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publication in the New York Reports.

No. 117 SSM 13
William I. Koch,
Appellant,
v.
Acker, Merrall & Condit Company,
Respondent.

Submitted by Joseph J. Saltarelli, for appellant.
Submitted by Stephen B. Meister, for respondent.
Pacific Legal Foundation, amicus curiae.

MEMORANDUM:

The judgment of Supreme Court appealed from and the
order of the Appellate Division brought up for review should be
reversed, with costs, and defendant's motion to dismiss
plaintiff's General Business Law §§ 349 and 350 causes of action

denied. To successfully assert a claim under General Business Law §§ 349 (h) or 350, "a plaintiff must allege that a defendant has engaged in (1) consumer-oriented conduct that is (2) materially misleading and that (3) plaintiff suffered injury as a result of the allegedly deceptive act or practice" (City of New York v Smokes-Spirits.Com, Inc., 12 NY3d 616, 621 [2009]; see Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 324, n 1 [2002]). Here, plaintiff sufficiently pleaded such causes of action, and the disclaimers set forth in defendant's catalogs "do not . . . bar [plaintiff's] claims for deceptive trade practices at this stage of the proceedings, as they do not establish a defense as a matter of law" (Goshen, 98 NY2d at 326; see Gaidon v Guardian Life Ins. Co. of Am. 94 NY2d 330, 345 [1999]).

To the extent that the Appellate Division order imposed a reliance requirement on General Business Law §§ 349 and 350 claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim (see Small v Lorillard Tobacco Co., 94 NY2d 43, 55 [1999], citing Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank, 85 NY2d 20, 26 [1995]).

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On review of submissions pursuant to section 500.11 of the Rules, judgment appealed from and order of the Appellate Division brought up for review reversed, with costs, and defendant's motion to dismiss plaintiff's causes of action under General Business Law §§ 349 and 350 denied, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Pigott and Jones concur. Judge Smith took no part.

Decided March 27, 2012