

Business attorney Frank Lauletta comments on New Jersey Supreme Court decision about Consumer Fraud Act (“CFA”)

The New Jersey CFA prohibits unconscionable commercial practices, deception, and fraud “in connection with the sale or advertisement of any merchandise.”



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The recent case of All The Way Towing,

LLC v. Bucks County International, Inc. addresses whether a purchase of a customized truck with an autoloader tow unit is a sale of “merchandise” under the New Jersey Consumer Fraud Act (N.J.S.A. 56:8-1 to -210). The CFA prohibits unconscionable commercial practices, deception, and fraud “in connection with the sale or advertisement of any merchandise.” N.J.S.A. 56:8-2.

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Plaintiff, All The Way Towing, LLC (hereinafter “ATW”) contracted to purchase a brand new truck from Bucks County International, Inc. (hereinafter “BCI”) with an autoloader tow body manufactured by Dynamic Towing Equipment and Manufacturing, Inc. (hereinafter “Dynamic”). The estimated purchase price was over \$160,000 with a \$10,000 deposit. Dynamic discovered that its tow body was incompatible with BCI’s truck, resulting in modifications to the towing unit. ATW rejected four separate delivery attempts due to deficiencies of the truck and/or towing unit. Eventually, ATW demanded a refund of

the deposit, which was rejected by BCI and lawsuit was filed.

The trial court dismissed ATW’s CFA claim ruling that, because the truck was a custom designed truck, it was not a product offered to the public and, therefore, not “merchandise” under the purview of the CFA.

Under the CFA, “[t]he term ‘merchandise’ shall include any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale[.]” The Supreme Court noted that “[i]n light of the Act’s original remedial purpose and its subsequent and continuous expansion by the Legislature, courts have consistently recognized that the CFA must be liberally construed.” The Court also noted that CFA has been previously interpreted to cover commercial transactions and certain custom goods as well. For example, the New Jersey Supreme Court has already held in *Czar, Inc. v. Heath* that the “CFA can apply to the building and installation of custom kitchen cabinets.” The Court also cited with approval a long list of cases from the New Jersey appellate division that held that customized goods can fall within the scope of CFA. Such goods covered custom auto repair work and a customized yacht.

The Court went on to explain that “In our examination of the matter at hand, the applicability of

the CFA does not turn on whether the public at large purchases International trucks onto which a Dynamic 801 tow unit is installed. What is relevant is that a member of the public could, if inclined, purchase an operational tow truck consisting of a Dynamic 801 tow body installed onto an International chassis. It is consistent with the intent of the CFA to protect consumers regardless of the popularity of the product or service sold or advertised. To promote consistency in the application of the requirement that a product be offered to the public when evaluating a private individual CFA action, we hold that the availability requirement can be met by showing that any member of the public could purchase the product or service, if willing and able, regardless of whether such a purchase is popular.” Therefore, the Court held that the transaction in question was covered by the CFA.

The case is All The Way Towing, LLC v. Bucks County International, Inc., A-66/67-17. - The complete comment will be published in full on the Blog of [Mr. Lauletta](#) at <https://franklaulettablog.blogspot.com/>

About [Frank A. Lauletta](#)

[Frank Lauletta](#) is an experienced corporate attorney who has many years of “hands on” experience in private and public companies. His practice focuses heavily on representing and counseling a broad array of companies in corporate transactions such as venture capital, corporate finance, and mergers and acquisitions. Frank also has extensive experience representing companies and shareholders in connection with drafting and negotiating shareholders agreements and buy-sell agreements and also frequently represents clients involved in partnership disputes and shareholder oppression actions. with his broad legal experience, executive-level background, and extensive relationships in the legal, venture



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Overview

Frank Lauletta is an experienced corporate attorney who has many years of “hands on” experience in private and public companies. His practice focuses heavily on representing and counseling a broad array of companies in corporate transactions such as venture capital, corporate finance, and mergers and acquisitions. Frank also has extensive experience representing companies and shareholders in connection with drafting and negotiating shareholders agreements and buy-sell agreements and also frequently represents clients involved in partnership disputes and shareholder oppression actions. with his broad legal experience, executive-level background, and extensive relationships in the legal, venture capital, and high technology communities, Frank is uniquely suited to serve as outside general counsel to clients.

Working closely with executive management teams, Frank currently serves in this capacity to a number of software and other technology-based companies throughout the United States.

Frank is frequently relied upon to help develop sales, licensing and royalty-based models for companies in the software, cloud, energy, medical and other intellectual property and technology-based industries. Frank also assists companies in developing their form sales, licensing, terms of use, distribution, employment and other agreements. Since 1997, Frank has negotiated and closed hundreds of software licensing, distribution, technology, joint venture, construction and other complex agreements with dozens of Fortune 500 and international companies with annual transaction values ranging from hundreds of thousands to multiple millions of dollars.

Frank Lauletta, Attorney Profile at solomonlawguild.com

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