

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
RS LEGACY CORPORATION, <i>et al.</i> , ¹)	Case No. 15-10197 (BLS)
)	
Debtors.)	(Jointly Administered)
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THE STATE OF TEXAS,)	
)	
Plaintiff,)	
)	
v.)	Adv. Pro. No. 15-50870 (BLS)
)	
RS LEGACY CORPORATION F/K/A)	
RADIOSHACK CORPORATION; RS)	
LEGACY CUSTOMER SERVICE LLC F/K/A)	
RADIOSHACK CUSTOMER SERVICE LLC;)	
ATLANTIC RETAIL VENTURES, INC.;)	
IGNITION L.P.; ITC SERVICES, INC.;)	
MERCHANDISING SUPPORT SERVICES,)	
INC.; RS LEGACY GLOBAL SOURCING)	
CORPORATION; RS LEGACY GLOBAL)	
SOURCING LIMITED PARTNERSHIP; RS)	
LEGACY GLOBAL SOURCING, INC.; RS IG)	
HOLDINGS INCORPORATED; RSignite,)	
LLC; SCK, INC.; RS LEGACY FINANCE)	
CORPORATION; RS LEGACY HOLDINGS,)	
INC.; RS LEGACY INTERNATIONAL)	
CORPORATION; TE ELECTRONICS LP;)	
TRADE AND SAVE LLC; AND TRS)	
QUALITY, INC.,)	
)	
Defendants.)	

¹ The Debtors are the following eighteen entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): RS Legacy Corporation (f/k/a RadioShack Corporation) (7710); Atlantic Retail Ventures, Inc. (6816); Ignition L.P. (3231); ITC Services, Inc. (1930); Merchandising Support Services, Inc. (4887); RS Legacy Customer Service LLC (f/k/a RadioShack Customer Service LLC) (8866); RS Legacy Global Sourcing Corporation (f/k/a RadioShack Global Sourcing Corporation) (0233); RS Legacy Global Sourcing Limited Partnership (f/k/a RadioShack Global Sourcing Limited Partnership) (8723); RS Legacy Global Sourcing, Inc. (f/k/a RadioShack Global Sourcing, Inc. (3960); RS Ig Holdings Incorporated (8924); RSignite, LLC (0543); SCK, Inc. (9220); RS Legacy Finance Corporation (f/k/a Tandy Finance Corporation) (5470); RS Legacy Holdings, Inc. (f/k/a Tandy Holdings, Inc.) (1789); RS Legacy International Corporation (f/k/a Tandy International Corporation) (9940); TE Electronics LP (9965); Trade and Save LLC (3850); and TRS Quality, Inc. (5417). The address of each of the Debtors is 300 RadioShack Circle, Fort Worth, Texas 76102.

THE STATE OF TEXAS’S FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF

COMES NOW the State of Texas (“Texas”), by and through the Texas Attorney General’s Office, and submits this State of Texas’s First Amended Complaint for Declaratory Relief (the “Complaint”).² Texas is amending its complaint out of an abundance of caution to name all Debtors as Defendants because of the original Defendants’ response to Texas’s discovery requests which indicated that multiple entities have issued gift cards but the original Defendants did not specify which entities. This First Amended Complaint seeks: (1) a declaration that proofs of claim for unredeemed Purchased Gift Cards and Promotional Consideration Gift Cards are entitled to priority status pursuant to 11 U.S.C. § 507(a)(7); (2) a declaration that Texas has standing under Federal Rule of Bankruptcy Procedure 2018 and/or the *parens patriae* doctrine to file a proof of claim for the balance of unredeemed gift cards on behalf of Consumers³ residing in Texas; (3) a declaration that funds should be turned over to the appropriate state for unclaimed property; (4) a declaration that if the Defendants’ books and records are inadequate to determine which category a gift card properly falls into, then all gift cards held by Consumers are entitled to priority status under Section 507(a)(7); and (5) a declaration that Texas has standing under the Texas Deceptive Trade Practices-Consumer Protection Act (TEX. BUS. & COMM. CODE ANN. § 17.41 et seq. (West 2015) (the “DTPA”) to file a proof of claim on behalf of Texas Consumers who purchased gift

² This amended complaint is timely filed without court approval in accordance with Federal Rule of Civil Procedure 15, made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7015, and which provides in pertinent part:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

FED. R. CIV. PRO. 15 (2012).

