

Affirmed and Opinion Filed June 22, 2021



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-01024-CV

**JANOS FARKAS, Appellant
V.
NATIONSTAR MORTGAGE, LLC, D/B/A MR. COOPER, Appellee**

**On Appeal from the 134th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-14689**

MEMORANDUM OPINION

Before Justices Partida-Kipness, Pedersen, III, and Goldstein
Opinion by Justice Partida-Kipness

Appellant Janos Farkas appeals from the trial court's judgment dismissing his claims against Nationstar Mortgage, LLC, d/b/a Mr. Cooper. Farkas had sued Nationstar for violations of the Texas Debt Collection Practices Act (DCPA). Nationstar sought dismissal of Farkas's claims on the grounds that he did not have standing under the DCPA. In his sole appellate issue, Farkas contends the trial court erred in dismissing his claims because he has standing as a consumer under the DCPA. We affirm the trial court's judgment.

BACKGROUND

Farkas obtained a loan on January 2, 2007, to purchase a condominium in Dallas, Texas. In the loan application, Farkas represented that he would not occupy the property as his primary residence. He also executed an affidavit in which he stated he intended to use the property for investment purposes. The loan was secured by a deed of trust on the property. Farkas also executed a 1–4 Family Rider that was incorporated into the deed of trust and assigned all leases and rents to the lender. Farkas made payments on the loan until September 2010.

The lender sent acceleration notices to Farkas, notifying him that the property would be sold at auction if he did not pay the loan in full. Farkas responded with cease-and-desist letters and a notice of intent to litigate. He did not pay the accelerated balance, and Nationstar, the current loan servicer, noticed a trustee's sale of the property for October 2, 2018.

Farkas filed suit against Nationstar on September 26, 2018. He alleged violations of the DCPA and sought declaratory judgment and a temporary restraining order. Nationstar answered and filed a plea to the jurisdiction in which it argued that Farkas was not a consumer and the loan was not a consumer debt. According to Nationstar, a consumer debt must be primarily for personal, family, or household purposes. Because Farkas was holding the property as an investment, the loan was not a consumer debt, and he lacked standing to sue under the DCPA. The trial court heard Nationstar's plea and dismissed Farkas's claims. This appeal followed.

STANDARD OF REVIEW

A plea to the jurisdiction challenges a court's subject-matter jurisdiction to hear a case. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). When, as in this case, the plea challenges the claimant's pleadings, we determine whether the claimant has pleaded facts that affirmatively demonstrate the trial court's jurisdiction, construing the pleadings liberally and in favor of the claimant. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993).

"Standing is a prerequisite to subject-matter jurisdiction, and subject-matter jurisdiction is essential to a court's power to decide a case." *M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W.3d 704, 708 (Tex. 2001). Thus, a plea to the jurisdiction is a proper vehicle to challenge a plaintiff's standing to maintain suit. *Vernco Constr., Inc. v. Nelson*, 460 S.W.3d 145, 149 (Tex. 2015). The plaintiff bears the burden to plead and establish facts affirmatively showing the court has subject-matter jurisdiction. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225–26 (Tex. 2004); *see also Bland*, 34 S.W.3d at 554.

We review a trial court's ruling on a plea to the jurisdiction de novo. *Miranda*, 133 S.W.3d at 226. In our review, we construe the pleadings liberally in favor of the pleader and look to the pleader's intent to determine whether the facts alleged affirmatively demonstrate the trial court's jurisdiction to hear the cause. *See id.* If the pleadings affirmatively negate the existence of jurisdiction, then the trial court

may grant the plea to the jurisdiction without allowing the plaintiff an opportunity to amend. *Id.* at 227.

ANALYSIS

In one issue, Farkas contends the trial court erred in granting Nationstar's plea to the jurisdiction. According to Farkas, the DCPA allows recovery by any person adversely affected by prohibited conduct and, as the individual mortgagor, he has standing to sue under the DCPA. We disagree.

