SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

ROY L. PEARSON, JR.	:	
	:	
Plaintiff,	:	**Docket No. 05 CA 4302 B**
	:	**Calendar 7**
v.	:	**Judge Bartnoff**
	:	
SOO CHUNG, et al.	:	
	:	
Defendants.	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case has its origin in a dispute between plaintiff Roy Pearson and defendants Soo Chung, Jin Nam Chung and Ki Y. Chung over a pair of allegedly missing pants. The defendants own Custom Cleaners, a dry cleaning store on Bladensburg Road, NE, within walking distance of the plaintiff's home. Mr. Pearson claims that he took his pants to Custom Cleaners for alterations in May 2005, that the defendants lost his pants, and that they then attempted to substitute another pair of pants for his. The defendants deny the plaintiff's allegations, and they insist that the pants they attempted to return to him—which he has refused to accept—are the pants that he brought in to be altered.

Mr. Pearson also claims that a "Satisfaction Guaranteed" sign that, until recently, was displayed in Custom Cleaners was an unconditional warranty that required the defendants to honor any claim by any customer, without limitation, based on the customer's determination of whatever would make that customer "satisfied." According to the plaintiff, the defendants did not honor and had no intention of honoring that purported unconditional guarantee of satisfaction to their customers, which he contends is an unfair trade practice under the Consumer Protection Procedures Act, D.C. Code § 28-3901 et seq. ("CPPA"), on several grounds.

In Count One of his Amended Complaint, the plaintiff alleges, based on the "Satisfaction Guaranteed" sign and on his claims regarding his pants, that each of the three defendants is liable to him for seven different violations of the CPPA, for every day Custom Cleaners was open over a period of several years.[1] He also alleges common law fraud, based on the "Satisfaction Guaranteed" sign (Count Two).[2] In addition, the Amended Complaint asserts a claim for conversion or negligence, relating to the pants (Count Three), and a claim for injunctive relief under the CPPA, regarding the "Satisfaction Guaranteed" and "Same Day Service" signs (Count Four). The plaintiff is seeking statutory, compensatory and punitive damages. He also is seeking attorney's fees, to which he claims to be entitled under the CPPA because he is an attorney who is representing himself in this action. He has presented various calculations of damages that go as high as $67 million.

The defendants strongly dispute the plaintiff's claims regarding the reasonable interpretation of the "Satisfaction Guaranteed" sign, both as a legal and factual matter. They

[1] By its terms, Count One of the Amended Complaint refers only to the "Satisfaction Guaranteed" sign, and not to a "Same Day Service" sign that also was displayed at Custom Cleaners. Nonetheless, the plaintiff in his Pretrial Statement and his Trial Brief claims damages under the CPPA regarding the "Same Day Service" sign. The defendants objected to the plaintiff's introduction at trial of evidence regarding the "Same Day Service" sign, since it was not the subject of Count One of the Complaint, but the Court did not preclude the plaintiff from doing so, given the pretrial submissions and the relief requested in Count Four, which does specifically refer to that sign. At the close of the plaintiff's case, the Court granted judgment for defendants on any and all claims relating to the "Same Day Service" sign. The plaintiff presented no evidence that the defendants did not make same day service available, nor did the plaintiff present any evidence that he himself ever had requested same day service. The only testimony presented about same day service was from one of the plaintiff's witnesses, who apparently requested and did receive same day service from Custom Cleaners.

[2] The Amended Complaint also alleges common law fraud based on another sign, which stated "All Work Done on Premises." The Court (Hon. Neal E. Kravitz) granted summary judgment to the defendants on that aspect of the fraud claim, in an Order entered May 16, 2006. Pretrial discovery in this case confirmed that all work was done on the Custom Cleaners premises. None of the other Counts of the Complaint include a claim for relief based on the "All Work Done on Premises" sign.

deny that the plaintiff is entitled to any relief at all in this case. They have advised the Court, through counsel, that they intend to request an award of attorney's fees after the Court issues its Findings, on the ground that the plaintiff has engaged in bad faith and vexatious litigation.[3]

A non-jury trial was held in this case on June 12 and 13, 2007. In a trial brief filed May 31, 2007, the plaintiff withdrew certain of his claims and made statements that led to some uncertainly about precisely what claims were being pursued. The plaintiff clearly had withdrawn his claim of an unfair trade practice under D.C. Code § 28-3904(s) (to "pass off goods or services as those of another"), which related specifically to his claims regarding the pants, under Count One. The Court also found that he had withdrawn the claim for conversion or negligent bailment (Count Three), which also related to the pants.[4] In addition, the plaintiff stated in his Trial Brief