³ “Consumers” refers to persons, wherever located, who purchased gift cards from the Defendants’ prepetition.

cards from the Defendants from January 1, 2015 through February 5, 2015. In support of its Complaint, Texas respectfully states as follows:

I. INTRODUCTION

1. The Defendants were primarily engaged in the electronics retail business and, as part of the normal course of their business, sold gift cards. As evidenced by the attached affidavits, RadioShack's policy and practice provided in relevant part that these gift cards did not expire. Both prepetition and postpetition, via telephone and via their website, Defendants represented to consumers that the gift cards do not expire. *See* Exhibits B and C. Further, at the time that Defendants filed for relief under Chapter 11, these cards on their face disclosed no expiration date. *See* Exhibit A.

2. Approximately 2.9 million consumers currently hold \$46 million worth of unredeemed gift cards.

3. Now that the gift cards have expired, the only recourse for Consumers is to file a proof of claim in this bankruptcy case. However, the Defendants have not made any efforts to provide those Consumers with notice of the filing or any other deadlines.⁴

4. Texas asserts that the funds of Consumers should not be distributed to other creditors, and further that claims for unredeemed Purchased Gift Cards and Promotional Consideration Gift Cards are entitled to priority status under Section 507(a)(7). Texas contends that it has standing to file a proof of claim on behalf of its residents for such funds pursuant to Federal Rule of Bankruptcy Procedure 2018(b) and/or the *parens patriae* doctrine. Texas also seeks from this Court a declaration that, to the extent there are gift card funds remaining after all

⁴ As of the date of filing of this Complaint, no claims bar date has been set for holders of "Gift Card Claims". Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof, D.I. 2214. The foregoing referenced order defines "Gift Card Claims" as "... claims related to prepetition gift cards."

Section 507(a)(7) claims based on unredeemed gift cards are paid, such funds should be turned over to the appropriate state for unclaimed property in accordance with applicable United States Supreme Court precedent. Texas also seeks a declaration that if the Defendants' books and records are inadequate to determine which category a gift card properly falls into, then all gift cards held by Consumers are entitled to priority status under Section 507(a)(7). Finally, Texas seeks a declaration that it has standing under the DTPA to file a proof of claim on behalf of Texas Consumers who purchased gift cards from the Defendants from January 1, 2015 through February 5, 2015.

II. JURISDICTION & VENUE

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1334, and 2201 and the standing order of reference in the United States District Court for Delaware (*available at http://www.ded.uscourts.gov/sites/default/files/general-orders/AmendedTitle11Order_2-29-12_0.pdf* (last visited June 1, 2015)).

6. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

7. Venue of this proceeding is proper in this District pursuant to 28 U.S.C. § 1409.

III. FACTUAL BACKGROUND

8. On February 5, 2015, the Defendants filed for relief under Chapter 11 of the Bankruptcy Code.

9. This Court directed that the separate filings of each Defendant were to be jointly administered and procedurally consolidated. (D.I. 98.)

10. The gift cards issued by the Defendants do not list an expiration date on their face. *See* Exhibit A. Further, the Defendants have represented prepetition and postpetition, via telephone and via their website, that gift cards do not expire. *See* Exhibits A through C.

11. Pursuant to the Motion for an Order Authorizing the Debtors to (i) Maintain Certain Customer Programs and (ii) Honor or Pay Related Prepetition Obligations to Their Customers (D.I. 7) (“Customer Programs Order”) and the Order granting same (D.I. 109), Saturday, March 7, 2015 was established as the expiration date for outstanding gift cards. This conflicted with ¶19 of the Order of this Court (I) Authorizing the Debtors to Assume the Consulting Agreement; (II) Authorizing and Approving the Conduct of Store Closing or Similar Themed Sales, with such Sales to be Free and Clear of all Liens, Claims and Encumbrances, (III) Authorizing Customary Bonuses to Employees of Closing Business Locations, and (IV) Granting Related Relief, which set the gift card expiration date at Tuesday, March 31, 2015. (D.I. 455.) The Order granting the Customer Programs Motion was amended on March 10, 2015 and set the final date for gift cards at March 31, 2015. (D.I. 894.)

12. On April 22, 2015, Texas sent counsel for the Defendants a letter asking for certain information regarding gift cards that were not redeemed by the gift card redemption deadline. A copy is attached hereto as Exhibit D.

13. In that letter, Texas sought, in part, a state-by-state breakdown of the quantity and total dollar amounts of unredeemed gift cards. Texas also inquired as to whether the Defendants have the ability to identify the buyers of remaining unredeemed gift cards. Texas further asked whether the Defendants had sent formal notice to the holders of unredeemed gift cards, had initiated a claims mechanism, or intended to send any notice of the bankruptcy to holders of unredeemed gift cards.

