

STATE OF ILLINOIS

3-07-0411

Johnnie Flournoy v. Ameritech



APPELLATE COURT THIRD DISTRICT
OTTAWA

At a term of the Appellate Court, begun and held at
Ottawa, on the 1st Day of January in the year of our Lord
Two thousand eight, within and for the Third District of
Illinois:

Present -

HONORABLE MARY W. McDADE, Presiding Justice X

HONORABLE MARY K. O'BRIEN, Justice

HONORABLE WILLIAM E. HOLDRIDGE, Justice X

HONORABLE ROBERT L. CARTER, Justice

HONORABLE DANIEL L. SCHMIDT, Justice X

HONORABLE VICKI R. WRIGHT, Justice

HONORABLE TOM M. LYTTON, Justice

GIST FLESHMAN, Clerk

BE IT REMEMBERED, that afterwards on

July 1, 2008 the Order of the Court was filed

in the Clerk's Office of said Court, in the words and figures
following viz:

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REC'D C000829

A-45

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 3--07--0411

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2008

JOHNNIE FLOURNOY,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	Nos. 02--MR--585
)	
)	
AMERITECH,)	Honorable
)	Robert C. Lorz
Defendant-Appellee.)	Judge, Presiding.

ORDER

This is the second time that this matter has been before this court. The essence of Flournoy's claim is that Ameritech deliberately terminated his collect calls prematurely, forcing him to call the same party again. As a consequence, his family members were charged multiple surcharges and initial calling fees for accepting his collect calls. The trial court dismissed the complaint with prejudice, however, this court reversed that decision of the trial court. Flournoy v. Ameritech, 351 Ill. App. 3d 583 (2004). In that previous decision, this court determined that Flournoy had stated a claim for relief under the Illinois Consumer Fraud Act (815 ILCS 505/1 et seq. (West 2000)). On remand, Ameritech moved to dismiss based upon Flournoy's lack of standing to pursue his consumer fraud claim. The trial court granted the motion. Flournoy appealed to this court. We find

that Flournoy did have standing to bring a claim under the Consumer Fraud Act. We therefore reverse and remand for further proceedings.

As the facts in this matter have been thoroughly discussed in the previous decision of this court, we will not restate them at length herein, but will discuss the relevant facts as necessary to explain our decision.

The question before this court is whether Flournoy had standing to bring a claim under the Consumer Fraud Act. Standing requires an injury to a legally protected interest. Board of Trustees of Community College District No. 502 v. Department of Professional Regulation, 363 Ill. App. 3d 190, 197 (2006). We review issues of standing de novo. Semande v. Estes, 374 Ill. App. 3d 468, 471 (2007).

In order to bring a claim under the Consumer Fraud Act, the plaintiff must allege: (1) a deceptive act or practice by the defendant; (2) that the defendant intended for the plaintiff to rely upon the deception; (3) that the deception occurred in the conduct of a trade or business; (4) that the plaintiff suffered actual damages; and (5) that the damages were proximately caused by the deceptive conduct. Flournoy, 351 Ill. App. 3d at 586.

In our previous decision, we found that Flournoy had stated a cause of action under the Consumer Fraud Act against Ameritech. Specifically, we noted that in the complaint Flournoy alleged that he sent money to his mother to cover all the cost of the charges billed by Ameritech, and that this allegation was

sufficient to establish that Flournoy had suffered actual damages proximately caused by Ameritech's alleged deceptive practice,

Our previous finding that Flournoy sufficiently pled that he suffered actual damages proximately caused by Ameritech's alleged deceptive practices stands as the law of the case in this matter. The law of the case doctrine provides that "where an issue has been litigated and decided, a court's unreversed decision on that question of law or fact settles that question for all subsequent stages of the suit." Alwin v. Village of Wheeling, 371 Ill. App. 3d 898, 911 (2007).

Ameitech maintains that our previous decision finding that Flournoy stated a cause of action under the Consumer Fraud Act is not law of the case as the issue of standing was not specifically litigated and decided. While Ameritech is correct in its observation, it misses the import of the this court's previous finding. Our previous decision settled a question of fact - did Flournoy sufficiently allege that he suffered actual damages as a result of Ameritech's alleged deceptive practices. Specifically, we found that the allegation was supported by Flournoy's claim that he actually paid the charges alleged fraudulent charges.

Simply put, while it is not law of the case that Flournoy has standing to bring a cause of action for consumer fraud against Ameritech, it is law of the case that Flournoy has sufficiently alleged that he has suffered actual damages as a result of Ameritech's alleged fraud. If the fact that Flournoy sent the money to his mother to pay the allegedly fraudulent

charges was sufficient to plead a cause of action for consumer fraud, this fact must also be sufficient to establish that Flournoy has standing to bring that cause of action. Given the fact that Flournoy actually paid the allegedly fraudulent billings, we find that the trial court erred in finding that he lacked standing to bring his complaint.

We disagree with Ameritech's characterization of Flournoy's payment of the amounts billed as gratuitous payments or gifts. The complaint maintains that Flournoy sent money to his parents for the specific purpose of paying the allegedly fraudulent charges incurred by his parents for his specific benefit. Taken as true, this allegation established that the money sent by Flournoy was not a gift nor was it gratuitous. Flournoy derived a specific benefit from the collect calls placed by him through Ameritech and the record shows that this specific benefit was made more costly to him by the alleged fraudulent actions of Ameritech. We are satisfied that if he prevails in this matter, Flournoy will derive a personal benefit from the relief he seeks.

Reversed and remanded.

HOLDRIDGE, J., with MCDADE, P. J., concurring, and SCHMIDT, J., dissenting.

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AMERITECH,)	
)	Honorable Robert C. Lorz,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE SCHMIDT, dissenting:

I would affirm the trial court and, therefore, respectfully dissent.

STATE OF ILLINOIS



APPELLATE COURT THIRD DISTRICT
OTTAWA

STATE OF ILLINOIS,)
APPELLATE COURT,) ss.
THIRD DISTRICT)

As Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and the keeper of the Records and Seal thereof, I do hereby certify that the foregoing is a true, full and complete FINAL ORDER of the said Appellate Court in the above entitled cause, now of record in my said office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court, at Ottawa, this 18th day of August in the year of our Lord two thousand and eight

Milt Fleckman

Clerk of the Appellate Court