[3] Defendants' counsel also noted at the outset of the trial that based on the plaintiff's Trial Brief, the defendants have given the plaintiff notice of their intention to file a motion for sanctions, pursuant to Rule 11 of the Superior Court Rules of Civil Procedure. Under that rule, if a party believes that the opposing party has made a submission to the court for an improper purpose (such as harassment or delay) or that the submission is not legally supportable, the moving party may seek sanctions, including attorney's fees. Rule 11(c)(1)(A) provides that the motion for sanctions may not be filed until the party against whom sanctions are being sought has been served with the motion and given an opportunity to correct or withdraw the challenged submission. That "safe harbor" provision provides for a 21-day period between service and filing of the motion, unless the court prescribes some other period. The plaintiff's Trial Brief was filed 11 days before trial was set to begin. The defendants advised the Court as a preliminary matter on the day of trial that they had served their Rule 11 motion but not yet filed it, because of the time requirements of the Rule, and they asked the Court to shorten the time for the plaintiff to reconsider his position. The plaintiff stated that he wanted to have the time afforded by the Rule to consider the defendants' motion, but he also agreed with the Court that the trial should not be delayed, and he confirmed to the Court on the record that he did not want to withdraw any of his claims. The defendants stated that they will be filing the motion for sanctions after the trial.

[4] At the outset of the trial, the plaintiff suggested that he had not withdrawn the conversion/negligence claim, but only that he might elect to withdraw it, in favor of the common law fraud claim. He also stated that it was very likely that he would make that election. The defendants objected that in the Table of Contents of his Trial Brief, the plaintiff had not stated that he might elect to withdraw the conversion/negligence claim, but that it had been "withdrawn by election." The Court further noted that in the body of the Trial Brief, the section on "Conversion/ Bailment Negligence" was blank, with the word "WITHDRAWN" in large letters

that "Plaintiff is not suing for lost pants," which raised a question about whether the incident regarding the pants remained in issue at all. The plaintiff insisted that although he was no longer seeking relief regarding the pants as such, the pants incident is evidence to support his claims of unfair trade practices under the CPPA, regarding the "Satisfaction Guaranteed" sign. On that basis, the Court permitted evidence regarding the pants to be admitted.

In his written submissions and throughout the trial, the plaintiff referred to himself as a private attorney general, even though all the claims in his Amended Complaint relate only to him and he is seeking relief solely on his own behalf. On October 31, 2006, when this case had been pending for nearly a year and a half, the defendant sought to amend and supplement the Complaint to assert claims as a private attorney general on behalf of potentially thousands of other consumers. At that point, discovery had been closed for seven months, the Court had ruled on the parties' respective motions for summary judgment, the parties had been through court-ordered mediation, and a pretrial conference had been set. Judge Kravitz denied the motion in an Order entered November 20, 2006.[5] During the trial, the Court reminded the plaintiff on numerous occasions that his claims in this case involve himself alone.

I.

At trial, the plaintiff presented the testimony of nine witnesses: Nora Faison, Lisa White-Hudgens, Rhonda Dorsey, Grace L. Hewell, Betty Green, Jumoke Tyehimba, Samuel Adinew,

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vertically down the page. In the circumstances, the Court found that the plaintiff had made his election and that the conversion/ negligence claim had been withdrawn.

[5] In that Order, Judge Kravitz found that the proposed amendment would dramatically expand the scope of this case and would be highly prejudicial to the defendants, who would be required to incur substantial additional legal fees for reopened discovery and likely inevitable additional motions practice. Judge Kravitz also noted that the case already had been "delayed unnecessarily by the plaintiff's disproportionate approach to the discovery process and by the plaintiff's active but largely unsuccessful motions practice," and he raised "significant concerns that the plaintiff [was] acting in bad faith and with an intent to delay the proceedings."

Louis Burnett, and the plaintiff himself. The defendants presented three witnesses: Saymendy Lloyd, Robert King, and defendant Soo Chung. The plaintiff offered more than 100 exhibits, of which 66 were admitted into evidence; the defendants offered four exhibits, all of which were admitted into evidence.

Based on the testimony presented, the evidence admitted, and the entire record, the Court makes the following findings:

1. Plaintiff Roy Pearson is a lawyer. He received his law degree from Northwestern University Law School in 1975 and then was a teaching fellow at Georgetown Law Center for two years. In 1978, he became a staff attorney at Neighborhood Legal Services in the District of Columbia, where he worked for the next 25 years. After six years as a staff attorney, Mr. Pearson became a consumer law specialist in the law reform unit, and in 1989, he was named Assistant Director for Legal Operations. He left Neighborhood Legal Services in 2002. He did some consulting work for Legal Services thereafter, but he essentially was unemployed until the spring of 2005. After he left Legal Services, he received unemployment benefits from the District of Columbia. In April 2005, he was appointed to be a District of Columbia Administrative Law Judge.

2. In February 2003, shortly after Mr. Pearson left Legal Services, his wife filed for divorce in the Circuit Court of Fairfax County, Virginia. Mr. Pearson represented himself in the divorce proceedings, and he contested certain of his wife's claims regarding their separation. According to Mr. Pearson, he spent much of the next year and a half on the divorce case. The trial court in Fairfax County made specific findings that the litigation was disproportionately long, despite the relative simplicity of the case, and that Mr. Pearson "in good part is responsible for excessive driving up of everything that went on here" and created "unnecessary litigation."