14. Texas later sent formal discovery in this action requesting the same information.

15. The Defendants have indicated that they have not collected sufficient information to be able to provide a state-by-state breakdown of the quantity and total dollar amounts of unredeemed gift cards.

16. Approximately \$46 million worth of gift cards, held by approximately 2.9 million consumers, were not redeemed by the deadline.

17. Further, the Defendants have not provided notice, actual or constructive, to the holders of unredeemed gift cards, whether those holders are known or unknown.⁵

18. The Defendants have informed Texas that they do not know who the holders of unredeemed gift cards are. However, Texas respectfully contends that such an assertion must be viewed with some skepticism in light of the fact that the Defendants maintain extensive data regarding their customers' purchases. The Defendants likely know the names, mailing addresses, and email addresses of at least some of the purchasers if not the holders.

19. Regardless, whether the Consumers who are currently holding unredeemed gift cards are known or unknown creditors, the Defendants have not taken any steps to provide them with actual or constructive notice.⁶

IV. RELIEF REQUESTED

Count I: Declaratory Relief that Proofs of Claim for Unredeemed Purchased Gift Cards and Promotional Consideration Gift Cards Are Entitled to Priority Status Pursuant to 11 U.S.C. § 507(a)(7)

⁵ The typical remedy for failing to provide notice to creditors – that a debtor's obligation to the creditor will not be discharged by the confirmation of a plan – does not help creditors in a case such as this, where the Defendants have proposed a liquidating chapter 11 plan. Because there will be no solvent entity once the plan has been consummated, creditors who were not provided notice of the bankruptcy will be left without a remedy.

⁶ Due process requires that creditors, whether known or unknown, be provided notice of all relevant deadlines before their claim can be discharged. *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995); *In re S.N.A. Nut Co.*, 198 B.R. 541, 543 (Bankr. N.D. Ill. 1996); *see also In re Longardner and Associates, Inc.*, 855 F.2d 455, 465 (7th Cir.1988). Known creditors must be provided with actual notice while unknown creditors may be provided with constructive notice. *Chemetron*, 72 F.3d at 345-46.

20. The preceding paragraphs are incorporated herein for all purposes as if set forth in full.

21. Of the gift cards the Defendants have sold since 2000, \$46 million remains unredeemed.

22. On information and belief, the gift cards issued by the Defendants fall into one of several categories:

- a. Gift cards purchased by Consumers (“Purchased Gift Cards”);
- b. Gift cards obtained by consumers as promotion for consideration by way of example but not limitation, buy \$200 worth of Radio Shack merchandise and get a \$50 gift card (“Promotional Consideration Gift Cards”);
- c. Gift cards purchased by businesses (“Non-Consumer Gift Cards”);
- d. Gift cards handed out as a promotion for no consideration (“Promotional No-consideration Gift Cards”); or
- e. Gift cards issued as a merchandise return (“Merchandise Return Gift Cards”).

23. Texas seeks a declaration that Purchased Gift Cards and Promotional Consideration Gift Cards are entitled to priority under 11 USC § 507(a)(7).

24. Pursuant to *In re W W Warehouse, Inc.*, 313 B.R. 588 (Bankr. D. Del. 2004) and 11 U.S.C. § 507(a)(7), the Purchased Gift Cards and Promotional Consideration Gift Cards should be determined to have priority status up to \$2,775 each.

25. Section 507(a)(7) provides:

Seventh, allowed unsecured claims of individuals, to the extent of \$2,775 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for

the personal, family, or household use of such individuals, that were not delivered or provided.

11 U.S.C. § 507(a)(7) (West 2015).

26. The Purchased Gift Cards and Promotional Consideration Gift Cards Consumers were presumably purchased with the expectation that the Defendants would apply some or all of the face value of the gift card toward a later, ultimate purchase.

27. WHEREFORE, Texas requests that this Court issue a declaratory judgment that proofs of claim filed in this case for Purchased Gift Cards or Promotional Consideration Gift Cards are entitled to priority status under Section 507(a)(7) for up to \$2,775 per gift card.

Count II: Declaratory Relief that Texas Has Standing to File A Proof of Claim for the Balance of Unredeemed Gift Cards on Behalf of its Residents

28. The preceding paragraphs are incorporated herein for all purposes as if set forth in full.

29. Texas has standing under Federal Rule of Bankruptcy Procedure 2018(b) and/or the *parens patriae* doctrine to file a proof of claim for the balance of unredeemed gift cards on behalf of its residents.

