UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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FOR ONLINE PUBLICATION ONLY

IN RE VISA CHECK/MASTERMONEY ANTITRUST LITIGATION

MEMORANDUM AND ORDER
96-CV-5238 (JG)

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JOHN GLEESON, United States District Judge:

In this class action brought by various retailers ("the merchants") against Visa and MasterCard ("the defendants"), the merchants claim that the defendants are violating the antitrust laws by forcing them to accept the defendants' debit cards and by attempting (and conspiring) to monopolize the debit card services market. In In re Visa Check/MasterMoney Antitrust Litigation, 192 F.R.D. 68 (E.D.N.Y. 2000), aff'd , 280 F.3d 124 (2d Cir. 2001), cert. denied, 122 S. Ct. 2382 (2002), familiarity with which is assumed, I certified a class of roughly four million merchants.

The parties have moved for summary judgment, and MasterCard has moved for a severance. For the reasons stated briefly below, I grant the merchants' motion for summary judgment in part and deny it in part, and I deny both of the defendants' motions for summary judgment in their entirety. MasterCard's motion for a severance is denied as well.

DISCUSSION

A. The Standard for Summary Judgment

The Second Circuit has counseled district courts that "summary judgment serves a vital function in the area of antitrust law" "[b]y avoiding wasteful trials and preventing lengthy litigation that may have a chilling effect on pro-competitive market forces." Tops Mkts., Inc. v. Quality Mkts., Inc., 142 F.3d 90, 95 (2d Cir. 1998) (citations omitted). Yet plaintiffs are not required to overcome any "special burden" when "opposing summary judgment in an antitrust

case" and "can defeat the motion by coming forward with specific facts to show a genuine issue exists requiring a trial." Virgin Atl. Airways Ltd. v. British Airways PLC, 257 F.3d 256, 262 (2d Cir. 2001) (internal quotations and citations omitted). "Summary judgment is appropriate only where, examining the evidence in the light most favorable to the nonmoving party, the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Pepsico, Inc. v. Coca-Cola Co., 315 F.3d 101, 104 (2d Cir. 2002) (per curiam) (internal quotations and citations omitted). The moving party may discharge its burden by showing that there is an absence of evidence to support the non-moving party's case. Id. at 105. Faced with such evidence, the nonmoving party must then come forward with sufficient evidence to show that there is a genuine issue of material fact requiring trial. Id.

B. The Merchants' Antitrust Claims

The merchants bring a total of seven claims against the defendants under the Sherman Act. 15 U.S.C. §§ 1 & 2 . They first claim that, in violation of § 1 of the Sherman Act, Visa and MasterCard each use their respective power in the credit card services market to force the merchants to accept their debit cards. They also claim that the defendants act in concert to violate § 1 of the Sherman Act in this way. The merchants further claim that, in violation of § 2 of the Sherman Act, Visa independently and together with MasterCard is attempting to monopolize, and conspiring to monopolize, the debit card services market.

1. The Section One Claims

The merchants claim that Visa and MasterCard, acting independently and jointly in a conspiracy, employ illegal tying arrangements that leverage their power in the credit card services market to force the merchants to accept their debit cards. "A tying arrangement is 'an agreement by a party to sell one product but only on the condition that the buyer also purchase a

different (or tied) product.'" Yentsch v. Texaco, Inc., 630 F.2d 46, 56 (2d Cir. 1980) (quoting N. Pac. Ry. Co. v. United States, 356 U.S. 1, 5 (1958)). The merchants can establish the defendants' liability for such an arrangement by showing that it is illegal under either a per se or rule of reason analysis.

To show that such an arrangement is illegal under the per se test, the merchants must establish four elements: "(1) that the tying arrangement affects a substantial amount of interstate commerce; (2) the two products are distinct; (3) the defendant actually tied the sale of the two products; and (4) the seller has appreciable market power in the tying market." In re Visa Check, 280 F.3d at 133 n.5 (citing United States v. IBM Corp., 163 F.3d 737, 741 (2d Cir. 1998)). The merchants can also show that a tying arrangement is illegal under the rule of reason test by proving that "the challenged action had an adverse effect on competition as a whole in the relevant market and, if the defendant shows a pro-competitive redeeming virtue of the action, that the same pro-competitive effect could be achieved through an alternative means that is less restrictive of competition." In re Visa Check, 280 F.3d at 133 n.5 (citing Clorox Co. v. Sterling Winthorp, Inc., 117 F.3d 50, 56 (2d. Cir. 1997)).

