

To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

FILED AND ENTERED
ON *6/29* 2009
WESTCHESTER
COUNTY CLERK

**SUPREME COURT OF THE STATE OF NEW YORK
COMMERCIAL DIVISION, WESTCHESTER COUNTY**

Present: **HON. KENNETH W. RUDOLPH**
Justice.

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CHRISTOPHER R. LONNER, individually and
on behalf of all others similarly
situated,

Plaintiff,

Index No. 2246/04

-against-

SIMON PROPERTY GROUP, INC.,

DECISION AFTER HEARING

Defendant,

-----X
ALIZA GOLDMAN, individually and
on behalf of all others similarly situated,

Plaintiff,

-against-

SIMON PROPERTY GROUP, INC.,

Defendant.

-----X

On May 29, 2009 this Court conducted a Geiger Hearing on relevant issues of class certification. In this consolidated action, plaintiffs Christopher Lonner ("Lonner") and Aliza Goldman ("Goldman") made an offer of proof as to the material facts prerequisite to certification of a class action pursuant to CPLR §901 et seq.

Defendant, Simon Property Group, Inc. (“Simon”) appeared and made an offer of proof in opposition.

The plaintiffs have established that the defendant sold gift cards to its customers at mall sites located in the State of New York during the period of March 1, 2003 through April 25, 2005 (“the contested period”). The gift cards were sold in denominations of \$20.00 to \$500.00. This action, on behalf of the cardholders, challenges the validity of the imposition of gift card dormancy and administration fees. The Appellate Division in Lonner v. Simon Property Group (57 AD2d 100, 101) affirming the prior decision of this Court held that

... “the imposition of dormancy and administrative fees decreasing the redeemable value of a gift card constitutes a sufficient predicate for causes of action to recover damages for breach of contract and deceptive business practices in violation of General Business Law §349. ...”

The following constitutes the decision and order of this Court on class certification.

It is abundantly clear from the offer of proof that plaintiffs have established the prerequisites to a class action certification pursuant to CPLR 901(a) et seq.

1. Joinder of all members of the class is impracticable if not impossible.
2. There are questions of law or fact common to the class which predominate over any questions affecting only individual members;

3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties will fairly and adequately protect the interests of the class; and
5. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The amended complaint, (Lonner, supra at 110)

... “alleges, inter alia, that the type size used by the defendant is impermissibly small, that the defendant failed to clearly and conspicuously disclose the existence of the dormancy fees and the circumstance under which they are imposed, and that the plaintiff was injured by this conduct. These allegations were sufficient to state a cause of action under General Business Law §349.” ...

Whether Simon’s conduct was deceptive or misleading is a question of fact.

The nexus of this claim common to all members of the class is the imposition of dormancy and administration fees against the value of the gift card after the sixth month of acquisition in violation of General Business Law §349. Thousands of Simon gift cards were sold to numerous patrons during the contested period.

An administrative fee of \$2.50 per month was deducted from the balance of the card value commencing with the seventh month from the month of card purchase.

Preliminary discovery has disclosed that more than \$1,000,000. in administrative fees have been charged during the contested period.

Class Action is superior to separate adjudication of this controversy particularly in view of the de minimis value of the administrative fee charged to the individual card holder.

The Court is satisfied (a) that the representative parties will fairly and adequately protect the interests of the class and (b) that counsel for the separate plaintiffs are qualified and experienced litigators fully capable of representing the best interests of the class in this action. Further, the Court has carefully considered each enumerated subdivision of CPLR §902 in reaching its conclusion.

Upon the foregoing, it is

ORDERED, pursuant to Article 9 of the CPLR this action for the contested period in the State of New York is certified as a class action on behalf of the class described herein, and it is further

ORDERED, that Lonner and Goldman are certified as class representatives, and it is further

ORDERED, that the firms of Sanford Wittels & Heisler, LLP and Trief & Olk be and the same are hereby appointed as counsel for the class, and it is further

ORDERED, that counsel for the respective parties shall appear before the Commercial Division of this Court for further proceedings to be determined on July 20, 2009 at 9:30 A.M.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
June 25, 2009

ENTER,



HON. KENNETH W. RUDOLPH
Justice of the Supreme Court

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