Federal Rule of Bankruptcy Procedure 2018(b)

30. Applicable case law precedent establishes that Federal Rule of Bankruptcy Procedure 2018(b) provides state attorneys general with the right to intervene on behalf of consumer creditors in cases such as this one. *See, e.g., In re U.S. Fidelis, Inc.*, 481 B.R. 503 (Bankr. E.D. Mo. 2012); *see also In re SCBA Liquidation, Inc.*, 489 B.R. 666, 687 (Bankr. W.D. Mich. 2013).

31. Rule 2018(b) provides:

(b) Intervention by Attorney General of a State

In a chapter 7, 11, 12, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.

FED. R. BANKR. P. 2018(b) (2012).

32. In the case at bar, the creditors the State of Texas is seeking to protect are undoubtedly “consumer creditors” within the meaning of Rule 2018(b).

33. Further, by filing of a proof of claim, Texas would not be pressing claims on its own behalf. Rather, the claims it would be pressing would be on behalf of its residents.

Parens Patriae

34. Texas asserts that under the *parens patriae* doctrine, the facts of this case warrant a finding that it has standing to press claims on behalf its residents.

35. The United States Supreme Court has explained that to have standing under the doctrine of *parens patriae*, the state asserting the doctrine must meet the following elements:

- (1) the state must have a quasi-sovereign interest, apart from the interests of particular private parties;
- (2) there must be an injury to a substantial segment of its population;
- and
- (3) the individuals could not obtain complete relief through a private suit.

Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez, 458 U.S. 592 (1982); *People by Abrams v. 11 Cornwell Co.*, 695 F.2d 34 (2d Cir.1982), modified on other grounds, 718 F.2d 22 (2d Cir.1983) (en banc).

36. Further:

The State must express a ‘quasi-sovereign’ interest, such as its interest in the health and well-being-both physical and economic-of its residents in general. Although more must be alleged than injury to an identifiable group of individual residents, the indirect effects of the injury must be considered as well in determining whether the State has alleged injury to a sufficiently substantial segment of its population.

Snapp, 458 U.S. at 593; *see also Allegheny Gen. Hosp. v. Philip Morris, Inc.*, 228 F.3d 429, 437 (3d Cir. 2000).

37. In the case at bar, Texas contends that: a) it has a quasi-sovereign interest; b) that without granting Texas standing to file a proof of claim on behalf of its residents, its residents will suffer an imminent injury; and c) that Consumers will not be able to obtain meaningful relief on their own because Consumers are at a unique disadvantage in the Chapter 11 context as discussed in *In re Grand Union Co.*, 204 B.R. 864, 873 (Bankr. D. Del. 1997).

38. Texas believes that these considerations satisfy the Supreme Court's analysis as outlined in *Snapp*. *See also Broselow v. Fisher*, 319 F.3d 605 (3d Cir. 2003); *see also In re SCBA Liquidation, Inc.*, 489 B.R. 666, 687 (Bankr. W.D. Mich. 2013).

Count III: Declaratory Relief Seeking Determination that Funds Should be Turned Over to the Appropriate State for Unclaimed Property

39. The preceding paragraphs are incorporated herein for all purposes as if set forth in full.

40. Texas asserts that, to the extent there are gift card funds remaining after all Section 507(a)(7) claims based on unredeemed gift cards are paid, such funds should be turned over to the appropriate state for unclaimed property in accordance with *Delaware v. New York*, 507 U.S. 490 (1993). As explained by the United States Supreme Court in *Delaware v. New York*, the state in which the creditor is last known to have resided should receive unclaimed property. 507 U.S. at 498. Further, if a debtor's records disclose no address for a creditor or the creditor's last known address is in a state whose laws do not provide for escheat, then the state of incorporation should receive the funds. *Id.*

41. On information and belief, RadioShack Customer Service, LLC is the entity which issued the gift cards. Further, on information and belief, RadioShack Customer Service, LLC was incorporated in Virginia.

42. Therefore, as to Consumers who purchased gift cards, the Defendants should be required to review their records for a last known address and then the funds should be turned over to that state pursuant to that state's laws regarding unclaimed property. If the Defendants cannot locate an address or if the state in question does not have a statute covering unclaimed property, then the funds should be turned over to Virginia pursuant to Virginia's unclaimed property statute (VA. CODE §59.1-530).⁷

43. WHEREFORE, Texas seeks declaratory relief from this Court that, to the extent there are gift card funds remaining after all Section 507(a)(7) claims based on unredeemed gift cards are paid, such funds should be turned over to the appropriate state for unclaimed property in accordance with *Delaware v. New York*.

