

TENTATIVE RULING

David West v. Direct TV
Case No. BC 313569
Department 26, CCH/Stanley Mosk
Hon. James R. Dunn
Date: 1/5/05

Defendant's demurrer to causes of action 1 and 3 is
SUSTAINED WITHOUT LEAVE TO AMEND

Proposition 64 amends California's unfair business statutes, including Sec. 17204 of the Bus. & Prof. Code. Prior to the amendment, Sec. 17204 stated that "[a]ctions for any relief pursuant to this chapter shall be prosecuted...by any person acting for the interests of itself, its members or the general public." As amended, Sec. 17204 now reads "[a]ctions for any relief pursuant to this chapter shall be prosecuted...by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition." The prior law provided for a broad standing requirement, but now only "[one] who has suffered injury in fact and has lost money or property as a result of such unfair competition" may bring a representative claim. California Constitution Article II, sec. 10 provides that an initiative or referendum approved by the majority of the voters shall take effect the day after the election unless provided otherwise. Therefore, there is no dispute that Proposition 64 became effective on November 3rd, 2004. The issue here is whether Prop. 64 can be applied to currently pending cases filed before November 3rd, 2004.

Where a claim or remedy is entirely dependent on a statute and not common law, the repeal of the statutory authorization takes effect immediately unless the amendment contains a savings clause. Younger v. Superior Court (1978) 21 Cal.3d 109. Because Prop. 64 does not have a savings clause, it should be read to apply to all pending cases. Plaintiff's standing as a representative plaintiff was based solely on a portion of a statute that has now been repealed.

Private plaintiffs who do not allege "injury in fact" may not "prosecute" such unfair business practices. Plaintiff must satisfy standing at every stage of the litigation, and it is his or her burden to "plead and prove facts showing standing." Tahoe Vista Concerned Citizens v. County of Placer (2000) 81 Cal.App.4th 577, 590-91; Lujan v. Defenders of Wildlife (1992) 504 U.S. 555, 561. Thus, Plaintiff must meet this requirement throughout the litigation, before and after Prop. 64 was enacted.

Where a law effects only procedural rules, the law applies immediately to pending cases. Here,

the standing requirement is a procedural rule and thus, should be applied retroactively. A procedural statute "is not made retroactive merely because it draws upon facts existing prior to its enactment.... [Instead], [t]he effect of such statutes is actually prospective in nature since they relate to the procedure to be followed in the future." Tapia v. Superior Court (1991) 53 Cal.3d 282, 288. "A statute which is procedural in nature may be given effect as to pending and future litigation even if the underlying cause of action occurred before the statute took effect. Pacific Coast Med. Enterprises v. Dept. Of Benefit Payments (1983) 140 Cal.App.3d 197, 204-05. "A statute is procedural when it neither creates a new cause of action nor deprives defendant of any defense on the merits. [Citation]. An amendment of a procedural statute applies to cases pending at the time of its enactment provided vested rights are not affected." Id.; citing Strauch v. Superior Court (1980) 107 Cal.App.3d 45, 49. As noted above, standing is a procedural issue as opposed to a substantive one. Killian v. Millard (1991) 228 Cal.App.3d 1601, 1605. Because standing is a procedural issue that is applied retroactively, Prop. 64 applies to this action.

Therefore the demurrer as to the 1st and 3rd causes of action is SUSTAINED without leave to amend.

JRD:cr
West.tr
1/5/05