Mr. Pearson therefore was ordered to pay $12,000 of his wife's attorney's fees. Mr. Pearson appealed, and the Virginia Court of Appeals affirmed the trial court's finding.[6]

3. Defendant Soo Chung moved to the United States from South Korea with her husband, defendant Jin Nam Chung, and their two sons in May 1992. She had been a housewife in Korea, and she also had owned a small clothing store with her younger sister. Her husband had worked in a hotel, and he also had worked with his father in a coal factory. When the family moved to the United States, Ms. Chung initially worked as a seamstress, and Mr. Chung worked at a dry cleaning business owned by Ms. Chung's younger brother. The Chungs purchased Happy Cleaners on Seventh Street, NW in 1995, and they purchased Custom Cleaners on Bladensburg Road, NE in 2000. Custom Cleaners is owned jointly by Soo Chung, Jin Nam Chung, and one of their sons, Ki Y. Chung. In the early 1990's, the Chungs also purchased another dry cleaning store, Fabricare, which they sold in June 2006. Both Happy Cleaners and Fabricare are "pick-up stores," where customers drop off and pick up their clothes, but which do not have dry cleaning or laundry machines. Custom Cleaners does have machines, and Ms. Chung described it as a "factory," in contrast to a "pick-up store." At Custom Cleaners, Ms. Chung usually works behind the counter and deals with the customers. She also does alterations and bagging. Her husband does the laundry, dry cleaning and bagging. Their sons help in the store from time to time and perform a variety of tasks, including working behind the counter, bagging, and helping their father with the laundry and dry cleaning.

[6] This Court permitted the defendants to introduce the Virginia Court of Appeals opinion in the divorce case, over the plaintiff's objection, because of the Virginia court's findings regarding the conduct of that litigation, given the plaintiff's claims for attorney's fees here. The defendants have questioned the plaintiff's entitlement to attorney's fees, as well as his conduct of this litigation. The plaintiff was not permitted to relitigate the merits of the Virginia court's findings at the trial of this case, but he made it clear that he continues to dispute them.

4. The "Satisfaction Guaranteed" sign was in the Custom Cleaners store when the defendants purchased the business, as were the "Same Day Service" and "All Work Done on Premises" signs. Those signs recently were removed. The "Same Day Service" sign was displayed over the counter, and the plaintiff presented evidence that it was not readily visible from outside the store.

5. Mr. Pearson moved to the Ft. Lincoln neighborhood in the District of Columbia in October 1999 and then began to patronize Custom Cleaners, which is within walking distance of his home. He does not own a car. Mr. Pearson testified that he had a good relationship with Soo Chung, who usually was working behind the counter when he came into the store.

6. In July 2002, Mr. Pearson brought a pair of pants to Custom Cleaners—he cannot recall whether for cleaning or alteration-- and the pants were missing when he came to pick them up. Mr. Pearson was waited on at that time by Jai Chung, a son of Soo Chung and Jin Nam Chung, who is not a defendant in this case and is not an owner of Custom Cleaners. Mr. Pearson does not recall whether Jai Chung asked him what he would accept as compensation for the lost pants or if Mr. Pearson initially made a proposal, but he told Mr. Chung that it would cost $150 to replace the pants, and they agreed that Custom Cleaners would compensate him in that amount. Mr. Pearson returned a few days later, and although Jai Chung suggested that the compensation should be only $80 because the pants were not new, Mr. Pearson insisted that they had agreed to compensation of $150. Jai Chung then presented him with a check that already had been made out for $150. Custom Cleaners did not require Mr. Pearson to document the

replacement value of the lost pants, and Mr. Pearson agrees that he was compensated fully for them.[7]

7. Mr. Pearson testified that about a week after he received compensation for the lost pants in 2002, he brought some clothes into Custom Cleaners, and Soo Chung told him that her family had met and decided that they did not want to continue to accept his business.[8] Mr. Pearson then advised her that he believed it was unlawful for Custom Cleaners to refuse to continue to do business with him, in light of the "Satisfaction Guaranteed" sign. According to Mr. Pearson, he attempted to explain that although the defendants could elect not to do business with someone, they could not lawfully do so if their action was taken in the aftermath of a customer complaint that had been satisfied. Otherwise, according to Mr. Pearson, the guarantee of satisfaction was in effect a guarantee of satisfaction only once, which the merchant had a duty to disclose. Ms. Chung did not engage with him at that time or discuss the matter further.

8. Mr. Pearson then wrote a letter to Custom Cleaners, advising the Chungs of his position that what Custom Cleaners had done was an unfair trade practice under the CPPA, because they were adding a condition after-the-fact to their guarantee of satisfaction. He left the letter for the Chungs at Custom Cleaners (he no longer has a copy), and a few days later, he

[7] Plaintiff's Exhibits 1(E)-(F) are the plaintiff's contemporaneous day timer entries in July-August 2002. Those entries reflect that on Tuesday, July 23, 2002, Jai Chung agreed that Mr. Pearson would be paid $150 if the pants were not located by Friday and that Mr. Pearson picked up the check on Saturday, July 27 and deposited it on Monday, July 29, 2002. Soo Chung testified that she believes Custom Cleaners later found the pants, but Mr. Pearson claimed never to have been told that.

