

Management Alert

California Supreme Court Enforces Proposition 64's Limitations on Who Can Sue Under California's Unfair Competition Statute

California's Unfair Competition Law (UCL), which has historically been a boon for plaintiffs lawyers bringing overtime and discrimination claims, was narrowed significantly on July 24, 2006. Of great import to all of those who were being sued when Prop 64¹ was enacted, the California Supreme Court issued two decisions regarding its effect on lawsuits pending when the voters cast their ballots on November 3, 2004. In *Californians for Disability Rights v. Mervyn's LLC*, (*CDR*), the Court held that Prop 64's limitation that UCL claims be brought only by people who have suffered actual injury (in the form of lost money or property) as a result of unfair competition - applied to cases pending at the time Prop 64 took effect even if the case was on appeal. However, in a companion case to *CDR*, *Branick v. Downey Savings and Loan Assoc.*, (*Branick*), the Court held that Prop 64 did not automatically bar Plaintiffs lawyers from saving their cases by amending the complaints to add new plaintiffs. The two decisions help clarify Prop 64's standing requirement and reinforced that Prop 64 raised the bar for plaintiffs seeking to file UCL claims.

CDR v. Mervyn's

The *CDR* plaintiff sued on behalf of the general public for alleged violations of unfair competition law. Specifically, plaintiff, a non-profit corporation, sued Mervyn's for unfair competition based on alleged violations of disability law related to pathways and fixtures in a department stores that allegedly did not permit adequate access for persons using mobility aids (e.g., wheelchairs, scooters, crutches and walkers). *CDR* did not claim to have suffered any harm as a result of the department store's conduct. The store prevailed in the trial court and while *CDR*'s appeal was pending, Prop 64 took effect. The store moved to dismiss the appeal, arguing that *CDR* no longer had standing to continue the litigation. The lower court denied that motion and the Supreme Court agreed to hear the issue.

The Court found that Prop 64 did not clearly address whether it would be applied to lawsuits pending at the time it took effect. It held that applying Prop 64 to pending cases is not a retroactive application because Prop 64 does not change the legal consequences of past conduct by

¹Codified at section 17204 of the California Business and Professions Code)

imposing new or different liabilities based on such conduct. Instead, the Court determined that Prop 64 essentially "withdraws the standing of persons who have not been harmed to represent those that have." Moreover, said the Court, while Prop 64 may operate to "defeat such persons' hope of recovering attorneys' fees," there is no right to such fees until a plaintiff has been successful, and ultimately, "the interest in suing on another's behalf is not a property right beyond statutory control." The Court stated that a contrary interpretation was implausible because it would deny the full effect of Prop 64, which voters used as their means to chose "their own legal representatives for cases brought ... on their behalf." Prop 64 therefore applies to all cases pending when it was enacted including those on appeal.

Standing alone, *CDR* was a significant victory for businesses seeking to limit their liability under California's unfair competition law for cases pending at the time Prop 64 took effect. However, as discussed below, the *Branick* decision may provide a lifeline to the unfair competition lawsuits that might have otherwise been eliminated by *CDR*.

Branick v. Downey Savings

Branick was procedurally very similar to *CDR*. Plaintiffs filed their UCL complaint on behalf of the general public but they had not transacted any business with defendant and had not otherwise lost any property or money as a result of dealing with defendant. While the case was pending on appeal, Prop 64 took effect and the court revoked the standing of plaintiffs that had not alleged actual injury caused by defendant and dismissed the action. The Supreme Court granted plaintiffs' petition for review and ordered the parties to brief, among other things, the issue of whether a plaintiff may "amend" his or her complaint to substitute in or add a party that satisfies the standing requirements of [Prop 64] ... and does such an amended complaint relate back to the initial complaint for statute of limitations purposes?"

Oddly, having asked the parties to brief the right to amend

issue, the Court declined to rule specifically on the issue. Instead it held that Prop 64 does not affect the ordinary rules governing amendment of complaints and that these rules would apply to *Branick* but must be applied by the trial court. In reaching this conclusion, the Court rejected defendant's argument that allowing amendment would defeat the policy purposes of Prop 64. The Court ruled instead that applying Prop 64 to existing cases fully achieves the policy objectives of the proposition and that existing legal standards prohibit frivolous actions. To bar a meritorious action prosecuted by a substituted plaintiff who "has suffered injury in fact and has lost money or property as a result of unfair competition or false advertising ..., serves none of the voters' [who voted for Prop 64] articulated objectives."

After cautioning that it was not issuing an advisory opinion, the Court then addressed certain of defendant's arguments against allowing plaintiffs to amend their complaint and rejected them all. The Court noted that it was not uncommon for courts to allow plaintiffs who have been determined to lack standing, or who have lost the right to sue, to substitute someone as plaintiff who has the necessary injury in fact. Moreover, the Court noted, employers were protected because the defendant cannot be required to answer a wholly different legal liability or obligation from that stated in the original complaint.

What These Cases Mean For Employers

CDR establishes that Prop 64 became effective as to all cases then pending on the date of enactment by the voters. That ruling assists employers as follows:

- It confirms that only people who have suffered actual injury in the form of lost money or property as a result of unfair competition can file unfair competition lawsuits. One court of appeals decision has also found that the actual injury limitation applies to those on whose behalf relief can be obtained. See *Pfizer v. Superior Court*. This should

reduce the number of claims by lawyers and activists who previously could sue on their own;

- This ruling along with the requirement that representative actions satisfy the requirements for class certification may limit the UCL claims to those actually injured by the alleged practice and who have enough in common to warrant group treatment;
- Additionally, *CDR* will help companies limit their liability under California's unfair competition law for cases pending at the time Prop 64 took effect on November 3, 2004.

However, given the holding in *Branick*:

- The Court has formally embraced the notion that lawyers and not clients are driving these cases by allowing trial courts to consider amendments adding a new plaintiff when the old one is found to lack standing;
- It remains to be seen whether California's trial courts will allow plaintiffs who have lost standing due to the operation of Prop 64 to amend their complaints to add new plaintiffs and what standards will apply;
- If such plaintiffs are allowed to amend, they must still show that their claims meet the legal test for whether an amended complaint relates back to the original complaint so as to avoid operation of the statute of limitations period.
- Finally, for those cases that are marginal or for which plaintiffs with standing may be difficult to locate, it is possible that plaintiffs' counsel may simply drop unfair competition claims filed before Prop 64 became effective but which are now pending.

If you have any questions about this ruling or any California Supreme Court ruling, please contact the Seyfarth Shaw attorney with whom you work or any California attorney on our website, www.seyfarth.com.

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