

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER**

Case: Tsukroff, B vs. Hedgeside Property & Investment Co et al
Judge: W. Scott Snowden
Courtroom: Department B
Event: Motion
PID # :

Case # 26-25117
Event Date: January 19, 2005
Clerk: D. Rey
Reporter: Barrie Hart
Cite/Report #:

Appearances:

Anne Holland, Attorney for Plaintiff
Malcolm Barrack, Attorney for Defendants,
Hedgeside Property and Investment Co. and
Dale Buller

This matter comes on at this date for Plaintiff's motion to compel further discovery responses.

The Court hears arguments of counsel.

The Court rules that the following Tentative Ruling shall be adopted and incorporated in the minutes as follows:

PLAINTIFF'S MOTION TO COMPEL FURTHER DISCOVERY RESPONSES

Plaintiff's motion to compel further discovery responses is DENIED.

Plaintiff seeks the production of various documents pertaining to all properties owned or managed by defendants. He asserts he is entitled to these documents because they relate to his fifth cause of action for unfair competition under Business and Professions Code section 17200, which he purports to bring in a representative capacity on behalf of the general public including defendants' former and current residential tenants. Defendants have objected to the production of these documents on the ground that Proposition 64, which was passed by California voters in November 2004, has eliminated plaintiff's right to sue in a representative capacity outside the confines of a class action lawsuit. Plaintiff contends that Proposition 64 has no application as this lawsuit was instituted prior to the passage of the Proposition, which is not retroactive.

Many courts across the state have considered the question of the retroactive effect of Proposition 64, and have not reached consensus on the point. Absent a precedential appellate opinion on the question, this court must independently evaluate the issue and

weigh in. The parameters of the issue have by now been fairly well defined in the legal community. (See collected trial court orders and appellate briefs at the following web site: <http://www.17200blog.blogspot.com>.)

In summary, as a general rule a newly passed ballot proposition is presumed to operate prospectively only, unless it contains an express declaration that it is retroactive or otherwise clearly indicates the electorate's intention that it be applied retroactively. (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287.) As explained in *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243, "[a] statute has retrospective effect when it substantially changes the legal consequences of past events." Predictably, this presumptively prospective rule is subject to some important exclusions, which defendants contend apply here. For example, it has been held that "[t]he repeal of a statutory right or remedy... presents entirely distinct issues from that of the prospective or retroactive application of a statute. A well-established line of authority holds: 'The unconditional repeal of a special remedial statute without a saving clause stops all pending actions where the repeal finds them. If final relief has not been granted before the repeal goes into effect it cannot be granted afterwards, even if a judgment has been entered and the cause is pending on appeal. The reviewing court must dispose of the case under the law in force when its decision is rendered.'" (*Physicians Com. for Responsible Medicine v. Tyson Foods, Inc.* (2004) 119 Cal. App. 4th 120, 125.) Thus, if Proposition 64, which eliminates the provision of section 17200 allowing a plaintiff to bring a representative action on behalf of the general public, is viewed as a "special remedial statute," the Proposition would apply immediately to matters pending before the court. On the other hand, if the statutory change is substantive, that is if it "would impose new, additional or different liabilities based on past conduct" it would not have retrospective application. (*Brenton v. Metabolife* (2004) 116 Cal.App.4th 679, 688.)

Plaintiff contends that section 17200 is not merely remedial, but gives substantive rights to plaintiffs "which affords them the standing to sue on behalf of others." (reply, p. 7.) Setting aside the question whether "standing" is itself procedural or substantive, the court concludes that the granting of standing to sue on behalf of others is remedial in nature, and not substantive. Under Proposition 64, a plaintiff may only maintain a cause of action under section 17200 if he or she has suffered an actual loss. A claim on behalf of others may be brought by a plaintiff who satisfies class action requirements. Alternatively, the Attorney General or County District Attorney may continue to seek a remedy on behalf of the general public. Thus, no new or different liabilities are imposed based upon past conduct, and no right to bring a claim is lost; merely the mechanism for obtaining the remedy has been altered.

Putting these issues into the context of the present case demonstrates the point. Here, plaintiff claims to have suffered an "injury in fact" and to have "lost money or property as a result of" defendants' alleged unfair competition. Accordingly, he has met the requirements of Proposition 64 for maintaining his own cause of action under section

17200. Any other individuals who claim to have been injured by defendants' conduct have a number of options for pursuing an action: They may seek to be added as named plaintiffs in the present action; they may file their own actions against defendants; plaintiff may institute a class action and they may become members of the class; or they may seek the intervention of the Attorney General or District Attorney, who can file an action on behalf of the general public.

As regards this lawsuit, the only aspect of section 17200 that has been changed by Proposition 64 is the withdrawal of the plaintiff's ability to obtain a remedy behalf of the general public. This special remedial statute applies here. Accordingly, plaintiff has no basis for compelling documents that do not pertain to his specific injuries.

Sanctions are denied.

-o0o-

-3-