[8] The day timer (Plaintiff's Exhibit 1(G)) reflects that Mr. Pearson was refused service on August 6, 2002.

received a telephone call on their behalf from a woman named Amanda Chun.[9] Mr. Pearson does not fully remember that conversation, but he testified that Ms. Chun asked him what the problem was and he explained his position. He recalls that she said something to the effect that since he had not been satisfied with Custom Cleaners' services, he should take his business elsewhere. He did not hear again from Amanda Chun, but about a week later, he brought some clothes into Custom Cleaners, was waited on by Soo Chung, and she accepted his order without comment. He continued to patronize Custom Cleaners, without further incident, for almost three years.

9. Mr. Pearson has an adult son, Jumoke Tyehimba, who was called as a witness by the plaintiff. Mr. Tyehimba testified that between March 2004 and February 2005, he was employed at the Park Hyatt Hotel as a sales and catering coordinator and was required to wear a suit or jacket and tie to work. He could not afford to buy suits at that time, but he and his father are about the same size, and from time to time he borrowed his father's clothes. Mr. Tyehimba testified that in March 2004, he borrowed four suits from his father, one of which had blue and red (burgundy) pinstripes, and kept them for about a year. He then left the Park Hyatt for another job, where he received a substantial raise, and he therefore had his father's suits cleaned and returned them to him in March 2005. Mr. Tyehimba testified that he likes cuffs on his pants, but his father does not, and none of the suit pants he borrowed had cuffs.

10. Mr. Pearson was offered and accepted a position as a District of Columbia Administrative Law Judge in mid-April 2005, and he began work on May 2, 2005. As of 2005, there was a dress code that required the Administrative Law Judges to wear business suits every

[9] According to the day timer (Plaintiff's Exhibit 1(G)-(H)), Mr. Pearson delivered his letter to Custom Cleaners on Saturday, August 10, 2002, and his conversation with Amanda Chun took place on August 14, 2002. In addition to writing his letter to the Chungs, Mr. Pearson prepared a draft Complaint against them, which was never filed.

day. Mr. Pearson for many years has worn a particular style of Hickey Freeman suit, the "Boardroom" model, which he has found to be the only style of suit that fits him well. (Hickey Freeman now has replaced the "Boardroom" with a model called the "Madison.") It is important to Mr. Pearson to be well-dressed and to wear suits of excellent quality. The retail price of his preferred style of suit in 2005 ranged from $1095 to $1295, without tax, depending on the fabric.

11. As of April 2005, Mr. Pearson owned five Hickey Freeman suits of the Boardroom style, four of which he had lent to his son and had been returned. Mr. Pearson had gained some weight in the three years since he had worn suits regularly, and he therefore decided to have the pants of each suit let out a few inches. He testified that at the time, his financial situation was "ruinous"—he had just been ordered to pay $12,000 in attorney's fees to his ex-wife, he had very limited funds, and he was at or close to the limit on his credit cards. Although the new job would pay him quite well, he was under serious short-term financial pressure just before the job began. For that reason, he did not have all his suit pants altered at one time, but instead, beginning in mid- April 2005, he brought in two pairs of suit pants to Custom Cleaners to be altered, and then another pair a few days later, and then another. (It cost $10.50 to alter each pair.) At some point during that period, he also brought in a pair of gray slacks, which did not belong to a suit, and which he said he did not need immediately. He brought in the final pair of suit pants to be altered on Tuesday, May 3, 2005, and requested that the pants be ready on Thursday, May 5, so that he could wear that suit to work on Friday, May 6. The plaintiff testified that those pants belonged to his blue and burgundy pinstriped suit.

12. Soo Chung initially gave Mr. Pearson a claim ticket that reflected that the pants would be ready on Friday, May 6, 2005 at 5:00 p.m. He pointed out to her that he wanted the pants on Thursday, and she then crossed out "FRI" on the receipt, by hand, and wrote in

"Thur. 4:00." When Mr. Pearson came to Custom Cleaners on May 5 for the pants, they were not ready, and Ms. Chung eventually told Mr. Pearson that they mistakenly had been taken to another store. Mr. Pearson testified that he reminded her that he needed the pants to wear the next day and she said she would have the pants for him at 7:30 the next morning, but when he went to Custom Cleaners on the morning of May 6, the pants still had not been located. Ms. Chung asked Mr. Pearson to return the next day, which he did. The parties' versions of events differ from that point. Mr. Pearson testified that the pants were not at the store on Saturday, May 7, and that Ms. Chung asked him to speak with someone (he thought she was identified as Soo Chung's sister) over the telephone. Based on that conversation, he went home and brought back his suit jacket, to help Ms. Chung identify his pants. According to Mr. Pearson, he had brought the claim check to the store, and he realized when he returned home to get the jacket that Ms. Chung had the claim check. He says that when he returned to the store with the jacket, he asked for the claim check, and Ms. Chung told him that she had given it back to him. In order to motivate Ms. Chung to find his missing suit pants, Mr. Pearson also told her that the loss of the pants effectively amounted to the loss of the suit, which it would cost at least $1000 to replace..

