

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE & TIME: November 10, 2004
JUDGE : THOMAS M. CECIL
RECORDER :

DEPT. NO: 54
CLERK : R. ROUSE
BAILIFF : V. CARROLL

03AS03632 TERRY TWOMEY VS. HANSEN INFORMATION TECHNOLOGIES

MOTION FILED BY:

ATTORNEYS PRESENT:

NATURE OF PROCEEDING: Motion To Compel

TENTATIVE RULING

The Court has received and considered the supplemental briefs filed by both parties as to the effect of the passage of Proposition 64. There is no dispute that the initiative is immediately effective. However, the parties disagree on whether it may be applied to this case.

The well-settled rule is that statutes, and initiatives, are presumed to operate prospectively only absent an explicit expression otherwise. *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287. The language of Proposition 64 is completely silent on whether it is to be applied retroactively. The voter information material is similarly silent. In such cases, it may be applied only prospectively. *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1194 (holding that Proposition 51 operated prospectively only as the language did not indicate the measure was to apply retroactively). Compare, *Jenkins v. County of Los Angeles* (1999) 74 Cal.App.4th 524, 536 (language of Proposition 213 included statement that the act "shall apply to all actions in which the initial trial has not commenced prior to January 1, 1997."). The Court notes that Propositions 69 and 66 on this year's ballot each include express language concerning retroactive application.

Defendant's contention that this Court may infer an intent that the initiative apply retroactively from language concerning the seriousness of the problem it address is the same argument made to the Court in *Evangelatos* and rejected. *Evangelatos, supra*, 44 Cal.3d at 1209-1212.

Defendant's contention that Proposition 64 operates prospectively, and therefore applies to this action, because its only effect is on how trial is conducted is not persuasive. In *Tapia, supra*, the California Supreme Court held that certain portions of Proposition 115 applied to pending actions because their only effect was on how trial was to be conducted, e.g. jury voir dire. The requirement for standing imposed by Proposition 64 is not a procedure affecting only how trial is to be

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conducted. Rather, the requirement of actual injury for standing goes to the very existence of a cause of action under Bus. & Prof. Code section 17200.

In conclusion, the Court finds that Proposition 64 does not apply to this action. Therefore, the tentative ruling granting plaintiff's motion for further responses to interrogatories has not changed.

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COURT RULING

This matter argued by counsel and submitted.

This matter taken under submission.

Having taken this matter under submission, the Court now rules as follows. The tentative ruling is affirmed with the following addition.

Defendant's position that the language of the initiative itself, e.g. the word "eliminate," resolves this issue is not persuasive. The language is not specific enough to overcome the general presumption against retroactive application to pending cases.

Defendant shall serve further responses to fourth set of special interrogatories nos. 42-78, verified and without objection, no later than November 24, 2004.

DECLARATION OF MAILING

I hereby certify that I am not a party to the within action, and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 9th Street, Sacramento CA 95814

Dated: November 12, 2004

R. Rouse, Deputy Clerk

cc: KELCIE M. GOSLING
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