

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL
MINUTE ORDER

OCT 08 2008
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Date: 10/03/2008

Time: 10:00:00 AM

Dept: C-71

Judicial Officer Presiding: Judge Ronald S. Prager
Clerk: Kathleen Sandoval, Clara Banks

Bailiff/Court Attendant:
ERM:

Case Init. Date: 06/18/2008

Case No: 37-2008-00086061-CU-BT-CTL Case Title: Pineda vs. Williams-Sonoma Stores Inc

Case Category: Civil - Unlimited

Case Type: Business Tort

Event Type: Demurrer / Motion to Strike
Moving Party: Williams-Sonoma Stores Inc
Causal Document & Date Filed: Motion to Strike, 07/23/2008

Appearances:

The Court, having taken the above-entitled matter under submission on 10/02/2008 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

RULING AFTER ORAL ARGUMENT: The Court rules on defendant Williams-Sonoma Stores, Inc.'s ("Defendant") demurrer as follows:

After taking the matter under submission, the Court affirms its tentative ruling.

Defendant's Request for Judicial Notice. Defendant Williams-Sonoma Stores, Inc. ("Defendant") asks the Court to take judicial notice of the Legislative History of Civil Code section 1747.08 and a print out of the white pages online search for plaintiff Jessica Pineda ("Plaintiff"). (Defendant's Request for Judicial Notice ("RJN"), Exhs. 1 and 2.) The request for judicial notice of the legislative history is granted. The request for judicial notice of the print out of the white pages online search is denied, as it is not the type of matter upon which judicial notice is granted.

Plaintiff's Request for Judicial Notice. Plaintiff asks the Court to take judicial notice of six superior court orders in other cases (Plaintiff's Request for Judicial Notice ("PRJN"). Exhs. 1-6) and print outs of internet web pages (Id. at Exhs. 7-8). The request for judicial notice of Exhibits 1-5, 7-8 is denied, as these items are not the type of matter upon which judicial notice is granted. The request for judicial notice of Exhibit 6 is granted.

The demurrer to the first cause of action for violation of the Song-Beverly Credit Card Act of 1971 ("Act") is sustained without leave to amend.

The Act provides that no corporation request, or require the provision of personal identification information as a condition to accepting the credit card as payment in full or in part for goods or services. (Civ. Code §1747.08(a)(1) and (2).) Personal identification information is "information concerning the cardholder, other than information set forth on the credit card, and including, but not limited to, the cardholder's address and telephone number." (Civ. Code §1747.08(b).)

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Courts engage in a three-step analysis for statutory construction: (1) examine the language of the statute itself; (2) review the statute's legislative history, and (3) "apply reason, practicality, and common sense to the language at hand" so as "to avoid an absurd result." (Californians Against Waste v. Dept. of Conservation (2002) 104 Cal.App.4th 317, 321.)

Language of the Statute. A zip code does not fall within the Act's definition, as it not unique to the cardholder or his household. Plaintiff's interpretation of the statute would broaden it to include information that is not personal to the individual but would lead a company such as defendant to obtain information that would fall under the statute. To do so, the Court would have to read language into the statute that does not exist. Furthermore, neither the statute nor the legislative history of the statute refers to zip codes. Finally, the court in Kelly v. Methodist Hospital of Southern California (2000) 22 Cal.4th 1108, 1121, stated that "when a statute contains a list or catalogue of items, a court should determine the meaning of each by reference to the others." Here, as pointed out by Defendant, the common denominator of an address and phone number is that each is unique to a particular cardholder. Thus, it follows that the inclusion of these terms make clear that personal identification information was not meant to include any information about the cardholder.

Legislative History. In Florez v. Linen 'N Things, Inc. (2003) 108 Cal.App.4th 447, 452, the court stated that the statute was enacted in "response to two principal privacy concerns. "[F]irst, that with increased use of computer technology, very specific and personal information about a consumer's spending habits was being made available to anyone willing to pay for it; and second, that acts of harassment and violence were being committed by store clerks who obtained customers' phone numbers and addresses." As to the first concern, Plaintiff set forth no facts in its complaint to show that a zip code, in and of itself, falls under the definition of personal identification information set forth in Civil Code section 1747.08 subd. (b) and did not assert that contention at oral argument. Instead, it argued that obtaining a zip code along with the credit cardholder's name has lead to the discovery of personal identification information in this case. As noted above, the statute does not refer to this type of scenario. As to the second concern, Plaintiff set forth no facts to show that acts of harassment and violence have occurred in this case.

Practical Application. An absurd result would be reached if zip codes applied to the Act because it would broaden the statute to include information that is not specific to an individual, like an area code, city, or state. Moreover, such an interpretation of the Act would prohibit retailers' common practice of requesting zip codes to protect consumers against the unauthorized and fraudulent use of credit cards.

The demurrer to the second cause of action for violation of Business and Professions Code section 17200 is sustained without leave to amend, as Plaintiff conceded that the demurrer was proper as to this claim.

The demurrer to the third cause of action for invasion of privacy is sustained without leave to amend for the reasons stated below.

The elements for a constitutional right to privacy are: The elements are: (1) a legally protected interest, (2) a reasonable expectation of privacy, and (3) a serious invasion of the privacy interest. (Hill v. Nat. Collegiate Athletic Assn. (1994) 7 Cal.4th 1, 35-37 (hereafter "Hill").)

As to the first element, "legally recognized privacy interests are generally of two classes: (1) interests in precluding the dissemination or misuse of sensitive and confidential information ("informational privacy"); and (2) interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference ("autonomy privacy"). (Hill, supra, 7 Cal.4th at p. 35.) The allegations in the Complaint indicate that this case is only concerned with informational privacy. The California Supreme Court stated that "[a] particular class of information is private when well-established social norms recognize the need to maximize individual control over its dissemination and use to prevent unjustified embarrassment or indignity." (Ibid.) Here, Plaintiff failed to show how marketing to her has caused unjustified embarrassment or indignity.

As to the second element, Plaintiff has failed to show how she could have a reasonable expectation of privacy in a zip code or home address. Furthermore, she pled no facts to show that she took steps to keep this information private.

As to the third element, "[a]ctionable invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right." (Hill, supra, 7 Cal.4th at p. 37.) Requesting a zip code is not an "egregious breach" of social norms.

Based on the foregoing, the motion to strike is moot.

IT IS SO ORDERED.

SUPERIOR COURT OF CALIFOR' A, COUNTY OF SAN DIEGO

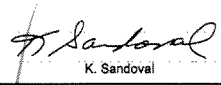
Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Pineda vs. Williams-Sonoma Stores Inc

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2008-00086061-CU-BT-CTL

I certify that I am not a party to this cause. I certify that a true copy of the attached was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 10/06/2008.

Clerk of the Court, by:  _____, Deputy

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