There is no real dispute with respect to the first and third elements of the per se test. In 1999 alone, merchants processed over one hundred and fifty billion dollars in sales through the defendants' off-line debit cards. This figure is "not insubstantial." Fortner Enters., Inc. v. United States Steel Corp., 394 U.S. 495, 501 (1969). To the extent that the defendants contend that this element incorporates the need for a showing of "foreclosure" or "anticompetitive effect" in the tied product market, I disagree. As for the tie, Visa and MasterCard's Honor All Cards rules require merchants who accept Visa and MasterCard credit cards to also accept their off-line debit cards. Defendants do not claim otherwise. Thus, defendants indisputably tie the sale

of their debit card services to the sale of their credit card services.

I conclude that the second element of the per se test is satisfied as well. Whether two products are distinct for the purposes of a tying claim "turns not on the functional relation between them, but rather on the character of the demand for the two items." Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 2, 19 (1984); see also Eastern Kodak Co. v. Image Tech. Serv. Inc., 504 U.S. 451, 462-63 (1992). Overwhelming evidence establishes that merchant demand for credit card services is distinct from merchant demand for debit card services: those services are sold separately; many merchants would refuse to use off-line debit services if given the choice to do so; and the defendants themselves have repeatedly acknowledged in their business strategy and marketing activities the distinctive attributes of their off-line debit services compared to their credit card services.

Although they assert that factual questions exist on this issue, the defendants' main argument addresses the legal standard. Specifically, they assert that two products are not distinct unless the demand for them is such that it is efficient for a firm to provide them separately. Since plaintiffs cannot show that it would have been efficient for Visa and MasterCard to create a separate brand and a separate acceptance network for their off-line debit cards, defendants argue, summary judgment on this issue ought to be in their favor, not the merchants'. I disagree. The proper question is not whether it was more efficient for the defendants to offer debit card services and credit card services together, but whether the nature of the demand is such that those services could be offered separately. In this case, applying that principle, no rational juror could fail to conclude that the products are distinct. See United States v. Visa U.S.A., Inc., 163 F. Supp. 2d 322, 335-38 (S.D.N.Y. 2002) (rejecting after trial defendants' claim that general purpose credit card market includes all methods of payment, including debit cards, and noting defendants' own

statements and studies confirming distinctions between debit and credit card services). I therefore grant the merchants' motion for summary judgment on the first three elements of their per se tying claim.

As for the fourth element, I conclude that Visa possesses appreciable economic power in the tying product market. There is no genuine issue of material fact requiring trial with respect to the fact that the relevant market, at its broadest, is the provision of general purpose credit and charge card services. The evidence establishes conclusively that merchants have not switched to other payment devices despite significant increases in the interchange fees on the defendants' credit cards. (In this respect, the evidence suggests an even narrower product market, i.e. general purpose credit card services alone.) That *consumers* might switch to another form of payment in the event of a surcharge on their credit card transactions does not alter the fact that there is no cross-elasticity of demand at the merchant level between defendants' products and all other forms of payment. See United States v. E. I. DuPont de Nemours & Co., 351 U.S. 377, 400 (1956). Indeed, in a separate case, Visa itself adopted this market definition, excluding all forms of payment except credit and charge cards. See SCFC ILC, Inc. v. Visa U.S.A., Inc., 36 F.3d 958, 966 (10th Cir. 1994). Visa claims that its prior statements embracing this market definition have no evidentiary value in this case. I disagree.

In that relevant market, the merchants argue that I should consider the two defendants collectively for purposes of determining whether they "have either the degree or the kind of market power that enables [them] to force customers to purchase a second, unwanted product in order to obtain the tying product." Jefferson Parish, 466 U.S. at 17-18. Their argument presumes the existence of concerted activity by the defendants with regard to their debit card strategies. Although there is evidence of such concerted activity, there is also evidence that the

defendants competed with one another as well. I cannot conclude as a matter of law that a conspiracy -- or any other form of concerted activity that would justify treating the defendants as a single entity -- existed.

