

F I L E D

Clerk of the Superior Court

JUN 13 2008

By: PATRICIA F. LEGLER, Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

LAMPS PLUS CREDIT TRANSACTION
CASES

Judicial Council Coordination Proceeding
No. 4532

~~PROPOSED~~ ORDER GRANTING
LAMPS PLUS'S PETITION FOR
COORDINATION

Judge: Hon. William R. Nevitt, Jr.
Dept.: 64
Date: June 13, 2008
Time: 2:30 p.m.

Included actions:

Finch v. Lamps Plus, Inc.

Superior Court of California, County of
San Diego, No. GIC 875385

Taylor v. Lamps Plus, Inc. et al.

Superior Court of California, County of
Los Angeles, No. BC 364 417

1 Petitioner Lamps Plus, Inc.'s ("Lamps Plus") petition for coordination came
2 on for hearing on June 13, 2008 at 2:30 p.m. in Department 64 of the above entitled court,
3 the Honorable William R. Nevitt, Jr. presiding. Edward D. Vogel, Esq. and John C.
4 Dineen, Esq. of Sheppard Mullin Richter & Hampton LLP appeared on behalf of Lamps
5 Plus. Norman B. Blumenthal, Esq. appeared on behalf of Plaintiff Vincent Finch
6 ("Finch"). Paul Alvarez, Esq. appeared on behalf of Plaintiff Cass Taylor ("Taylor").
7

8 The Court, having reviewed and considered Lamps Plus's Petition, all the
9 pleadings filed and documents lodged in support of, and in opposition to, Lamps Plus's
10 Petition, and having heard the arguments of counsel, finds that good cause exists for
11 granting the Petition and Lamps Plus's Petition is hereby **GRANTED**:
12

13 **IT IS HEREBY ORDERED** that after considering the factors set forth in
14 California Rule of Court ("CRC") 3.400, the Court determines that the two actions ^{to be} ~~are~~
15 coordinated, *The Finch* action (Superior Court of California, County of San Diego, Case
16 No. GIC875385) and the *Taylor* action (Superior Court of California, County of Los
17 Angeles, Case No. BC364417), are complex.
18

19 This Court is charged with determining whether the *Taylor* and *Finch* actions
20 are complex and is not bound by any previous determination of that issue. Although
21 "claims involving class actions" are provisionally designated complex by CRC 3.400(c)(6),
22 that is not determinative. The predominate factor here is CRC 3.400(b)(4): "whether the
23 action is likely to involve: . . . (4) coordination with related actions pending in one or
24 more courts in other counties." That factor was evidenced by orders of both the Los
25 Angeles County Superior Court in *Taylor* (see August 24, 2007 Order, page 2, attached as
26 Exhibit M to Declaration of Phillip A. Davis Filed In Support Of Petition For
27 Coordination, filed May 21, 2008) and the San Diego County Superior Court in *Finch* (see
28 September 14, 2007 Order, page 2).

1 **IT IS FURTHER ORDERED** that after considering the factors set forth in
2 Code of Civil Procedure ("CCP") section 404.1, coordination of the *Taylor* and *Finch*
3 actions is appropriate. Plaintiff Taylor argues that the *Finch* case is "dying on the vine"
4 because Plaintiff Finch alleges a "return" that does not violate Civil Code section 1747.08,
5 that Plaintiff Finch cannot substitute another plaintiff without raising statute of limitations
6 problems, and the potential sub-classes create attorney conflict. According to Plaintiff
7 Taylor, because *Finch* is "dying on the vine" as a 1747.08 class action, there is no
8 commonality of law or facts between *Finch* and the certified *Taylor* class action.
9 However, no court has yet decided whether Taylor's views of the *Finch* action are correct.
10 Some judge must do so. Both cases allege violation of the same statute by the same
11 defendant. It would be better to have the same judge decide what conduct violates that
12 statute, what remedies are available, and whether the classes should be or remain certified.
13 If *Finch* does survive as a class action, then common issues of fact and law will
14 predominate and the two cases will be before the same judge. (If *Finch* does not survive as
15 a class action, then it will presumably be dismissed.) This factor favors coordination.