13. Mr. Pearson testified that Ms. Chung then promised to continue to search for his pants. She did have the gray slacks that he had brought in for alterations, and she offered those pants to him, but she first insisted on measuring the inseam and waist. He attempted to pay for the gray slacks with his credit card, but he was over his limit, and he therefore left the pants at the cleaner. He eventually picked them up on May 14, 2005.

14. According to Mr. Pearson, Ms. Chung had said that she would call him, but she did not. He therefore went to Custom Cleaners on the following Saturday afternoon, May 14, 2005.

When he arrived, Ms. Chung, without comment, gave him a pair of gray pants with cuffs that were on a hanger. He testified that those pants obviously did not match his suit jacket, which was still hanging in the store, but Ms. Chung nonetheless insisted that the pants were his. Mr. Pearson determined that there was no point in discussing the matter further, and he left. He hen realized that he had left a carrying case with papers at Custom Cleaners, and he returned to the store to retrieve it and had a further conversation with Soo Chung. He testified that she continued to state that the pants were his.

15. Mr. Pearson attempted to determine whether it would be possible to replace the pants. He called Samuel Adinew, a salesman at Nordstrom's, who was able to identify the fabric number from a label inside the pocket of the suit jacket. Mr. Adinew called Hickey Freeman on Mr. Pearson's behalf, and he learned that the fabric was no longer available. The pants therefore could not be replaced.

16. Mr. Pearson then wrote a letter to Soo Chung and to Ki Chung,[10] in which he stated his version of what had happened to his suit pants and demanded that they deliver a check for $1,150 to him at his home by June 4, 2005, to compensate him for the lost pants and to fulfill their promise of "Satisfaction Guaranteed." He further stated in the letter that if Custom Cleaners did not honor the guarantee by making the payment he demanded, he would pursue legal remedies against them for multiple violations of the CPPA and for fraudulent conduct and would seek no less than $50,000 in compensatory, treble and punitive damages, and attorney's

[10] The record reflects that Mr. Pearson initially did not have the defendants' correct names. The letter to Ms. Chung was addressed to "Jin N Soo Y (a/k/a Soo Chung)," and that name also was used in the initial Complaint filed in this case, which named two defendants. With the defendants' consent, the plaintiff was permitted to amend the Complaint in July 2005 to reflect that there were three owners of Custom Cleaners and to include their correct names.

fees. A copy of portions of the CPPA also was attached to the letter. The Chungs did not respond, and Mr. Pearson then filed this suit against them on June 7, 2005.

17. Soo Chung testified that she recalls Mr. Pearson bringing in the pants in dispute (Defendants' Exhibit 2), as well as another pair of gray slacks on May 3, 2005. She also recalls that he asked that the suit pants be altered first. She specifically recognized Defendants' Exhibit 2 as the pants belonging to Mr. Pearson because his pants have three belt inserts, which is unusual. The number on the ticket attached to the pants (182) is the same as the number on the tag attached to the claim ticket. Ms. Chung had no doubt that the pants she altered and attempted to return to Mr. Pearson are the same pants he brought in for alteration on May 3, 2005.

18. Ms. Chung also testified that she remembers that the printed ticket stated that the suit pants would be ready on Friday and that she changed it to Thursday, at Mr. Pearson's request. She did the alterations, but the pants were delivered to another store in error, and she therefore did not have them when he came in on May 5, 2005.[11] She testified that the pants were delivered back to Custom Cleaners on the evening of May 6, that Mr. Pearson came in for them on May 7, and that he then said they were not his and would not accept them. She was very sure that they were Mr. Pearson's pants, and she therefore arranged for an acquaintance, Mrs. Park, who owns another dry cleaning store and who is much more fluent in English than Ms. Chung, to speak with Mr. Pearson on the telephone when he arrived at Custom Cleaners and ask him to bring in the suit jacket. Mr. Pearson did bring in the jacket, but he continued to insist that the pants were not his, even after she showed him that the pants were the same size as the other slacks he had brought in for alterations. (Those slacks also were ready on May 6, but Mr. Pearson could not

[11] She also stated that it was quite possible that she then asked Mr. Pearson to come in the next morning, as he claims, and that the pants had not yet been delivered back to Custom Cleaners at that time. She said it can take some time to locate a missing item from another store.

pay for them at that time.) Ms. Chung further testified that Mr. Pearson had his customer receipt when he came in initially for the pants, but he did not have it when he returned. She denied that she had kept it.

19. Ms. Chung and her family received Mr. Pearson's demand letter. They did not pay him the amount he demanded, because they were confident that they had the pants he had brought to them for alteration.

20. Ms. Chung also testified that no one other than Mr. Pearson ever has complained about the "Satisfaction Guaranteed" sign or suggested that it was misleading in any way. She further testified that she did not think the sign was misleading, but that it was removed to avoid further potential litigation, given her family's suffering as the result of this case. She understands "Satisfaction Guaranteed" to have the common sense meaning that if a customer has a problem, Custom Cleaners will do its best to fix the problem—for example, to redo an alteration or to dry clean an item again—and if the problem cannot be fixed, Custom Cleaners will compensate the customer for the value of the clothing.

