California Supreme Court Holds Treble Damages Not Permitted under the Unfair Competition Law - Restitution is the Sole Monetary Remedy

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Earlier today, the California Supreme Court issued its unanimous opinion concluding that Civil Code section 3345, which allows treble damages to be awarded to seniors when a statute provides for a fine or penalty, is not permitted under the Unfair Competition Law, Business & Professions Code section 17200 (the "UCL").

The decision, *Clark v. Superior Court (National Western Life Insurance Company)*, confirms that the only monetary remedy available under the UCL is restitution, and that a claim for treble damages is not restitution, nor is the nature of restitution comparable to a penalty.

The plaintiffs in the case filed a class action lawsuit against National Western Life Insurance Company arising out of the sale of deferred annuities issued to California residents who were senior citizens. The trial court denied certification as to all claims except one under the UCL. In addition to seeking restitution in the UCL claim, the plaintiffs sought treble damages on their restitution claim under section 3345.

As reported in our earlier blog post last September when the Supreme Court accepted review, in the more than two decades since the enactment of section 3345, no case had ever permitted any sort of damages, be they compensatory, treble or punitive, under the UCL. The trial court dismissed the claim for treble damages, but the Court of Appeal reversed, finding that the plain meaning of section 3345 applied to a private action seeking restitution under the UCL.

In reversing the decision issued by the Court of Appeal, the Supreme Court focused on two issues. First, the Court considered whether a claim under section 3345 only applies to treble amounts awarded under the Consumer Legal Remedies Act ("CLRA"), since the first subsection of section 3345 makes reference to and cites language from the CLRA. The Court concluded that a claim under section 3345 is not so limited, observing that, if trebling was to apply only to a claim under the CLRA, there would have been no need for a separate statute (section 3345); the Legislature could have just amended the CLRA. Nevertheless, the Supreme Court did not articulate any other statutes that might be able to be trebled under section 3345.

After this, the Supreme Court specifically addressed whether section 3345 trebling was permitted under the UCL. The Court focused on the salient language of section 3345 where it requires the underlying statute to impose a "fine, or a civil penalty . . . or any other remedy the purpose of which is to punish or deter," and found that it cannot refer to the UCL. First, citing to a number of its past decisions, the Court reiterated that the only monetary remedy under the UCL is restitution.

Next, the Court relied on the well-established canon of statutory construction that when there is a general term followed by various specific terms, as is the case in the language of section 3345 just quoted, the general term must be limited to the nature of the specific terms. In other words, "any other remedy" must refer to a remedy in the nature of a penalty, and thus section 3345 trebling is only allowed when a statute permits a remedy that is in the nature of a penalty. The

UCL, however, is not such a statute. Confirming that restitution only allows the restoration of something taken, or a return to the status quo, restitution under the UCL is not a penalty, which is a recovery without reference to the actual damage sustained. In sum, the Supreme Court concluded:

Because restitution in a private action brought under the unfair competition law is measured by what was taken from the plaintiff, that remedy is not a penalty and hence does not fall within the trebled recovery provision of Civil Code section 3345, subdivision (b).

Kent Keller and Larry Golub of Barger & Wolen represent National Western Life Insurance Company in the *Clark* case.