Viewing the defendants individually, Visa indisputably possesses sufficient market power "to force [merchants] to do something that [they] would not do in a competitive market." Id. at 13-14; see also id. at 26-29. Visa's share of the general purpose credit and charge card market has fluctuated from between 43 to 47 percent from 1991 to 1998, and its share of the credit card market alone is nearly 60 percent. See PX 679. This easily qualifies as "appreciable economic power" for purposes of the per se rule. Eastman Kodak, 504 U.S. at 464.

MasterCard's share of the credit and charge card services market, however, has fluctuated from between 26 to 28 percent over the same period, and its share of the credit card market alone has varied from between 33 to 36 percent. See PX 679. At this stage in the proceedings, I cannot conclude as a matter of law that MasterCard has "sufficient economic power" to warrant application of the per se rule. N. Pac. Ry., 356 U.S. at 5-7; see Jefferson Parish, 466 U.S. at 17-18, 28-29. I therefore grant the merchants' motion for summary judgment on this element as it pertains to Visa, but deny it as it pertains to MasterCard.

While the merchants succeed on the foregoing elements of their per se claim against Visa, the parties disagree over whether the per se rule is appropriate in this case. Per se analysis has generally fallen into disfavor in modern antitrust law, see, e.g., Bus. Elecs. Corp. v. Sharp Elecs. Corp., 485 U.S. 717 (1988); Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36 (1977), although the Supreme Court has counseled that "[i]t is far too late in the history of our antitrust jurisprudence to question the proposition that *certain* tying arrangements pose an unacceptable risk of stifling competition and therefore are unreasonable 'per se.'" Jefferson

Parish, 466 U.S. at 9 (emphasis added). Not all tying arrangements are subject to per se analysis. Id. at 11 ("It is clear . . . that every refusal to sell two products separately cannot be said to restrain competition."). Instead, for tying claims,

> per se condemnation – condemnation without inquiry into actual market conditions – is only appropriate if the existence of forcing is probable. Thus, application of the per se rule focuses on the probability of anticompetitive consequences. . . . [A]s a threshold matter, there must be a substantial potential for impact on competition in order to justify per se condemnation. . . . Once this threshold is surmounted, per se prohibition is appropriate if anticompetitive forcing is likely.

Id. at 15-16.

The plaintiffs have largely assumed away this threshold determination in favor of a strict application of the four elements of the per se rule address above. The defendants contend that per se analysis is inappropriate here because the merchants have failed to demonstrate that the Honor All Cards rules have "foreclosed competition on the merits" in the debit card services market. Id. at 21. Since the merchants are not precluded from accepting competing online debit cards, the defendants argue, the merchants have failed to show that the arrangement poses any threat to competition in the tied product market. In support of this argument, the defendants point to decisions of the Second Circuit that appear to engraft an "anticompetitive effect" element onto the test for illegal tying arrangements, see, e.g., Hack v. Yale College, 237 F.3d 81, 86 (2d Cir. 2000), and to the decisions of other courts of appeals that have rejected per se analysis of so-called "full-line forcing" arrangements, where suppliers require distributors to carry their full line of products without preventing those distributors from accepting competing ones. See, e.g., Smith Mach. Co., Inc. v. Hesston Corp., 878 F.2d 1290, 1294-98 (10th Cir. 1989).

I am not persuaded that Jefferson Parish's threshold for per se analysis looks exclusively toward the issue of actual foreclosure or anticompetitive effect in the tied product

market. It is true that Jefferson Parish makes clear that, in deciding the appropriateness of per se analysis, the inquiry "must focus on the market or markets in which the two products are sold, for that is where the anticompetitive forcing has its impact." 466 U.S. at 18. But the Court, citing extensively to precedent, noted two situations where, based on a defendant's power in the tying product market alone, anticompetitive forcing would be *probable* in the tied product market and thus per se analysis was justified. Id. at 16-18.[1] Given this background, per se analysis may be appropriate when a defendant with sufficient economic power in one product market uses that power to force downstream consumers to accept another product on the defendant's own economic terms and where this arrangement has a significant probability of anticompetitive effect on competition in the tied product market. The "line-forcing" cases cited by the defendants are inapposite here; they involve "typical line forcing situation[s]" between one distributor and one upstream supplier, in which the supplier lacked significant economic power in a distinct tying product market and the tying agreement lacked any price-control component. Smith Mach., 878 F.2d at 1297; see id. at 1296-98 (noting that the supplier's competitor, not the supplier, possessed