21. Mr. Pearson called four witnesses to testify about their dissatisfaction with Custom Cleaners.[12] Each of them had a problem with clothing that was brought in to be dry cleaned in

[12] The defendants objected to the testimony of other customers, on the grounds that this case involves only Mr. Pearson and his own claims about one pair of pants. The Court generally agreed with that position, but the testimony of other customers arguably was relevant to the issue of the defendants' intent to honor the "Satisfaction Guaranteed" sign, as well as to the plaintiff's claims for punitive damages. The Court therefore permitted some testimony from other customers. The plaintiff had listed 26 such witnesses in his Pretrial Statement, but at the pretrial conference, the Court limited him to four, given that the testimony was duplicative, which the plaintiff could not dispute. The Court granted the plaintiff's request that he be permitted to identify seven of the 26 customer witnesses, although he was limited to calling only four, in case one or more of the designated witnesses became unavailable. He filed a timely designation in accordance with the Court's order, but he also sought to introduce written statements of the 22 witnesses who were not called. The defendants objected that the plaintiff was attempting to

2004 or 2005. One witness claimed that lace on a sleeve of a dress had been damaged; another claimed a sweater had been lost; another claimed a white suit had been discolored; and another claimed some pants had been washed and ruined. In two of those instances, the defendants disputed the customer's claim, and the customer never did anything to follow up or pursue the claim further. In the case of the allegedly missing sweater, the customer did not have a claim receipt, and the defendants questioned whether the item had been brought in at all. It may be that those situations could have been better handled by the defendants, but the Court does not find that they in any way establish that the defendants had no intention of attempting to satisfy their customers.

22. The final dissatisfied customer called as a witness by the plaintiff is an elderly woman who used Custom Cleaners only once. She claimed that a man who was one of the owners chased her out of the store when she complained about the condition of her pants, but she admitted that he may not have understood her and that she ran out of the store and never returned. She also admitted that she may not have understood what the man behind the counter was saying to her. It appears that she misread the situation and did not communicate her concerns adequately to the defendants, and she misunderstood the defendants' attempt to communicate with her. No conclusion regarding the defendants' response to customer complaints can be drawn from that incident.

23. None of the customer witnesses who testified for the plaintiff adopted his expansive interpretation that "Satisfaction Guaranteed" means that the defendants must give the customer whatever he or she demands, without regard to the facts or the reasonableness of the customer's

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circumvent the Court's pretrial ruling limiting duplicative testimony and that the statements were inadmissible on hearsay grounds. The Court agreed with the defendants and denied the request.

claims. Each of them testified that she would expect the cleaner to pay for the value of the lost or damaged clothing, if the item could not be repaired.[13]

24. When a customer brings in clothing to Custom Cleaners, whether for laundry, dry cleaning or alterations, the customer is given a claim ticket. The ticket is printed by a machine, and there are preprinted statements regarding conditions of service on the back of the ticket. Ms. Chung testified that Custom Cleaners did not draft those conditions and has never used or attempted to enforce them, and no testimony was presented to the contrary.

II.

There is no dispute that the plaintiff is a "consumer" and the defendants, through Custom Cleaners, are a "merchant," for purposes of the CPPA, D.C. Code §§ 28-3901(a)(2) and (3). The plaintiff contends that the defendants' display of the "Satisfaction Guaranteed" sign constituted an unfair trade practice under six different provisions of D.C. Code § 28-3904. That statute provides, in pertinent part, as follows:

> It shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived, or damaged thereby, for any person to:
>
> (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .
>
> (d) represent that goods or services are of particular standard, quality, grade, style or model, if in fact they are of another;
>
> (e) misrepresent as to a material fact which has a tendency to mislead;
>
> (f) fail to state a material fact if such failure tends to mislead; . . .

[13] One of the witnesses gave somewhat contradictory testimony. She claimed she brought in a white suit to be dry cleaned, but that the suit the defendants returned to her was a cream color. She testified at one point that she would have been satisfied if she had been compensated for the value of the suit, which she had purchased for $198, but at another point she stated that she should receive $500, because of her "inconvenience." She did not explain the basis for that claim, other than that she felt she had not been treated well by Custom Cleaners.

(h) advertise or offer goods or services without the intent to sell them or without the intend to sell them as advertised or offered; . . .

(u) represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not . . . .

The CPPA itself does not specify the burden of proof required to establish a violation of the statute. The plaintiff argues that the applicable burden of proof is the civil "preponderance of the evidence" test, as to each of the unfair trade practices he is claiming. To the extent that an unfair trade practice under the statute is premised on a common law cause of action, the District of Columbia Court of Appeals has held that the burden of proof is the same as the burden of proof applicable to the common law claim. *Osbourne v. Capital City Mortgage Corporation*, 727 A. 2d 322, 325-326 (D.C. 1999). In particular, with regard to a claim of intentional misrepresentation, the Court of Appeals held in *Osbourne* that the higher clear and convincing evidence standard applicable at common law also applies to a claim of intentional misrepresentation under the CPPA, D.C. Code § 28-3904(e).

