

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 03/04/2016

TIME: 08:30:00 AM

DEPT: C-65

JUDICIAL OFFICER PRESIDING: Joan M. Lewis

CLERK: Regina Lindsey-Cooper

REPORTER/ERM: Christina Lothar CSR# 8624

BAILIFF/COURT ATTENDANT: Henry Whatley, CSO

CASE NO: **37-2014-00012491-CU-MC-CTL** CASE INIT.DATE: 04/22/2014

CASE TITLE: **Bed Bath & Beyond Inc vs John Chiang [Imaged]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

MOVING PARTY: Bed Bath & Beyond Inc

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication and supporting documents, 10/02/2015

APPEARANCES

Aaron David Jones, counsel, present for Defendant(s).

Ethank Millar, counsel, present for Bed Bath & Beyond.

Plaintiff submit(s) on the Court's tentative ruling.

The Court hears oral argument and CONFIRMS and MODIFIES the tentative ruling as follows:

Plaintiff Bed, Bath & Beyond ("BB&B") has brought a motion for summary judgment or, in the alternative, summary adjudication.

BB&B operates a chain of retail stores that sell domestic merchandise and home furnishings. [See evidence cited in support of Plaintiff's Separate Statement of Undisputed Material Facts ("SSUMF") No. 1.] Sometimes customers attempt to return merchandise at BB&B's stores but do not have a receipt showing that they purchased the merchandise at BB&B. [*Id.*, at 2.] In such instances, BB&B is not obligated to accept such returns or to give cash back. [*Id.* at 2-3.] However, as a courtesy and accommodation, BB&B issues merchandise return certificates, or what BB&B refers to as Merchandise Return Credits (or "MRCs"). [*Id.* at 4.]

Under the terms of BB&B's return policy, a customer is not entitled to a cash refund if the customer does not have an original receipt. [*Id.* at 5.] By their express terms, the MRCs are redeemable only for merchandise at BB&B and its affiliates and not for cash. [*Id.* at 6.] The MRCs do not expire and can be redeemed by customers against a future purchase of merchandise at any time after they are issued. [*Id.* at 7.] In order for an MRC recipient to redeem the certificate and realize the value associated with it, the recipient must purchase merchandise at BB&B and present the certificate. [*Id.* at 15.]

Between 2004 and 2012, BB&B reported and remitted to Defendant as unclaimed property under the

Unclaimed Proper Law ("UPL") cash equal to the full unredeemed balances of the MRCs that were issued to California customers who returned merchandise to BB&B without a receipt and which had remained unredeemed for at least three years in the total amount of \$1,834,477.62.

By way of this action, Plaintiff contends that it mistakenly remitted these monies and that they should be refunded to BB&B.

Plaintiff seeks judgment against the Defendant in the amount of \$1,834,477.62 plus interest. The motion seeks summary judgment or, alternatively, summary adjudication. However, it appears that if any cause of action is adjudicated in Plaintiff's favor, Plaintiff would be entitled to judgment as requested.

Defendant has opposed the motion.

For the most part in its opposing brief Defendant argues substantive reasons why, under the facts of this case, the money was properly escheated to the State. However, in its Separate Statement of Disputed and Undisputed Facts and Evidence ("SSDUF"), Defendant at varying times disputes a fact on the basis that "The records contains no 'MRCs' (evidently, store credits) that were issued during the time period relevant to this case." [SSDUF No. 4.] See also SSDUF No. 19 where Defendant "disputed" Plaintiff's assertion that "true and correct copies of some sample MRCs and gift certificates are attached to the Declaration of Steven Taplits as Exhibit 3." Although in Defendant's most recent version of its separate statement Defendant disputed this fact, in its December 2015 responsive separate statement the fact was "undisputed." Defendant offers no evidence – or argument – that the terms of the store credits were any different during the relevant period than those provided as an exemplar with this motion.

The first issues for adjudication were Issues 1 and 2 which addressed Plaintiff's first and second causes of action of its First Amended Complaint ("FAC") for refund under CCP Sec. 1540 and/or CCP Sec. 1561(b), respectively.

Plaintiff explained that at the time the monies were escheated, Sec. 1540 provided that "[a]ny person, excluding another state, who claims an interest in property paid or delivered to the controller under this chapter may file a claim to the property or to the net proceeds from its sale." The statute was later amended to reflect that it only permitted claims by "owners" of the property.

