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STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals

DINE BRANDS GLOBAL, INC,

Plaintiff–Appellee,

v

RACHAEL EUBANKS, in her capacity as THE TREASURER FOR THE STATE OF MICHIGAN,

Defendant–Appellant.
_____/

Supreme Court No. 165391
Court of Appeals No. 360293
Oakland CC No. 2021–189420–CZ

THE WALT DISNEY COMPANY ,

Plaintiff–Appellee,

v

RACHAEL EUBANKS, in her capacity as THE TREASURER FOR THE STATE OF MICHIGAN,

Defendant–Appellant.
_____/

Supreme Court No. 165392
Court of Appeals No. 360291
Oakland CC No. 2021–189464–CZ

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or her state governmental action is invalid.

SUPPLEMENTAL REPLY BRIEF OF APPELLANT RACHAEL EUBANKS, STATE TREASURER

ORAL ARGUMENT REQUESTED

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Date: June 6, 2024

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INTRODUCTION

Unclaimed property laws concern the abandonment of property rights. Those property rights belong to individuals, third parties, that are neither Disney nor Dine Brands because Disney and Dine Brands are merely holders that do not have any rights to the properties. Their briefs overlook this context and miss the plot. As a result, their arguments advance an unconstitutional framework.

Disney and Dine Brands concede the Treasurer's argument that under their theory the only way to compel the turnover of abandoned properties required by statute would be to skip the examination and file a preemptive lawsuit to determine the abandonment of property rights. The Constitution's Due Process Clause requires notice to those individuals for such lawsuits. Yet, in such a case, only the holders, who are benefiting from their lucrative silence, would know who and where those individuals are. Disney's and Dine Brands' construction of the Uniform Unclaimed Property Act (UUPA) does not further due-process protections to the owners. Even after an examination, the Treasurer would not be in any better position to provide notice to the owners, as any notice provided by Treasury would be based on the holders' records. Thus, Disney's and Dine Brands' understanding of the Act would deny those individuals their respective due process rights and render the Act unconstitutional and unworkable. It also undermines the central framework of the Act, statutory abandonment, by requiring judicial proceedings to determine abandonment in the first instance.

As demonstrated by the briefing in this matter, the Treasurer's implementation of the UUPA is consistent with its sister States' implementation.

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The uniform Act's purpose is to avoid conflicts between States that may arise in trying to escheat the same abandoned property. If this Court rules in Disney's and Dine Brands' favor, these entities do not necessarily keep the money abandoned by Michigan citizens. There is no private escheat. Instead, Michigan will no longer have a seat at the table, and the other States will be free to fight for the properties in question. This is a conflict the uniform Act sought to avoid.

Rather than address the heart of the matter, Disney and Dine Brands present numerous arguments that fail to resolve the real issues in this case. Most apparent, they erroneously argue that their compliance with Michigan law is optional. This Court should reverse the Court of Appeals' published decision.

ARGUMENT

I. Disney and Dine Brands are not contesting that the properties belong to others.

In their briefing, Disney and Dines Brands assert that they dispute ownership of the properties. (Disney supp br, p 1, n 1; Dine Brands supp br, p 1, n 1.) However, this dispute was never a count raised in the complaint. Instead, this case is purely limited to a single question concerning the statute of limitations. Ownership by the former employees and customers is presumed for purposes of the analysis, as well as their abandonment of those interests. In the event this Court remands these cases and permits Disney and Dine Brands to amend their complaints to add new counts to dispute ownership of specific properties (such as a count addressing why they own their former employees' paychecks), the

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Constitution requires Disney and Dine Brands to name and notify those former employees and customers so that they can appear and defend themselves in litigation seeking to finally adjudicate their respective property rights. See *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 313 (1950).

II. The UUPA provides a process by statute for abandoned property, which includes due process for the presumed owners as is constitutionally required.

Disney's and Dine Brands' argument overlooks the reality and the history of the UUPA. As discussed throughout the Treasurer's briefing, the UUPA provides for statutory abandonment and administrative enforcement. MCL 567.221, *et seq.*, see also *Texaco Inc, v Short*, 452 US 516 (1982). Since its enactment, it has been a misdemeanor for a holder to willfully refuse to turn over abandoned property after the Treasurer demanded it in writing. MCL 567.255(4). That demand is made after the examination. MCL 567.251. While the Legislature has subsequently fleshed out the examination and administrative hearings component, MCL 567.251a, the law has always placed the burden on the holder to challenge the administrative determination because it is a misdemeanor to willfully ignore it. MCL 567.255(4). Hence, the law required compliance with the administrative acts and proceedings independent of lawsuits. Contrary to Disney's and Dine Brands' argument, this is not a "novel argument" but a statement of the law that has been in effect for many years. (Disney supp br, p 35, Dine Brands supp br, p 35.) And the subsequent amendments did not alter, but, instead, solidified this reality.

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Moreover, in the context of statutory abandonment, it makes sense to place the burden on the holder to initiate a court proceeding contesting the administrative decision, especially when it is asserting ownership. Holders possess but do not own abandoned property belonging to another. The Treasurer's decision is based on the holder's own records and, like this case, is not an estimate. MCL 567.251(5). The records indicate that the holder possesses someone else's property that is abandoned. Hence, the holder lacks any property rights to assert. Statutory abandonment does not provide the same level of finality as a judicial determination. But if and when a judicial determination is sought, then the entity disputing ownership and with whom it is disputing ownership should file the suit and notify the appropriate individuals. The holder knows which properties it is disputing. It knows who the owners are according to its own records, and it knows the owners' last known address. Moreover, it has also always been their duty to notify those owners prior to remittance of the abandoned properties to the State. MCL 567.238(5). If the holder wants to argue that it owns the property, the least it could do is to name as parties the person or persons its records show own it.