The plaintiff contends that *Osbourne* was overruled by the 2000 Amendments to the CPPA, based on a provision that was added to § 28-3901 that the statue is to "be construed and applied liberally to promote its purpose." Section 28-3901(c). But that general provision does not address burden of proof, and the plaintiff conceded at trial that there is no mention of burden of proof in the legislative history of the 2000 Amendments. It is a longstanding principle that "no statute is to be construed as altering the common law, farther than its words import. It is not to be construed as making any innovation upon the common law which it does not fairly express." *Monroe v. Foreman*, 540 A. 2d 736, 739 (D.C. 1988) (internal citations omitted). The Court

finds no merit in the plaintiff's claim that the 2000 Amendments to the CPPA somehow overruled the Court of Appeals decision in *Osbourne.*[14]

To the extent that the plaintiff is claiming that the defendants' conduct constituted intentional misrepresentation-- either by an affirmative misrepresentation that has a tendency to mislead or by a failure to state a material fact if such failure tends to mislead-- those claims must be proven by clear, convincing and unequivocal evidence. As a practical matter, however, the Court finds that the plaintiff has not proved those or any of his other claims even by the lower preponderance of the evidence standard.

With regard to the alleged missing pants, the plaintiff has not met his burden of proving that the pants the defendants attempted to return to him were not the pants he brought in for alterations. At best, the evidence on that subject is in equipoise. The Court agrees with the plaintiff that the pants in the defendants' possession do not appear to match the jacket to his burgundy and blue pinstriped suit. The Court also will accept that Mr. Pearson does not like cuffs on his pants. The plaintiff may well believe that he brought the pants to his burgundy and blue pinstriped suit to the defendants, but there also is strong evidence that he did not. The Court found Soo Chung to be very credible, and her explanation that she recognized the disputed pants as belonging to Mr. Pearson because of the unusual belt inserts was much more credible than his speculation that she took a pair of unclaimed pants from the back of the store and altered them to

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[14] To the contrary, in *Caulfield v. Stark*, 893 A. 2d 970, 976 (D.C. 2006), the Court of Appeals referred with approval to the holding in *Osbourne* that the clear and convincing evidence standard applies to claims of intentional misrepresentation under the CPPA. Although that case was decided after the 2000 Amendments, the cause of action arose before the amendments took effect, and the amendments are not retroactive. But there is no suggestion in *Caulfield* that the Court believed the amendments had any bearing on the burden of proof for misrepresentation claims under the CPPA. *Osbourne* concerned an affirmative misrepresentation, but given that misrepresentation at common law includes both affirmative statements and a failure to disclose a material fact, the ruling in *Osbourne* is applicable to CPPA claims under both §§ 28-3904(e) and (f).

match his measurements. Mr. Pearson only recently had received four suits back from his son, he brought in several pairs of pants over a period of less than two weeks for alterations, and it certainly is plausible that the pants on the hanger with his blue and burgundy pinstriped suit jacket were not the pants that matched the jacket, even if Mr. Pearson assumed that they were. The Court need not determine what did happen; what it must do is to determine if Mr. Pearson proved that the defendants intentionally misled him and otherwise are liable to him under the CPPA based on the pants. The Court finds that he has not made that proof.

The plaintiff's claims regarding the "Satisfaction Guaranteed" sign are premised on his interpretation that the sign is an unconditional and unlimited warranty of satisfaction to the customer, as determined solely by the customer, without regard to the facts or to any notion of reasonableness. The plaintiff confirmed at trial that in his view, if a customer brings in an item of clothing to be dry cleaned, and the dry cleaner remembers the item, and the customer then claims that the item is not his when the dry cleaner presents it back to the customer after it has been cleaned, the cleaner must pay the customer whatever the customer claims the item is worth if there is a "Satisfaction Guaranteed" sign in the store, even if the dry cleaner knows the customer is mistaken or lying.

Nothing in the law supports that position. To the contrary, a claim of an unfair trade practice properly is considered in terms of how the practice would be viewed and understood by a reasonable consumer. *Alicke v. MCI Communications Corp.*, 111 F.3d 909 (D.C. Cir. 1997) (practice of rounding up telephone bills to the next full minute could not mislead a reasonable consumer and therefore could not be a material misrepresentation or omission). *See also Rossman v. Fleet Bank Nat'l Assn*, 280 F. 3d 384 (3rd Cir. 2002) (duration of advertised offer of credit card with "no annual fee" properly determined based on assumptions that would be made

by a reasonable person; one year is a reasonable assumption). A reasonable consumer would not interpret "Satisfaction Guaranteed" to mean that a merchant is required to satisfy a customer's unreasonable demands or to accede to demands that the merchant has reasonable grounds to dispute.

To the extent that the plaintiff's claims of unfair trade practices are based on his contention that the "Satisfaction Guaranteed" sign required the defendants to accede to his demands regarding his allegedly missing pants, despite the defendants' reasonable belief that they had produced the same pants that he had brought in for alterations, those claims must fail. Similarly, the defendants' acknowledgement that they did not interpret "Satisfaction Guaranteed" to require them to meet any customer's unreasonable demand does not constitute an unfair trade practice under any of the provisions of the CPPA invoked by the plaintiff.

