California Supreme Court Holds That Section 17200 Claims Must Comply With Class Action Requirements

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Arias v. Superior Court of San Joaquin (Angelo Dairy), __ Cal. 4th __ , 2009 WL 1838973 (June 29, 2009)

Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court (First Transit, Inc.), __ Cal. 4th __ , 2009 WL 1838972 (June 29, 2009)

In a pair of cases, the California Supreme Court restricted the use of California Business & Professions Code Section 17200 et seq. One case affirmed what many expected, that Proposition 64, a 2004 voter initiative, requires plaintiffs to follow strict class-action procedures when seeking to recover under California's unfair competition law (Bus. & Prof. Code § 17200 et seq.) which prohibits "any unlawful, unfair or fraudulent business act or practice . . . ."

Before 2004, any person could assert representative claims under the unfair competition law to obtain restitution or injunctive relief against unfair or unlawful business practices. Such claims we not required to be brought as a class action, and a plaintiff had standing to sue even without having personally suffered an injury. (See Former §§ 17203, 17204; Stop Youth Addiction, Inc. v. Lucky Stores, Inc., 17 Cal. 4th 553, 561 (1998)).

In 2004, however, the California electorate passed Proposition 64, amending the unfair competition law to provide that a private plaintiff may bring a representative action under this law only if the plaintiff has "suffered injury in fact and has lost money or property as a result of such unfair competition" and "complies with Section 382 of the Code of Civil Procedure . . . ." This statute provides that "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." The Court has previously interpreted Code of Civil Procedure section 382 as authorizing class actions. See Richmond v. Dart Industries, Inc., 29 Cal. 3d 462, 470 (1981).

In Arias v. Superior Court of San Joaquin (Angelo Dairy), __ Cal. 4th __ , 2009 WL 1838973 (June 29, 2009), the Court held that employees can pursue penalties for wage-and-hour violations under the Private Attorneys General Act, or ("PAGA"), without having to qualify their lawsuit as a class action.

Justice Joyce L. Kennard, writing for the majority, also analyzed the effect of Proposition 64. Plaintiff contended that because Proposition 64's amendment of the unfair competition law required compliance only with "[s]ection 382 of the Code of Civil Procedure" and because that statute makes no mention of the words "class action," his representative lawsuit brought under the unfair competition law need not comply with the requirements governing a class action. The Court rejected this assertion, explaining:

In light of this strong evidence of voter intent, we construe the statement in section 17203, as amended by Proposition 64, that a private party may pursue a representative action under the

unfair competition law only if the party "complies with Section 382 of the Code of Civil Procedure" to mean that such an action must meet the requirements for a class action. (See Fireside Bank v. Superior Court, supra, 40 Cal.4th at p. 1092, fn. 9.)

In a concurring opinion by Justice Werdegar, she disagreed with the majority's "nonliteral interpretation of Proposition 64 (Gen. Elec. (Nov. 2, 2004)), which forecloses a variety of representative actions the measure clearly permits. Unlike the majority, I do not believe we would frustrate the voters' intent by enforcing the measure according to its plain language."

Similarly, in Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court (First Transit, Inc.), __ Cal. 4th __ , 2009 WL 1838972 (June 29, 2009), the Court ruled that the requirement that a plaintiff be one "who has suffered injury in fact," combined with the PAGA requirement that a labor action be initiated by an "aggrieved employee," prevents a union from bring a UCL action based on associational standing.