Standing is a constitutional prerequisite to maintaining a lawsuit. *Williams v. Lara*, 52 S.W.3d 171, 178 (Tex. 2001). Standing may be conferred by statute. *Bland*, 34 S.W.3d at 555; *Scott v. Bd. of Adjustment*, 405 S.W.2d 55, 56 (Tex. 1966). A party suing under a statute must establish standing, or the right to make a claim, under that statute. *Scott*, 405 S.W.2d at 56; *Marauder Corp. v. Beall*, 301 S.W.3d 817, 820 (Tex. App.—Dallas 2009, no pet.). In such cases, the statute itself provides the framework for the standing analysis, and the standing analysis begins and ends with the statute. *Williams*, 52 S.W.3d at 178–79; *Scott*, 405 S.W.2d at 56.

Farkas sued Nationstar for violations of sections 392.301(a)(8) and 392.304(a)(19) of the DCPA. These sections prohibit a debt collector from taking certain actions while attempting to collect a consumer debt. TEX. FIN. CODE §§ 392.301(a)(8) (prohibiting debt collector from “threatening to take an action prohibited by law”), 392.304(a)(19) (prohibiting debt collector from “using any other false representation or deceptive means to collect a debt or obtain information

concerning a consumer”), 392.001(5) (“‘Debt collection’ means an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor.”). A “consumer” is “an individual who has a consumer debt.” *Id.* § 392.001(1). A consumer debt is “an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction or alleged transaction.” *Id.* § 392.001(2). “Personal” is defined as “of or relating to a particular person; affecting one individual or each of many individuals; peculiar or proper to private concerns.” *Monroe v. Frank*, 936 S.W.2d 654, 660 (Tex. App.—Dallas 1996, writ dism’d w.o.j.) (applying the common meaning in the absence of a statutory definition). Consequently, obligations arising out of commercial transactions fall outside of the DCPA. *Ford v. City State Bank of Palacios*, 44 S.W.3d 121, 136 (Tex. App.—Corpus Christi–Edinburg 2001, no pet.); *First Gibraltar Bank, FSB v. Smith*, 62 F.3d 133, 135 (5th Cir.1995).

Farkas cites several cases for the proposition that he has standing because the DCPA allows any person adversely affected by prohibited conduct to seek relief. Although a plaintiff need not be in privity with the defendant to bring an action under the DCPA, the debt in question must still be a consumer debt. TEX. FIN. CODE §§ 392.403(a) (“A person may sue for . . . actual damages sustained as a result of a violation of this chapter.”) 392.301–.307 (defining prohibited debt collection practices), 392.001(5) (restricting “debt collection” to conduct related only to

collecting “consumer debts”). Because none of Farkas’s cited cases involve an allegation the debt at issue was commercial, they are unhelpful.¹

The parties cite no cases addressing a debt on real property held for investment, such as the debt at issue here, and we are likewise unaware of any such cases. Nationstar, however, cites *Ford v. City State Bank of Palacios*, 44 S.W.3d 121, 128–30 (Tex. App.—Corpus Christi–Edinburg 2001, no pet.), for the proposition that “[l]oans taken for commercial purposes, even if to make personal income, are not consumer debts under Texas law.” We find *Ford* instructive.

The claims in *Ford* arose from loans secured to purchase cattle. *Id.* When Ford defaulted on the loans and the bank threatened foreclosure, Ford sued the bank alleging DCPA violations and other claims. *Id.* On appeal from summary judgment on his claims, Ford argued the loans were “taken out by me for my personal and family purposes to make a personal income for me and my family.” *Id.* at 136. Citing some of the same cases Farkas cites here, Ford argued his debt was not commercial and, even if it was, he had standing as a person “adversely affected by the prohibited