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[1] First, the Court noted that whenever a seller with monopoly power in the tying product market (by virtue of a patent) attempted to expand that power into another market, anticompetitive effect in the tied product market could be presumed. Id. at 16 (citing United States v. Loew's, Inc., 371 U.S. 38 (1962); United States v. Paramount Pictures, 334 U.S. 131 (1948); Int'l Salt Co. v. United States, 332 U.S. 392, 395-96 (1947); IBM v. United States, 298 U.S. 131 (1936)). Second, the Court noted that if a seller's "share of the market [in the tying product] is high" or if it "offers a unique product that competitors are not able to offer," a court could also conclude that "the likelihood that market power exists and is being used to restrain competition in a separate market is sufficient to make per se condemnation appropriate." Jefferson Parish, 466 U.S. at 18 (citing Fortner, 394 U.S. at 495; N. Pac. Ry., 356 U.S. at 1; Times-Picayune Publ'g Co. v. United States, 345 U.S. 594 (1953)). On this latter point, the Court explained in Northern Pacific Railway that tying agreements "are unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product." 356 U.S. at 6; see also Eastman Kodak, 504 U.S. at 464-80; Fortner, 394 U.S. at 512-13 (White, J., dissenting).

significant economic power in both the tying and tied product markets and thus "the likelihood that [the supplier's tying] policy causes *anticompetitive* forcing is virtually nil") (emphasis in original). Neither of those conditions is present here.

However, there are factors that counsel against invoking the per se rule at this stage in the case. First, there is a factual issue with regard to MasterCard's market power. Depending on the outcome of that issue, the merchants' tying claim against MasterCard may require them to prevail under the rule of reason test. See Jefferson Parish, 466 U.S. at 17 ("When, however, the seller does not have either the degree or the kind of market power that enables him to force customers to purchase a second, unwanted product in order to obtain the tying product, an antitrust violation can be established only by evidence of an unreasonable restraint on competition in the relevant market."). Thus, the actual market effects of MasterCard's Honor All Cards rule, and its pro-competitive justifications, will be tried in any event. Second, it is not clear to me whether the Second Circuit's per se standard in fact requires proof of a fifth element, i.e., foreclosure of competition or anticompetitive effect in the tied product market. Compare In re Visa Check, 280 F.3d at 133 n.5 (stating only four elements for per se tying claim), and IBM, 163 F.3d at 741 (noting only four elements for unlawful tying arrangement), with Hack, 237 F.3d at 86 (stating five elements, including "anticompetitive effects in the tied market," for tying claim), DeJesus v. Sears, Roebuck & Co. Inc., 87 F.3d 65, 70 (2d Cir. 1996) (same). Finally, there are several unique features of this case – the relationship between the merchants and the defendants, the relationship between the defendants themselves (and among their member banks), the nature of the tying arrangements, and the ultimate effects of these arrangements on consumers – that will benefit from further development at trial. See, e.g., United States v. Microsoft Corp., 253 F.3d 34, 90-95 (D.C. Cir. 2001).

In addition to their claims of substantive tying violations of § 1, the merchants claim that Visa and MasterCard acted in concert to impose those illegal tying arrangements on them. The defendants contend that the merchants have failed to present any "direct or circumstantial evidence that reasonably tends to prove that [they] had a conscious commitment to a common scheme designed to achieve an unlawful objective." Monsanto Co. v. Spray-Rite Serv. Corp., 465 U.S. 752, 764 (1984) (quotations and citations omitted). I disagree. There is evidence, direct and circumstantial, from which a jury could find a conspiracy. See Apex Oil Co. v. DiMauro, 822 F.2d 246, 252-60 (2d Cir. 1987).

