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Kwikset: California Supreme Court Expands Plaintiffs' Standing To Sue Under The Unfair Competition Law

By James M. Burgess

In *Kwikset v. Superior Court* (Jan. 27, 2011) __ Cal.4th __, the California Supreme Court greatly expanded the standard for determining whether a plaintiff has standing to sue under the Unfair Competition Law ("UCL"), Business and Professions Code section 17200. In doing so, the Supreme Court disapproved several prior court of appeal decisions that had narrowed standing to only those plaintiffs who were entitled to restitution. (*Silvaco Data Systems v. Intel Corp.* (2010) 184 Cal.App.4th 210, 245; *Citizens of Humanity, LLC v. Costco Wholesale Corp.* (2009) 171 Cal.App.4th 1, 22; and *Buckland v. Threshold Enterprises, Ltd.*, (2007) 155 Cal.App.4th 798, 817.) The Supreme Court's opinion means that more lawsuits alleging UCL violations are likely to be filed and such lawsuits will be harder to dismiss at the pleading stage.

In *Kwikset*, the plaintiff accused Kwikset of improperly advertising locksets as "Made in USA" when, in fact, some parts were manufactured abroad. The plaintiff sued for violation of the UCL and False Advertising. At trial, the court concluded that the plaintiff was correct and issued an injunction ordering Kwikset to cease labeling its products as "Made in the USA" and to notify its retailers and distributors of the falsely labeled products so they could return them for a refund. However, the court concluded that the plaintiff was not entitled to restitution for equitable reasons. Only injunctive relief and restitution are available under the UCL. The parties appealed.

During the pendency of the appeal, on November 4, 2004, the voters passed Proposition 64. Proposition 64 limited a plaintiff's standing to sue under the UCL and False Advertising Law. Proposition 64 required that a plaintiff plead and prove that it suffered "injury in fact" and that it "lost money or property" as a result of the alleged unfair competition. Prior to Proposition 64 anyone could sue "on behalf of the general public" even if the plaintiff itself had not been harmed.

Proposition 64 was applied to pending cases. As a result, the court of appeal reversed the trial court's judgment in *Kwikset* because the plaintiff lacked standing under the new rules. The case was remanded to allow a new plaintiff to sue who could meet the new standing rules. The new plaintiff filed an amended complaint under the UCL seeking only injunctive relief and foregoing restitution.

Since Proposition 64 was passed, several courts of appeal interpreted "lost money or property" to require a loss entitling the plaintiff to "restitution". The courts reasoned that this made sense because restitution was the only form of monetary or economic relief available under the UCL. In fact, no contrary cases appeared in the courts of appeal and, this interpretation was followed by most practitioners and courts. Under these cases, some courts had ruled that UCL cases could not seek only injunctions but had to also qualify for restitution.

On remand, the trial court refused to sustain Kwikset's demurrer on lack of standing. Kwikset's writ to the court of appeal was granted. The court of appeal ruled that the plaintiff lacked standing to sue under the UCL because

he had not alleged a cognizable loss of money or property. The Supreme Court reversed the court of appeal.

The Supreme Court concluded that "Proposition 64 should be read in light of its apparent purposes, i.e., to eliminate standing for those who have not engaged in any business dealings with would-be defendants . . . while preserving for actual victims of deception and other acts of unfair competition the ability to sue and enjoin such practices." The Court held that "plaintiffs who can truthfully allege they were deceived by a product's label into spending money to purchase a product, and would not have purchased it otherwise, have "lost money or property" within the meaning of Proposition 64 and have standing to sue.

The Court interpreted "lost money or property" to mean that "plaintiff now must demonstrate some form of economic injury." This formulation is vastly broader than the previously understood interpretation limiting it to restitution. The court stated that "[t]here are innumerable ways in which economic injury from unfair competition may be shown. A plaintiff may (1) surrender in a transaction more, or acquire in a transaction less, than he or she otherwise would have, (2) have a present or future property interest diminished, (3) be deprived of money or property to which he or she has a cognizable claim, or (4) be required to enter into a transaction, costing money or property, that otherwise would have been unnecessary." According to the Supreme Court, the "quantum of lost money or property necessary to show standing is only so much as would suffice to establish injury in fact."

The court distinguished between restitution and the economic injury needed to satisfy the standing requirement. "A restitution order against a defendant . . . requires both that the money or property have been lost by a plaintiff. . . and that it have been acquired by a defendant. [citation] But the economic injury that an unfair business practice may occasion may often involve a loss by the plaintiff without any corresponding gain by the defendant such as, for example, a diminishment in the value of some asset a plaintiff possesses." The court also ruled that a plaintiff may seek an injunction only and may pursue a UCL action even if it is not entitled to restitution, as long as it can show the requisite economic injury.

Defendants will now face more lawsuits that will be harder to dismiss easily and for less cost. However, there are a few important things to consider. First, the Supreme Court did not alter the monetary remedy that is available, which is limited to restitution. Monetary relief is not available for all economic injury and damages are still not available. Second, the Supreme Court did not change the requirement that the plaintiff must show injury "as a result of" the unfair competition, which requires a showing of actual reliance in many cases. This not only makes it harder for the plaintiff to establish liability but also presents challenges for class certification.