

California Supreme Court's Prop 64 Ruling Breathes New Life Into UCL Class Actions

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On May 18, 2009, in In re Tobacco II Cases, No. S147345 (“Tobacco”), the California Supreme Court answered two questions raised by Proposition 64, a November 2004 voter initiative that amended California’s Unfair Competition Law (“UCL”): Who in a UCL class action must comply with Proposition 64’s standing requirements – just the representative plaintiff, or all putative class members – in order for the class action to proceed, and what is the causation requirement for the purpose of establishing standing under the UCL?

In a 4-3 decision¹, the Court answered the first question by holding that only the representative plaintiff – and not the so-called “absent” class members – must meet Proposition 64’s “injury in fact” requirement. As to the second question, the Court held that a representative plaintiff who alleges misrepresentations under the UCL’s “fraudulent prong” must demonstrate “actual reliance” in accordance with “well-settled principles regarding the element of reliance in ordinary fraud actions.” However, the Court held that such a representative plaintiff need not show individualized reliance on specific misrepresentations where the alleged misrepresentations were part of an extensive and long-term advertising campaign.

Background

California’s UCL is exceptionally broad, prohibiting any “business act or practice” that is “unlawful, unfair or fraudulent.” Before November 2004, the UCL permitted uninjured plaintiffs acting as “private attorneys general” to sue on behalf of the general public. Many such cases were viewed as frivolous “shakedown” lawsuits in which no person had been injured but through which plaintiffs’ attorneys could extract substantial fees. In November 2004, California voters passed Proposition 64, an initiative that put a stop to UCL lawsuits brought on behalf of the general public by persons who had suffered no injury. Proposition

¹ Justice Moreno wrote the majority opinion with which Justices Kennard, Werdegard and Moore (sitting by designation) concurred. Justice Baxter wrote the dissenting opinion, which was joined by Justices Chin and Corrigan.

64 amended the UCL to require that a private plaintiff have “suffered injury in fact” and “lost money or property as a result of such unfair competition.” See Cal. Civ. Proc. Code §§ 17204, 17535. Proposition 64 also required that representative claims by private plaintiffs comply with California’s general class action statute, Code of Civil Procedure section 382. *Id.*

Thus, Proposition 64 raised the bar for private UCL plaintiffs by mandating that they meet specific standing requirements and by permitting claims on behalf of others only if brought as a class action. In the face of these limits, plaintiffs asserted that Proposition 64’s standing requirements applied only to the representative plaintiff and not to all putative class members. Another hotly contested topic was whether Proposition 64, by requiring “lost money or property as a result of . . . unfair competition,” (emphasis added) added a reliance element to misrepresentation claims brought under the UCL, and if so, whether every member of the putative class must have actually relied on a defendant’s alleged misrepresentation.

The Case

In *Tobacco*, plaintiffs alleged that tobacco companies violated the UCL by making false and misleading statements over several decades denying or disputing the health hazards and addictiveness of cigarette smoking. The trial court initially certified a class, but after the passage of Proposition 64, decertified the class. The trial court reasoned that after Proposition 64, standing under the UCL required individual plaintiffs as well as each of the absent class members to show that they suffered “injury in fact” and that they lost money or property as a result of the alleged unfair competition. The trial court found that the phrase “as a result of” imposed a requirement of individual reliance which, in turn, meant that individual issues would predominate over common issues and the case was unsuitable for class treatment. The California Court of Appeals, Fourth District, affirmed the trial court’s decertification of the class, and plaintiffs appealed.

