

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHINA PRIVATIZATION FUND (DEL),
L.P., A DELAWARE LIMITED
PARTNERSHIP; AND CRIMSON
CAPITAL CHINA INC., A CAYMAN
ISLANDS EXEMPTED COMPANY,
Appellants,
vs.
HERITAGE BANK OF NEVADA, A
NEVADA BANKING CORPORATION;
AND UMPQUA BANK A/K/A GLACIER
BANK, AN OREGON CORPORATION,
Respondents.

No. 87264

FILED

JAN 22 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellants' second amended complaint. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

This appeal concerns whether a defrauded party can recover against banks that allegedly laundered stolen money. Appellants China Privatization Fund L.P. and Crimson Capital China Inc. manage a private equity fund. Unknown fraudsters impersonated appellants and convinced the fund's brokerage to sell off certain securities in unauthorized sales. The fraudsters withdrew the proceeds of those sales via two Nevada banks, respondents Umpqua Bank and Heritage Bank of Nevada. Appellants had no banking relationship with either respondent, rather, the fraudsters created a fake Nevada corporation and opened accounts with the two banks to facilitate their scheme. Both banks' anti-money laundering procedures did not flag the transfers. When appellants discovered the scheme, they sued respondents for violating the Nevada Deceptive Trade Practices Act

(NDTPA), codified as NRS 41.600. Based on the fraudulent sale of the securities, appellants claimed that the banks made false public representations about their anti-fraud tools which assured clients their programs would flag and trigger protective measures to preclude fraudulent acts. Heritage's website states that it uses "security measures that comply with federal law." Umpqua's website states that it is "committed to providing resources" that help "recognize fraud, as well as the tools to help prevent it." The district court granted the banks' motions to dismiss, finding that these alleged misstatements did not actually harm appellants. This appeal followed.

"We review a district court order granting a motion to dismiss de novo." *Zohar v. Zbiegien*, 130 Nev. 733, 736, 334 P.3d 402, 404-05 (2014). On review, we "accept[] the plaintiffs' factual allegations as true, but the allegations must be legally sufficient to constitute the elements of the claim asserted." *Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009). We will affirm an order granting a motion to dismiss "only where it appears beyond a doubt that the plaintiff could prove no set of facts that would entitle him or her to relief." *Zohar*, 130 Nev. at 736, 334 P.3d at 405 (cleaned up).

To have standing to bring a claim under the NDTPA, the plaintiff must "show he or she was directly harmed by consumer fraud." *R.J. Reynolds Tobacco Co. v. Eighth Jud. Dist. Ct.*, 138 Nev. 585, 594, 514 P.3d 425, 433 (2022). The NDTPA defines actionable consumer fraud as any "deceptive trade practice as defined in NRS 598.0915 to 598.0925." NRS 41.600(2)(e). A "deceptive trade practice" occurs when a person, among other things, "[k]nowingly makes any other false representation in a transaction." NRS 598.0915(15). Thus, to survive a motion to dismiss,

appellants needed to plead facts indicating that the banks made false representations in transactions that directly harmed them.

There is an important distinction between the banks' anti-fraud *procedures* and the banks' *statements* about their procedures. A deceptive trade practices claim under the NDTPA must allege harm to the plaintiffs from the *statements*, and appellants failed to plead facts supporting such harm. They did not allege that they were aware of the banks' statements regarding their security, nor did they allege that any other party took advantage of those statements in causing the harm to appellants. Rather, they allege that they were harmed by the banks' procedures *themselves*, claiming that the banks were out of compliance with federal requirements for anti-money-laundering protections. As we indicated in *R.J. Reynolds*, an NDTPA claim must show harm "arising from the [defendant's] deceptive trade practices." 138 Nev. at 593, 514 P.3d at 432.


Here, the deceptive trade practices alleged were the banks' misstatements about their security procedures, but the harm alleged arose from the banks' noncompliance itself. The fact that respondents placed misstatements about their compliance with federal requirements on their websites did not affect the existence of the errors in their security procedures which allowed the fraudulent transfers to go through. The fraudulent transfers would have happened regardless of whether or not the respondents had made misstatements. The NDTPA is not a remedy for noncompliance with federal requirements. It is one for plaintiffs who are harmed by a defendant's commercial statements, and appellants were not even aware of the statements at issue here, much less harmed by them. Appellants are correct in asserting that the remedial purpose of the NDTPA is to redress wrongs caused by misrepresentations, but they failed to link


that to the injury they sustained. Although appellants were certainly harmed by defendants' failure to prevent the fraud, they failed to plead harm arising from the alleged deceptive trade practices, i.e., the website statements. Therefore, we conclude that appellants do not have standing to bring a claim under the NDTPA.

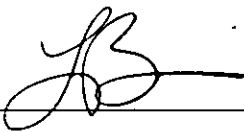
We need not consider the parties' arguments over whether or not appellants' claims repackage the claims in their original complaint. An amended complaint supersedes completely the original complaint. *Randono v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807, 808 (1984). The only claims we need to consider on appeal are those related to the operative second amended complaint: a deceptive trade practices claim against each bank. Thus, we need not consider the first complaint.

Having concluded that the district court did not err in dismissing appellants' second amended complaint, we

ORDER the judgment of the district court AFFIRMED


_____, C.J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Kathleen M. Drakulich, District Judge
Jonathan L. Andrews, Settlement Judge
Brownstein Hyatt Farber Schreck, LLP/Reno
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Thompson Coburn Hahn & Hessen LLP
Armstrong Teasdale, LLP/Las Vegas
Reed Smith LLP/Los Angeles
Robison, Sharp, Sullivan & Brust
Washoe District Court Clerk