For these reasons, the merchants' motion for summary judgment on their per se claims is denied. A trial will be held on, among other issues, those that lie at the heart of the merchants' § 1 claims: whether Visa and MasterCard's Honor All Cards rules harmed competition in the debit card services market, and whether the defendants acted together to produce that result.

2. The Section 2 Claims

The merchants contend that Visa, separately and together with MasterCard, is attempting to monopolize and conspiring to monopolize the debit card services market, in violation of § 2 of the Sherman Act. That section provides in relevant part that "[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations" has violated the law. 15 U.S.C. § 2. To prevail on an attempt to monopolize claim, the merchants must show: "(1) that the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power." Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447, 456 (1993). To win on a conspiracy to

monopolize claim, a plaintiff must show: "(1) proof of a concerted action deliberately entered into with the specific intent to achieve an unlawful monopoly, and (2) the commission of an overt act in furtherance of the conspiracy." Int'l Distrib. Ctrs., Inc. v. Walsh Trucking Co., Inc., 812 F.2d 786, 795 (2d Cir. 1987).

a. Standing

The defendants contend that the merchants lack standing to bring their § 2 claims. I disagree. The merchants are direct consumers of the defendants' debit cards services and are directly injured by their allegedly anticompetitive conduct. Accordingly, the merchants have standing for purposes of the antitrust laws. See Associated Gen. Contractors, Inc. v. California State Council of Carpenters, 459 U.S. 519, 536-45 (1983); Crimpers Promotions Inc. v. Home Box Office, Inc., 724 F.2d 290, 293-97 (2d Cir. 1983).

b. The Attempt to Monopolize Claim Against MasterCard

MasterCard contends that the attempt to monopolize claim against it should be dismissed because it alleges an illegal "conspiracy to attempt to monopolize," which is not recognized by the antitrust laws. See, e.g., Windy City Circulating Co. v. Charles Levy Circulating Co., 550 F. Supp. 960, 967 (N.D. Ill. 1982). I find that the evidence of common ownership, a lack of competition, and incidents of concerted activity by the two defendants could permit a jury to conclude that MasterCard, along with Visa, is attempting to monopolize the relevant market.

c. The Relevant Market

There is no genuine issue of material fact regarding the relevant product market -- the debit card services market. Contrary to the defendants' contention that the relevant market is all forms of payment, debit card services is a well-defined submarket characterized by an inelasticity of demand and universal recognition by the public, the parties, and the industry as a

whole. See Brown Shoe Co. v. United States, 370 U.S. 294, 324-26 (1962). No rational jury could conclude otherwise.

d. Predatory or Anticompetitive Conduct

The Second Circuit has yet to articulate a precise test for the "predatory or anticompetitive conduct" element of an attempt to monopolize claim. The Supreme Court has cautioned, however, that § 2 of the Sherman Act is not to be applied "against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself" and that "[i]t is sometimes difficult to distinguish robust competition from conduct with long-term anticompetitive effects." Spectrum Sports, 506 U.S. at 892. While the courts of appeals have struggled to articulate the difference between permissible and impermissible conduct under § 2, compare Microsoft, 253 F.3d at 58-59 (establishing alternating, four-part test for anticompetitive conduct under § 2), with Gen. Indus. Corp. v. Hartz Mtn. Corp., 810 F.2d 795, 804 (8th Cir. 1987) (stating simply that "[a]nticompetitive conduct is conduct without legitimate purpose that only makes sense because it eliminates competition"), many circuits have held that illegal conduct like an impermissible tying arrangement under § 1 "may also qualify as anticompetitive conduct for section 2 purposes." Multistate Legal Studies, Inc. v. Harcourt Brace Jovanovich Legal and Prof'l Publ'ns, Inc., 63 F.3d 1540, 1550 (10th Cir. 1995) (citing cases and treatise). Given the nature of their tying claims and the merchants' factually-supported allegations of predatory and anticompetitive conduct by both Visa and MasterCard, I conclude that the merchants have presented sufficient evidence on this element to proceed to trial.

e. Specific Intent to Monopolize

A defendant's specific intent to monopolize can be found from its own words or inferred from its predatory and anticompetitive conduct. See Tops Mkts., 142 F.3d at 101-102.