The plaintiff also argues that the conditions on the back of the claim ticket that the defendants give to their customers are unlawful limitations on the otherwise unlimited guarantee of satisfaction announced by the sign in the store. In support of that argument, the plaintiff relies on Federal Trade Commission ("FTC") regulations regarding "Satisfaction Guarantees" and similar representations in advertising, 16 C.F.R. 239.3. The FTC regulations provide that "[a]n advertisement that mentions a 'Satisfaction Guarantee' or a similar representation should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, any material limitations or conditions that apply to the 'Satisfaction Guarantee' or similar representations." 16 C.F.R. 239.3(b). By their terms, the regulations apply to print and broadcast advertising, and they include two examples: (1) that if a guarantee is time-limited, the time limits should be included in the advertisement, and (2) if a money-back guarantee requires

that the product be returned in the original packaging, the packaging requirement should be included in the advertisement itself.

The FTC regulations on print and broadcast advertising do not appear to be directly applicable to a determination whether a sign in the defendants' store constitutes a violation of the CPPA. The concern underlying the regulations is that customers not be lured into a store based on advertised promises that turn out to be limited by additional conditions that are not revealed until the customer comes into the store. That concern about a "bait- and-switch" does not apply to a sign that is only displayed inside the store itself. In addition, however, the Court does not find that the terms on the reverse side of the claim ticket-- even if they were enforced by the defendants, which they are not—are properly considered to be conditions on an otherwise unlimited guarantee of customer satisfaction. At best, the reverse side of the claim ticket sets out the terms of the services and bailment provided by Custom Cleaners to its customers, and not limitations on any guarantee of satisfaction.[15]

The FTC regulations for the advertising of warranties and guarantees also provide that a "seller or manufacturer should use the terms 'Satisfaction Guarantee,' "Money Back Guarantee,'

[15] The plaintiff's reliance on *Montgomery Ward & Co. v. F.T.C.*, 379 F.2d 666 (7th Cir. 1967) to support his argument is misplaced. That case involved newspaper advertisements that were found to be deceptive, because of discrepancies between the guarantees in the advertisements (such as a guarantee of rebuilt engines for 90 days or 4000 miles) and the written guarantee certificates actually provided with the advertised products, which imposed additional restrictions (such as limiting the guarantee to 30 days if the assembly was used in a truck or commercial vehicle). The company claimed that it was prepared to honor the original guarantees in the newspaper advertisements and to disregard the additional restrictions in the guarantee certificates, and there was no evidence that the advertised guarantees had not been honored or that any customer even had made a claim. Nevertheless, the Court was concerned that a customer would have no reason to know that the additional restrictions in the guarantee certificates would not be given effect, and it therefore upheld the FTC's finding that the newspaper advertisements were deceptive. That situation is quite different from a "Satisfaction Guaranteed" sign in a dry cleaning store and terms of service and bailment included on the claim ticket.

'Free Trial Offer,' or similar representations in advertising only if the seller or manufacturer, as the case may be, refunds the full purchase price of the advertised product at the purchaser's request." 16 CFR 239.3(a). By its terms, that regulation is inapplicable to this case. But it provides some guidance on the reasonable interpretation of the "Satisfaction Guaranteed" sign, which also was espoused by every witness at trial who was asked about the sign, with the exception of the plaintiff: that if there is a problem with dry cleaning, laundry or alterations, the cleaner should try to fix it, and if the problem cannot be fixed, the cleaner should make reasonable compensation to the customer for the value of the damaged item. The Court does not find that the evidence presented by the plaintiff in any way establishes that the defendants had no intention of honoring that guarantee. To the contrary, the evidence presented by Mr. Pearson regarding his experience in 2002 demonstrates that they did. When a pair of his pants could not be located at that time, Custom Cleaners compensated Mr. Pearson fully for the value of the pants, based on his representations regarding value, without even requiring any further documentation.

It would have been perfectly appropriate for the defendants to have insisted in 2002 that Mr. Pearson document the value of the missing pants before they paid him $150, but they determined at that time that it was not necessary for him to do so. The fact that they did dispute his claims in 2005, when he asserted that they had lost a pair of his pants and they believed they had not, does not constitute a violation of the promise of "Satisfaction Guaranteed" or a violation of any provision of the CPPA.

III.

Based on the foregoing, the Court finds that the plaintiff is not entitled to any relief whatsoever on his claims under the CPPA, Counts One and Four of his Amended Complaint.

The Court's analysis of the plaintiff's CPPA claims applies as well to his claims of common law fraud in Count Two of the Amended Complaint. The plaintiff acknowledges that he is required to prove those claims by clear, convincing and unequivocal evidence. He has not proven those claims by a preponderance of the evidence, let alone by that higher standard.

Judgment therefore will be awarded to the defendants, as well as their costs. A separate judgment is being entered, together with these findings. The issue of the defendants' claim for attorney's fees against the plaintiff will be addressed after the defendant's motions for sanctions and for attorney's fees have been filed and briefed by the parties.

Judge Judith Bartnoff
Signed in Chambers

June 25, 2007
Date

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