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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

STEPHEN YUN etc.,	
Plaintiff and Respondent,	G030016
v.	(Super. Ct. No. 01CC06030)
uBID, INC.,	O P I N I O N
Defendant and Appellant.	

Appeal from an order of the Superior Court of Orange County, William F. McDonald, Judge. Affirmed.

Latham & Watkins, Juli Wilson Marshall and Joanna Joyce Weiss for Defendant and Appellant.

Law Offices of Morse Mehrban and Morse Mehrban for Plaintiff and Respondent.

uBid, Inc., appeals from an order that denied its petition to compel arbitration of two causes of action brought by Steven Yun, which seek a public injunction against unfair competition and false advertising. uBid contends the disputes are arbitrable. We disagree, and affirm.

* * *

uBid is an internet auction site, and Yun is one of its customers. When Yun registered with the site, he accepted the terms of the company's user agreement. The agreement provides that all claims relating to uBid's services, or the agreement, shall be submitted to arbitration in Chicago, Illinois.

Yun purchased some merchandise from uBid, and he arranged for the company to ship it to him. uBid's stated shipping policy is that charges are based on the actual weight of the item to be shipped. It said the goods weighed six pounds, and Yun agreed to pay the corresponding fee. When the package arrived, it turned out to weigh but two pounds. Yun felt cheated and sued.

The complaint, brought by Yun individually and on behalf of the general public, sets out six causes of action. They are breach of contract, unjust enrichment, involuntary trust, money had and received, unfair competition and false advertising. Only the latter two are at issue here. The unfair competition claim alleges uBid's shipping policy is an unlawful and fraudulent business practice, likely to mislead the public, in violation of Business and Professions Code section 17200.[1] The false advertising claim alleges uBid intentionally induced members of the public to contract

[1] All further statutory references are to the Business and Professions Code unless otherwise stated. Section 17200 provides that "unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by . . . Section 17500 . . . ." An injunction against such conduct is authorized by section 17203.

for its shipping services by means of false and misleading advertising, a violation of section 17500.[2]

uBid moved to compel arbitration. The trial judge denied the motion as to the unfair competition and false advertising claims, and Yun then dismissed without prejudice all other causes of action.

The question before us is whether unfair competition and false advertising claims that seek an injunction on behalf of the general public are subject to contractual arbitration. The recent decision in *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303 is dispositive. *Cruz* hold that causes of action for unfair competition (§ 17200) and false advertising (§ 17500) that seek injunctive relief on behalf of the general public are not subject to contractual arbitration. (*Cruz v. PacifiCare Health Systems, Inc., supra,* 30 Cal.4th at pp. 315-316) On the other hand, claims under the same statutes that seek restitution and disgorgement of profits are arbitrable. (*Id*. at p. 320.) In a mixed case with both arbitrable and inarbitrable claims, it is appropriate for the trial judge to stay the inarbitrable claims to permit arbitration of the remaining causes of action. (*Ibid*.)

This case was argued while *Cruz* was pending, and we deferred submission to await the outcome. We then invited the parties to submit supplemental briefs addressing the impact of *Cruz* on present matter. Only uBid responded.

uBid argues that Yun seeks restitution and disgorgement, so these claims must be arbitrated, with the injunction claim stayed pending the arbitration. But the argument consists solely of the statement that the prayer for relief seeks a permanent injunction, restitution and disgorgement. From this uBid asserts, without analysis or

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[2] Section 17500 makes unlawful a variety of conduct, including making or disseminating to the public any untrue or misleading statement with the intent "to dispose of real or personal property or to perform services . . . or to induce the public to enter into any obligation relating thereto . . . ." The statute covers statements made through various means, one of which is the internet.

explanation, that all are sought as remedies for the unfair competition and false advertising claims. We do not buy it.

The monetary remedies relate to the dismissed claims for monetary relief, not the causes of action before us. The monetary claims all allege some form of damage, for which the monetary remedies are appropriate. On the other hand, the unfair competition and false advertising causes of action allege only that uBid's conduct was unlawful, along with the traditional grounds for an injunction – the harm to Yun and the general public outweighs the utility of uBid's actions. Since restitution and disgorgement are not sought, there is nothing to arbitrate.

uBid next contends Yun's complaint does not seek a public injunction, so both causes of action are subject to the arbitration clause. Its argument goes like this: Neither cause of action as set out in the complaint seeks a particular remedy, and the request for a "permanent injunction" in the prayer for relief at the end of the complaint does not seek a public injunction. But that is a myopic reading. It is substance, not form, that counts. Nothing turns on where in the complaint a remedy is sought, nor on the absence of the word "public." Both the section 17200 and the section 17500 causes of action allege harm to the general public, and the prayer requests an injunction against the offending conduct. That is a public injunction as we understand it.

Finally, uBid argues the substantive claims are subject to arbitration, and only the injunction issue is for the trial court. In other words, its position is the merits of the claims must be sent to arbitration, with the request for an injunction stayed pending the arbitrators determination. The argument is based on *Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, but the case is distinguishable on this point. There, the complaint alleged the defendant's conduct gave rise to multiple causes of action, only one of which was the section 17200 claim for an injunction. The court sent all the substantive causes of action and all damage issues to arbitration, staying only the injunction for court consideration if the arbitrator found liability. Here,

however, the *only* causes of action are the sections 17200 and 17500 injunction claims. The problem of issues common to both the injunction and non-injunction claims is not present, and we see no reason to split the cause of action from the remedy in this case.

Since the order staying arbitration was correct, it is affirmed. Respondent is entitled to costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

O'LEARY, J.

ARONSON, J.