A. Disney and Dine Brands argue that they do not need to comply with the law.

Throughout Disney's and Dine Brands' briefs, they assert that they should be able to destroy records during an examination and that they do not need to comply with administrative decisions or written demands to turn over property even though it is a crime to willfully refuse. MCL 567.255(4); (Disney supp br, pp 29–32,

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35–36, Dine Brands supp br, pp 29–32, 35–36.) Instead, they argue that they only need to preserve records during a lawsuit or court order for the same. (*Id.*) Neither Disney nor Dine Brands cite authority granting them the right to pick and choose which laws Michigan can enforce against them. A holder's destruction of its own records does not bestow it with rights to another's property in its possession. Their arguments are meritless and would undermine the authority of the State. This Court should reject them.

III. Disney's and Dine Brands' arguments misses the point.

By raising numerous arguments that fail to engage the controlling questions, Disney and Dine Brands do not assist this Court in its review. Michigan interprets and implements its UUPA consistent with its sister States, and the States collectively view the statute of limitations as governing the scope of the audits (what years will be under review). In the end, Disney's, and Dine Brands' arguments fail to grapple meaningfully with this legal reality. They do not point to a single State that interprets and implements its laws consistent with the approach they advance and ask this Court to adopt. Their arguments should be rejected.

Disney and Dine Brands assert that they are "not aware of a single state that has defined the term 'action' or 'proceeding' in its unclaimed property law to include an 'examination.' " (Disney supp br, p 15, Dine Brands supp br, p 15.) This is a curious statement since each of the examinations here was multi-state, and neither examination involved a single State that initiated its portion with a court proceeding. That fact demonstrates that the other States in this proceeding

understand "action" or "proceeding" to include an "examination." Nor have Disney and Dine Brands referenced a single State that has since filed a lawsuit. In other words, Michigan conducted itself in a uniform approach with all other participating States. Given the context, Disney's and Dine Brands' assertion is contradicted by the circumstances present here.

Disney and Dine Brands attempt to minimize the novelty of the Court of Appeals' decision. (*Id.*) All 50 states participate in multi-state examinations. In this case, the Treasurer is unaware of any State that initiated a lawsuit to join the examination. Moreover, no party disputes that some states have the exact same language in their respective laws concerning the statute of limitations. Yet, the Michigan Court of Appeals is the first in the nation to rule that examinations are outside the statute of limitations. The decision treads a path no other court has taken.

Disney and Dine Brands further point to different States, as well as to the 2016 version of the uniform Act, which explicitly include examinations in the statute of limitations. (Disney supp br, pp 15–16, Dine Brands supp br, pp 15–16.) Yet, Disney and Dine Brands fail to consider that each State is its own sovereign with its own property law and escheatment procedure. In exercising that authority, some State legislatures, modeling after the uniform commission, revised their respective laws to clarify that the examination is included in their respective statute of limitations. But Michigan did not do so, and instead amended its Act to comprehensively address the examination and administrative hearing process. See

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MCL 567.251a. This ultimately supports the Treasurer's position, not Disney's and Dine Brands'. It demonstrates that the Legislature understood the examination to already be included in the phrase "action or proceeding" as used within the statute of limitations.

Disney and Dine Brands likewise misunderstand bankruptcy law and miss the Treasurer's point in referring to it. (Disney supp br, p 11, n 7, Dine Brands supp br, p 11, n 7.) The Bankruptcy Code generally stays the commencement or continuation "of a judicial, administrative, or other action or proceeding" against the debtor. 11 USC 362(a)(1). This clarifies a central point in this case. Namely, it is widely recognized that administrative actions or proceedings are a subset of actions or proceedings. The Code then explicitly exempts numerous collection acts or proceedings, such as tax audits from the stay. See 11 USC 362(b)(9)(a). This is an example of the Code's recognition that an audit is an action or proceeding requiring a specific exemption to exempt the tax audit from the stay.

Disney and Dine Brands likewise misapply a Delaware case in raising constitutional questions with the Treasurer's argument. (Disney supp br, p 31, n 31, Dine Brands supp br, p 31, n 31.) In that case, Delaware waited 22 years to audit a company while also employing estimation techniques, potentially exposing the holder to liability with multiple other States for the same properties. *Temple-Inland, Inc, v Cook*, 192 F Supp 3d 527, 550 (USDC Del, 2016). None of those facts are present in these cases because these cases involve coordinated multi-state audits, timely commenced, and the audit findings in these cases are based on

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Disney's and Dine Brands' own records—they do not involve any estimation or guessing. Importantly, *Temple-Inland* highlights why multi-state audits are preferrable to each state independently auditing and attempting to escheat abandoned properties.

Multi-state audits avoid the very real threat of exposing holders to liability to different States for the same property and avoid States fighting amongst themselves over the same property. If this Court were to affirm the Court of Appeals, thereby removing Michigan and its priority status from the picture, a different State very well might assert its own claim to the properties at issue. Disney's and Dine Brands' arguments do not survive scrutiny. This Court should grant the application and reverse the Court of Appeals.

CONCLUSION AND RELIEF REQUESTED

The State Treasurer asks that this Court grant the application for leave to appeal and reverse the Court of Appeals.

Respectfully submitted,

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Dated: June 6, 2024

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WORD COUNT STATEMENT

This document complies with the type-volume limitation of Michigan Court Rule 7.305(E) because, excluding the part of the document exempted, this **reply brief at the application stage** contains no more than 3,200 words. This document contains 2,017 words.

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