16
17 As to convenience of parties, witnesses and counsel, if the cases are
18 coordinated, the parties and counsel in the case that is transferred will be inconvenienced.
19 Taylor argues that coordination in San Diego would inconvenience the bulk of the
20 witnesses because the stores that followed the alleged violative policy are in Los Angeles
21 County. However, this inconvenience of witnesses can be overcome by having the
22 coordinated proceedings occur in Los Angeles County Superior Court. If there are
23 common witnesses, it would be more convenient for them to testify in one coordinated
24 action, not two. This factor favors coordination.

25
26 As to the relative development, *Taylor*, though filed later, is further advanced
27 – there is a certified class and a trial date. As Taylor notes, the fact that a trial date is
28

1 imminent (two months away) may be grounds for summarily denying the petition to
2 coordinate. Taken alone, this factor favors not coordinating.

3
4 As to the efficient use of judicial resources and the courts' calendars, if there
5 are two class actions covering violation of the same statute by the same defendant, it would
6 be a waste of resources to have two actions, one of which may subsume the other. This
7 factor favors coordination.

8
9 As to duplicative and inconsistent rulings, orders, or judgments, this is a real
10 possibility if the two actions proceed in different courts. This factor favors coordination.

11
12 As to settlement, it is difficult to envision how Defendant can settle when
13 there is uncertainty as to the extent, if any, of the overlap between the classes (and/or sub-
14 classes) in the two actions. At this point, it cannot be said whether the *Taylor* class or the
15 *Finch* class will subsume the other. This factor favors coordination.

16
17 To the extent the *Taylor* action's more advanced state favors not
18 coordinating, it is overcome by the other factors.

19
20 **IT IS FURTHER ORDERED** that, pursuant to CCP section 404.3 and
21 CRC 3.530, this Court recommends that the Superior Court of California, County of Los
22 Angeles be the site of the coordinated proceedings.

23
24 It appears that the bulk of the witnesses are in the Los Angeles area. The
25 *Taylor* action is further advanced, and the Los Angeles County Superior Court has already
26 considered the issue of class certification. Also, if the *Finch* action "dies on the vine," as
27 predicted by Plaintiff's counsel in *Taylor*, the Los Angeles County Superior Court will still
28

1 be positioned to advance the *Taylor* action, if appropriate, independently of the *Finch*
2 action.

3
4 **IT IS FURTHER ORDERED** that, pursuant to CCP section 404.2, after
5 considering the factors set forth in CCP section 404.1, the Court selects the Second District
6 Court of Appeal as the reviewing court having appellate jurisdiction of the coordinated
7 actions.

8
9 If the site of the coordinated proceedings is the Los Angeles County Superior
10 Court, the ends of justice will be promoted best by having the appellate division that
11 normally receives appeals from the Los Angeles County Superior Court be the reviewing
12 court. There is no reason to select any other court as the reviewing court.

13
14 **IT IS FURTHER ORDERED** that pursuant to CRC 3.529, the following
15 proceedings are automatically **STAYED** in their entirety pending further order of the
16 coordination trial judge:

17
18 (1) *Taylor v. Lamps Plus, Inc. et al.*, Case No. BC 364417, pending in
19 Los Angeles Superior Court; and


20 (2) *Finch v. Lamps Plus, Inc.*, Case No. GIC 875385, pending in San
21 Diego Superior Court.

22
23 **IT IS FURTHER ORDERED** that Petitioner's counsel are directed to serve
24 notice of ruling in accordance with the provisions of Code of Civil Procedure section
25 1019.5(a) and CRC 3.529(a).

1 **IT IS FURTHER ORDERED** that in accordance with CCP section 404.3,
2 this Court will notify the Chairperson of the Judicial Council of the above ruling.
3

4 **IT IS SO ORDERED.**

5
6 DATED: 6/13/08


7 HON. WILLIAM R. NEVITT, JR.
8 JUDGE OF THE SUPERIOR COURT
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28