The Supreme Court’s Ruling

In *Tobacco*, the Supreme Court first addressed the issue of who must comply with the new standing requirements of Proposition 64, which require that a private plaintiff has “suffered injury in fact” and “lost money or property as a result of [the] unfair competition.” The Court first examined federal case law, which the Court stated was “clear that the question of standing in class actions involves the standing of the class representative and not the class members.” The Court then examined the language of Proposition 64 and concluded that nothing in the text of Proposition 64, nor the accompanying ballot materials, “makes any reference to altering class action procedures to impose upon all absent class members the standing requirement imposed upon the class representative.” The Court noted that mandating that putative class members meet UCL standing requirements is not necessary to curb the abuse of the UCL that led to the passage of Proposition 64 – frivolous lawsuits where no plaintiff had been injured. On the other hand, the Court noted that imposing such a mandate would “effectively eliminate the class action lawsuit as a vehicle for the vindication of [consumer] rights” protected by the UCL. Finally, the Court explained that the primary relief offered under the UCL – injunctive relief – could be awarded “in futuro” and does not require a present injury. The Court further noted the UCL language that authorizes restitution for any money or property which “may have been acquired” by the unfair competition is “patently less stringent” than the UCL’s standing requirement that a loss of money or property be “as a result of” the unfair competition. Thus, the Court concluded that only a named plaintiff and not absent class members must meet the UCL’s standing requirements.

The Court then addressed whether Proposition 64’s requirement that a plaintiff have “lost money or property as a result of” (emphasis added) the alleged unfair competition requires proof of actual reliance

for a claim under the UCL's "fraudulent prong." The Court observed that before Proposition 64, relief under the UCL was available without individualized proof of deception, reliance and injury. However, the Court also noted that "there is no doubt that reliance is the causal mechanism of fraud," that "the overriding purpose of Proposition 64 was to impose limits on private enforcement actions under the UCL." The Court thus concluded that the "as a result of" language in Proposition 64 imposes an actual reliance requirement on private plaintiffs prosecuting an action under the UCL's "fraudulent prong." The Court went on to analyze the degree to which a plaintiff must plead such reliance. Ultimately, the Court held that although a "plaintiff must allege that the defendant's misrepresentations were an immediate cause of the injury-causing conduct, the plaintiff is not required to allege that those misrepresentations were the sole or even the decisive cause . . ." Rather, "[i]t is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [the plaintiff's] decision." Furthermore, where "a plaintiff alleges exposure to a long-term advertising campaign, the plaintiff is not required to plead with an unrealistic degree of specificity that the plaintiff relied on particular advertisements or statements." Notably, however, the Court cautioned that "a presumption, or at least an inference, of reliance arises [only] where[] there is a showing that a misrepresentation was material," and underscored that "materiality is generally a question of fact" except where the "fact misrepresented" is "so obviously unimportant" that "a reasonable man" would not be influenced by it.

Ultimately, the Court reversed the trial court's order decertifying the class and remanded the case for the trial court to determine whether the plaintiffs could establish standing under the Court's holding.

The Dissent

The dissent "respectfully disagree[d]" that the absent class members "in a private UCL class action need not meet the injury-in-fact and causation requirements of Proposition 64." The dissent pointed out that under the majority holding "so long as the named plaintiffs actually relied on the allegedly deceptive advertising claims when buying and smoking cigarettes, they may seek injunctive and restitutionary relief on behalf of *all California smokers who simply saw or heard such ads* . . . , regardless of whether false claims contained in those ads had anything to do with any class member's decision to buy and smoke cigarettes" (emphasis in original). The dissent concluded that "[e]ven if the majority's holding has some sympathetic appeal on the particular facts alleged here, the rule the majority announces will apply equally to less egregious cases, where it invites the very kinds of mischief Proposition 64 was intended to curtail."

Impact of Tobacco

Tobacco breathes new life into UCL consumer class actions. The standing hurdle for absent class members previously enunciated by several trial and appellate courts has been set aside. The Court also articulated a lower threshold for satisfying the UCL's reliance requirement – although named plaintiffs must allege actual reliance, they need not allege reliance on specific misrepresentations where the alleged misrepresentations were made in the context of an extensive advertising campaign that occurred over a long period of time.

Although under the Court's ruling a named plaintiff seeking to establish UCL standing need not demonstrate individualized proof of reliance with respect to absent class members, the Court nevertheless held that class certification standards under California Code of Civil Procedure section 382 are still applicable. Defendants, therefore, may still defeat class certification where, for instance, individual issues of law or fact predominate over common issues.

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