Viewed in the light most favorable to the merchants, the defendants' statements and conduct relating to online debit cards render their alleged specific intent to monopolize the debit card services market an issue of fact for a jury to resolve.

f. Dangerous Probability of Achieving Monopoly Power

In assessing the probability of achieving monopoly power in the relevant product market, courts are guided by characteristics such as the defendant's market share, any barriers to entry by competitors, the nature of competition in that market, and the overall development of the industry. See Kelco Disposal, Inc. v. Browning-Ferris Indus. of Vermont, Inc., 845 F.2d 404, 408-409 (2d Cir. 1988); see also Tops Mkts., 142 F.3d at 100-101. The merchants have come forward with sufficient evidence to create a genuine issue of material fact regarding this element. See Microsoft, 253 F.3d at 80 (noting that the "determination whether a dangerous probability of success exists is a particularly fact-intensive inquiry"). Visa's individual market share satisfies any "threshold showing," AD/SAT v. Associated Press, 181 F.3d 216, 226 (2d Cir. 1999) (quotation and citation omitted), and if Visa and MasterCard are proved to have acted in concert, this element could be satisfied as a matter of law. See Kelco, 845 F.2d at 409 (finding dangerous probability where defendant had 55% market share).

g. Conspiracy to Monopolize

The defendants assert that the merchants have failed to present any direct or circumstantial evidence of a conspiracy. Monsanto Co., 465 U.S. at 764. As I mentioned above, I disagree.

3. The Merchants' Damages Theory

The Supreme Court has repeatedly observed that damages in antitrust cases are "rarely susceptible of the kind of concrete, detailed proof of injury which is available in other

contexts." Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 123 (1969); see also J. Pruett Payne Co., Inc. v. Chrysler Motors Corp., 451 U.S. 557, 561-68 (1981) ("in order to recover damages [plaintiffs] must establish . . . some approximation of damages;" the "traditional rule excus[es] antitrust plaintiffs from an unduly rigorous standard of proving antitrust injury"). The defendants contend that the merchants' expert testimony fails to present a viable theory of damages. Many of the defendants' arguments on this subject have already been rejected at the class certification stage. See In re Visa Check, 280 F.3d at 138-40; In re Visa Check, 192 F.R.D at 81-87. In any event, I conclude that the merchants have presented a sufficiently compelling (and factually-supported) theory of damages to warrant a trial of the issue.

4. The Failure-to-Mitigate Defense

"An antitrust plaintiff has a duty to mitigate damages." Litton Sys., Inc. v. AT&T, 700 F.2d 785, 820 n.47 (2d Cir. 1980). Visa and MasterCard have both raised the merchants' "failure to mitigate" as an affirmative defense. The merchants contend that I should dismiss the defense as a matter of law as unreasonable, impracticable, and impermissible under the defendants' own rules. I find the argument to be without merit. There is ample evidence on both sides of the question whether the merchants could have mitigated their damages (by, for example, "steering" their customers to online debit transactions). The existence of that genuine issue of material fact precludes summary judgment on the defense.

C. MasterCard's Motion to Sever

MasterCard, with the support of Visa, seeks a separate trial of the claims against it. The motion is premised on an assertion that the jury in a trial including both defendants would be confused and unable to weigh the evidence separately as against each defendant. I see no reason why that would occur, or why a properly-instructed jury could not give both defendants a fair trial.

Accordingly, there is no basis for a severance. The alternative request for a pretrial hearing to determine the admissibility of statements offered pursuant to Fed. R. Evid. 801(d)(2)(E), see United States v. James, 590 F.2d 575 (5th Cir. 1979), is denied as well. The admissibility of any such evidence will be determined at trial.

CONCLUSION

The merchants' motion for summary judgment is granted in part and denied in part. The defendants' motions for summary judgment are denied in their entirety. MasterCard's motion for a severance is denied.

So Ordered.

JOHN GLEESON, U.S.D.J.

Dated: April 1, 2003
Brooklyn, New York