¹ See *Monroe*, 936 S.W.2d at 660 (addressing whether debtor was a consumer because debt (bail bond) was for friend’s benefit, not debtor’s); *Rios v. Partners in Primary Care, P.A.*, SA-18-CV-00538-FB, 2019 WL 668509, at *14 (W.D. Tex. Feb. 15, 2019), *report and recommendation adopted sub nom. Rios v. Ciox Health, LLC*, CV SA-18-CA-538-FB, 2019 WL 2565265 (W.D. Tex. Mar. 22, 2019) (“There is no allegation that the debt involved a commercial or business transaction . . .”); *McCaig v. Wells Fargo Bank (Tex.)*, N.A., 788 F.3d 463, 473 (5th Cir. 2015) (addressing whether non-party to home mortgage who had no property interest in the underlying property had standing under the DCPA); *Cushman v. GC Services, LP*, 657 F. Supp. 2d 834, 841 (S.D. Tex. 2009) (addressing whether DCPA applies only to consumers residing in Texas); *Smith v. Heard*, 980 S.W.2d 693, 698 (Tex. App.—San Antonio 1998, pet. denied) (concluding summary judgment on DCPA grounds improper because summary judgment motion did not address DCPA).

conduct.” *Id.* at 136–37. The court rejected Ford’s argument, noting that the cited cases contained no allegation the debt at issue was not consumer debt, and that a consumer debt is required for any claim under the DCPA. *Id.* Instead, the court relied on *Garza v. Bancorp Group, Inc.*, 955 F. Supp. 68, 71–72 (S.D. Tex. 1996). We also find *Garza* instructive.

The claims in *Garza* arose from security equipment leases for family-owned and operated meat markets. *Garza*, 95 F. Supp. at 70. When the Garzas stopped paying the leases before the term expired, the lessor attempted to collect, and the Garzas sued alleging DCPA violations and other claims. *Id.* at 70–71. The lessor moved for summary judgment on the DCPA claims, arguing that the leases were not consumer transactions. *Id.* at 71. The Garzas responded that the leases were consumer transactions because they leased the security equipment “for the primary purpose of protecting ourselves and our family.” *Id.* The court concluded, however, the fact “[t]hat the equipment was intended to provide security to family members working at the stores does not transform the purpose into a noncommercial one” and the DCPA “does not extend to the debts of family-owned businesses that are incurred for business purposes.” *Id.* at 72. Accordingly, the court granted summary judgment to the lessor. *Id.*

Like the appellants in *Ford* and *Garza*, Farkas contends the loan at issue here was a consumer debt. In each case, the appellant relied on his personal benefit or liability associated with the debt to so argue. As with the commercial debts in *Ford*

and *Garza*, however, Farkas obtained the loan at issue here for commercial purposes. Specifically, the record reflects that Farkas obtained the loan to purchase investment property. The record further reflects that Farkas owns several such properties, including at least one other condominium in the same building as the one he purchased here. Accordingly, Farkas's personal benefit derived from the income produced by the condominium and personal liability attached to the loan does not alter the commercial nature of the loan. *See Ford*, 44 S.W.3d at 137.

Based on the record before us, we conclude the loan was not a consumer transaction, and Farkas did not have standing to sue under the DCPA. Accordingly, we overrule his sole issue on appeal.

CONCLUSION

The loan at issue here was taken to purchase investment property. Thus, it was not a consumer transaction, and Farkas did not have standing to sue Nationstar for alleged DCPA violations arising from its attempt to accelerate the loan and foreclose on the underlying property. Accordingly, we overrule Farkas's sole appellate issue and affirm the trial court's judgment dismissing his claims.

/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

JANOS FARKAS, Appellant

No. 05-19-01024-CV V.

NATIONSTAR MORTGAGE, LLC,
D/B/A MR. COOPER, Appellee

On Appeal from the 134th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-18-14689.
Opinion delivered by Justice Partida-
Kipness. Justices Pedersen, III and
Goldstein participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee NATIONSTAR MORTGAGE, LLC, D/B/A MR. COOPER recover its costs of this appeal from appellant JANOS FARKAS.

Judgment entered June 22, 2021.