

NJ Court Broadly Interprets Consumer Contract Protection Statute

by Christine M. Vanek on August 12, 2013

Discount restaurant coupons purchased online qualify as contracts under the state's consumer protection statute, according to the Supreme Court of New Jersey. The panel was asked to weigh in by the Third Circuit Court of Appeals, which is considering the dismissal of a class-action lawsuit against Restaurant.com.

The Facts of the Case

The specific question before the Supreme Court of New Jersey was whether Restaurant.com's certificates fall under the New Jersey's Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA).

The TCCWNA makes it unlawful to "offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign ... which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law" The TCCWNA further provides that any person who violates the provisions of the statute shall be liable to an aggrieved consumer for a civil penalty not less than \$100, actual damages, or both at the election of the consumer, in addition to reasonable attorneys' fees and court costs.

In Shelton v. Restaurant.com, the plaintiffs alleged that Restaurant.com's certificates violate the New Jersey Gift Certificate Statute (GCS), the New Jersey Consumer Fraud Act (CFA), and the TCCWNA because they contain a provision specifying an expiration period less than twenty-four months from the date of issue or sale of the certificate. The certificate terms and condition specifically contained the following language: 1) the certificate "[e]xpires one (1) year from date of issue, except in California and where otherwise provided by law[.]" and 2) the certificate is "[v]oid to the extent prohibited by law."

A district court judge dismissed the suit on several grounds, including that plaintiffs were not "consumers" as defined in the TCCWNA because the certificates purchased by them were not property. The plaintiffs appealed.

The Court's Decision

In its advisory opinion to the Third Circuit, the state Supreme Court concluded that TCCWNA covers the sale of tangible and intangible property. It further held that the plaintiffs are "consumers" within the scope of the TCCWNA because the certificates

acquired by them through the Restaurant.com website are “property . . . primarily for personal, family, or household purposes.”

"Plaintiffs and other purchasers paid money to Restaurant.com, which in turn issued a certificate for use at a participating restaurant. Upon presentation, the purchaser receives goods, namely food and drinks, at a discounted price," Judge Mary Cuff explained.

The New Jersey Supreme Court further concluded that because the TCCWNA is a remedial statute, it is entitled to a broad interpretation to facilitate its stated purpose. As highlighted by the court, “The Legislature enacted the TCCWNA to permit consumers to know the full terms and conditions of the offer made to them by a seller or of the consumer contract into which they decide to enter.”

The Impact on New Jersey Businesses

Prior to this case, very few consumer class-action lawsuits have included violations of the TCCWNA. However, in the wake of the court’s broad interpretation of the statute, businesses should be aware of the potential for liability.

If you have any questions about this case or would like to discuss the legal issues involved, please contact me, Christine Vanek, or the Scarinci Hollenbeck attorney with whom you work.