The Court agrees with BB&B that it may seek a refund under this statute either as a party "who claims an interest" in the money or as the "owner" of the cash.

Additionally, or alternatively, BB&B may seek relief under 1561(b) as a "holder" of the escheated property.

The question then becomes whether or not the property was properly escheated to the State.

In arguing that the property was properly escheated, Defendant contends that the property is "intangible personal property." See CCP Sec. 1520. However, only intangible property that is actually "owing" to the owner would be escheated. The Court concludes that because the MRCs are not redeemable for cash, the Plaintiff does not "ow[e]" money to the owner of an MRC.

Defendant argued, in part, that in certain circumstances the Plaintiff would owe cash to the owners of store credits. Specifically, when (1) the value owed is less than \$10 and the customer requests cash back; or (2) the customer provides an original receipt. Defendant, however, offered no evidence in

opposing the motion to suggest that either scenario was present for the monies the subject of this action.

The Court further finds that the Defendant's interpretation of the UPL conflicts with Civ. Code Sec. 1723. It is true as Defendant argues that Sec. 1723 does not concern escheat. Nevertheless, the conflict exists in that the law authorizes BB&B to maintain the return policy it has – no cash where there is no receipt – but, yet, under Defendant's analysis, those same store credits could then be escheated and operate as cash available to a consumer when the consumer was never entitled to cash.

Finally, CCP Sec. 1520.5 provides that "Section 1520 does not apply to gift certificates . . ." Here, Defendant has not persuasively argued why the MRCs should not qualify as gift certificates. They bear the same characteristics as a more traditional gift certificate that is labeled as a "gift certificate" or a card that reads "gift card." Although not perhaps obtained for purposes of gifting to another, the law recognizes gift certificates in circumstances other than purchase as a gift. See Civ. Code Sec. 1749.5(d)(1) recognizing that gift certificates under the law would include those that are distributed by the issuer to a consumer pursuant to an awards, loyalty or promotional program. The Court therefore further finds that the UPL does not apply to BB&B's store credits because they are in the form of a gift certificate.

Based on the above findings, the Court grants the motion as to the first two issues for adjudication and finds that under CCP Sec. 1540 and/or 1561(b), Plaintiff is entitled to judgment against Defendant John Chiang in his official capacity as Controller of the State of California in the amount of \$1,834,477.62.

The Court declines to find against John Chiang individually. First, it is not clear to the Court why Mr. Chiang should be individually liable in this case. Second, to the extent 42 U.S.C. Sec. 1983 has any application to the facts of this case, this issue was not raised by the Plaintiff in its moving papers.

The request for prejudgment interest is denied. See CCP Secs. 1540(c) and 1561(b).

Plaintiff sought six other issues for adjudication. However, because the Court believes judgment is appropriate for Plaintiff on its causes of action for a refund pursuant to CCP Secs. 1540 and/or 1561, the Court declines to reach the other alternative issues for adjudication.

In ruling on this motion the Court took judicial notice as requested with the exception that the Court declines to take judicial notice of the Michigan Court of Claims case cited in the reply because the request is (1) irrelevant to this case; and (2) untimely (should have been offered in support of the moving papers).

On February 26, 2016, the Court received Plaintiff's application to file exhibits under seal. Specifically, Plaintiff seeks to seal Exs. A and B attached to the Declaration of Cassandra Hooks in support of the reply and also Exs. 14 and 15 to the Declaration of Aaron D. Jones in support of Defendant's opposition.

The Court has reviewed the application and concludes sealing is appropriate under CRC 2.550(d). Specifically, that because the documents concern confidential and proprietary business information: (1) there exists an overriding interest that overcomes the right of public access to the record; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest.

In ruling on this motion the Court overruled Plaintiff's evidentiary objection.

Defendant's evidentiary objections No. 1 [as to only the assertion "BB&B has no legal obligation"] and 5 [as to only "A chart summarizing the amounts . . . reported in those years"] are sustained. The remaining objections are overruled.

The Court did not consider any evidence that was submitted with the reply that have been submitted with the moving papers.

Plaintiff dismisses the remaining causes of action.

The Summary Judgment / Summary Adjudication (Civil) set for 9/9/16 at 8:30 am is vacated.

The Trial Readiness Conference (Civil) set for 9/23/16 at 10:00 am is vacated.

The Civil Jury Trial set for 10/7/16 at 9:45 am is vacated.

Parties waive notice.

Joan M. Lewis

Judge Joan M. Lewis