Count IV: Declaratory Relief Seeking Determination that Funds Should be Turned Over to the Appropriate State for Unclaimed Property

44. The preceding paragraphs are incorporated herein for all purposes as if set forth in full.

45. Texas seeks a declaration that if, as the Defendants have asserted thus far, the Defendants' books and records are inadequate to determine which category a gift card properly

⁷ On information and belief formed after communications with the Virginia Attorney General's Office, the gift cards became subject to reporting under Virginia's unclaimed property statute when the gift card redemption period ended. When the gift card redemption period ended, Virginia's exemption for gift cards (articulated in § 55-210.8:1 of the Code of Virginia) was no longer applicable because the cards were no longer "redeemable in merchandise, in services, or through future purchases". Further, on information and belief, Virginia's Division of Unclaimed Property intends to honor claims from gift card owners whose individual card balances were identified and reported to Virginia along with the owner's name and address or by the card number.

falls into, then all gift cards held by Consumers are entitled to priority status under Section 507(a)(7).

46. Texas does not believe that the burden is properly placed on gift card holders, who likely received the gift card as a “gift”, and who therefore have no way of knowing how the donor paid for the card. The Defendants have advised Texas that it has no way of cross-referencing a particular gift card to determine its origin. Texas asserts that because of the Defendants’ inability to even verify the information provided by consumers, consumers should not be required to have kept meticulous records and then to jump through hoops on a proof of claim form.

47. WHEREFORE, Texas seeks declaratory relief from this Court that if the Defendants’ books and records are inadequate to determine which category a gift card properly falls into, then all gift cards held by Consumers are entitled to priority status under Section 507(a)(7).

Count V: Declaratory Relief Seeking Determination that Texas Has Standing to Seek Restitution Under the DTPA to File a Proof of Claim on Behalf of Texas Consumers

48. The preceding paragraphs are incorporated herein for all purposes as if set forth in full.

49. The DTPA authorizes the Consumer Protection Division of the Texas Attorney General’s Office to take action in the public interest to enforce the Act including to obtain orders to compensate identifiable persons for actual damages or to restore moneys which may have been acquired by means of any unlawful act or practice and to seek civil penalties of up to \$20,000 per violation. Thus, Texas is entitled to seek restitution under the DTPA on behalf of Consumers who reside in Texas and who were issued gift cards during the time period of January 1, 2015 until February 5, 2015, which is the date on which the Defendants filed for relief under Chapter 11 of the Bankruptcy Code.

50. As discussed above, the Debtors filed for relief under Chapter 11 of the Bankruptcy Code on February 5, 2015. In the five week period between Jan 1, 2015 and Feb 5, 2015, the Defendants sold 16,700 gift cards which currently have a remaining unredeemed balance of \$360,625.16.⁸

51. Texas alleges that the Defendants knew throughout 2015 that the representation to consumers that its gift cards would never expire was false and misleading⁹ and yet the Defendants continued to offer to sell and sell such gift cards.

52. Defendants' conduct constituted false, misleading, or deceptive acts or practices in the conduct of trade or commerce in violation of the following subsections of the DTPA Section 17.46(a) which prohibits false, misleading or deceptive acts or practices in the conduct of any trade or commerce; and Section 17.46(b)(12) which prohibits representing that an agreement confers or involves rights, remedies or obligations which it does not have or involve, or which are prohibited by law.

53. WHEREFORE, Texas requests that this Court declare that it has the authority to file a proof of claim on behalf of its residents under the DTPA.

Respectfully Submitted,

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

⁸ The discovery obtained to date indicates that for 2014, the Defendants sold 176,104 gift cards with a remaining balance of \$2,896,666.06.

⁹ On information and belief, the Debtors established their relationship with bankruptcy counsel on September 16, 2014, at which time, the Debtors established a retainer with Jones Day with an advance retainer of \$1,000,000. As of the date of the order for relief, the retainer balance was \$705,680.78. Jones Day received \$7,742,211.47 (including the retainer) in pre-petition payments. *See* Application of The Debtors For an Order Authorizing Them to Retain and Employ Jones Day as Counsel, *Nunc Pro Tunc* As of The Petition Date at 12, In re RS Legacy Corp., No. 15-10197 (Bankr. Del. Feb. 14, 2015), ECF No. 271.

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