because the CCPA does not apply to any of Amoco's actions alleged by plaintiffs. Plaintiffs contend that Amoco violated the CCPA when it made false representations as to the services and the price of the services it was providing the royalty owners under the lease contracts. Specifically, plaintiffs allege the false statements were contained in Amoco's letter to royalty owners in June 1991, and in Amoco's monthly check stubs. Amoco maintains that the proper interpretation of CCPA requires this Court, "to confine [the statute's] reach to representations made to consumers concerning the price of, or reductions to the price of, goods, services, or property being offered for sale, or that were intended or likely to affect the price to consumers." See Defendant's Brief in Support of Motion for Summary Judgment on Plaintiffs' Separate Individual Claims at 3.

Summary judgment is a drastic remedy and should be granted only on a clear showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Rule 56, C.R.C.P. Cooper v. U.S. Ski Ass'n, 32 P.3d 502, 505 (Colo. App. 2000). The moving party has the burden of proving that no triable issue exists, and all doubts must be resolved in favor of the non-moving party. Smith v. Boyett, 908 P.2d 508, 514 (Colo. 1995).

In order to analyze claims under the CCPA courts "must give effect to the spirit and intent of the General Assembly in enacting the statute....A statutory interpretation that defeats the legislative intent or leads to an absurd result will not be followed." (Citations omitted.) Hall

v. Walter, 969 P.2d 224, 229. Colorado courts have provided some insight into that legislative intent. "A primary purpose of the CCPA is to deter and punish deceptive trade practices." Id. "The CCPA provides a private cause of action for deceptive trade practices that affect the public." Referring to C.R.S. §6-1-105, Rocky Mountain Rhino Lining, Inc. v. Rhino Linings USA, Inc., 37 P.3d 458, 461 (Colo. App. 2001). In Hall, supra, the Colorado Supreme Court interpreted §6-1-113(1) which provides for damages under the CCPA, and found five elements inherent in pursuing a claim under the CCPA. The court stated,

...we now hold that for purposes of a private cause of action pursuant to §6-1-113, C.R.C.P. 'any person' means a person, ... who establishes (1) that the defendant engaged in an unfair or deceptive trade practice; (2) that the challenged practice occurred in the course of defendant's business, vocation, or occupation; (3) that it significantly impacts the public as actual or potential consumers of the defendant's goods, services, or property; (4) that the plaintiff suffered injury in fact to a legally protected interest; and (5) that the challenged practice caused the plaintiff's injury. Hall, supra at 235.

Using these elements and applying them to the parties and allegations in the present matter, the Court finds that plaintiffs' allegations do not fit squarely within either the language or the intended purpose of the CCPA. Even though Colorado courts have expanded the definition of "any person", the individual royalty owners are not "consumers" of defendant's goods or services as the legislature intended to be protected by the CCPA. Plaintiffs' only claims to being consumers of the defendant's services are based on the use of the words "customer" and "service" by Amoco in its own mailings sent to all royalty owners. The Court agrees with defendant's description of the actual nature of the parties' business relationship, i.e., that Amoco is the purchaser of the royalty owners' oil and/or gas, and the that service it provides is in paying royalty owners each their calculated share of receipts from the ultimate sale of the oil and/or gas. Even if this service has been performed incorrectly or wrongfully, as plaintiffs contend, there is no genuine issue of material fact as to its applicability under the CCPA.

IT IS THEREFORE ORDERED that defendant's Motion for Summary Judgment is
GRANTED.

Done in Chambers this 23rd day of July, 2002.



David L. Dickinson
District Court Judge

Xc: T. Dugan
B. Miller