

Should Coupons be Considered “Property” Under New Jersey Consumer Contract Law?

by Robert Levy on April 20, 2012

The New Jersey Supreme Court is considering an interesting legal issue at the request of the Third U.S. Circuit Court of Appeals—whether discount restaurant gift certificates qualify as “property” under the state’s consumer contract law. Given the growing popularity of websites that offer discounted coupons and gift certificates for goods and services, the court’s decision could have a significant impact on New Jersey businesses.

The case, *Shelton v. Restaurant.com*, involves discounted restaurant coupons that purport to expire within one year, less than the two years required under the New Jersey Gift Card Act. In June 2010, U.S. District Judge Joel Pisano dismissed the case, finding the New Jersey Truth-in-Consumer Contract, Warranty, and Notice Act (TCCWNA) did not apply because the plaintiffs are not consumers under the law and the coupons are not consumer contracts.

“[T]he plain language of the statute limits ‘consumer’ to one who buys services or property primarily for personal purposes, not one who purchases a contingent right to services from a third party,” wrote Pisano. On appeal, the Third Circuit has asked for guidance on the law.

Under the TCCWNA, “No seller, lessor, creditor, lender or bailee shall in the course of his business 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 after the effective date of this act 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 at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed.” The statute defines a consumer as “any individual who buys, leases, borrows, or bails any money, property or service which is primarily for personal, family or household purposes.”

In arguments before the New Jersey Supreme Court, the two sides offered their reasoning why coupons should or should not be considered “property.” The plaintiffs argued that even if the coupons are considered intangible property, they should still be covered by the TCCWNA. They highlighted that there is no specific carve out in the statute for intangible property, as there is for real property and commercial leases.

Meanwhile, Restaurant.com argued that the plaintiffs have merely purchased an opportunity to get a discount and, therefore, there is no cause of action under the TCCWNA. Attorneys for the company further argued that no court has found intangible property such as a coupon to be covered by similar consumer protection laws.

Given the novelty of this issue, our New Jersey business attorneys will be awaiting the New Jersey Supreme Court's opinion. In the meantime, if you have questions about whether your consumer contracts could be subject to TCCWNA or the Consumer Fraud Act, please contact us at 201.397.1776.