

CASE NO. S132433

SUPREME COURT COPY

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IN THE

SUPREME COURT OF CALIFORNIA

Thomas Branick, et al.

*Plaintiffs and Appellants*

v.

Downey Savings and Loan Association,

*Defendant and Respondent*

*On a Decision from the Court of Appeal,  
Second Appellate District, Division Five  
Case Number B172981*

SUPREME COURT  
FILED

JUN 13 2005

Frederick K. Orrick, Clerk

DEPUTY

**DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A.'S  
OPENING BRIEF ON THE MERITS**

Matthew A. Hodel (State Bar No. 93962)  
Michael S. LeBoff (State Bar No. 204612)  
HODEL BRIGGS WINTER LLP  
8105 Irvine Center Drive  
Suite 1400  
Irvine, CA 92618  
(949) 450-8040  
(949) 450-8033 (facsimile)

Richard A. Derevan (State Bar No. 60960)  
SNELL & WILMER LLP  
1920 Main Street  
Suite 1200  
Irvine, CA 92614-7230  
(949) 253-2700  
(949) 955-2507 (facsimile)

**Attorneys for Defendant and Respondent  
Downey Savings and Loan Association**

Service on the Attorney General of the State of California and the District Attorney  
of the County of Los Angeles Required by Business and Professions Code Section  
17209 and California Rules of Court 44.5

## TABLE OF CONTENTS

	Page
Factual and Procedural Background .....	1
Legal Discussion .....	3
I. Proposition 64 Applies to Cases Pending at the Time The Initial Became Effective .....	3
A. Proposition 64 applies to pending cases because it repealed a statutory right .....	3
B. Proposition 64 applies to pending cases because the changes are merely procedural .....	8
II. Plaintiffs Should Not Be Allowed to Amend Their Complaint to Add New Plaintiffs .....	10
A. Plaintiffs should not be allowed to substitute entirely new plaintiffs because there was no mistake in naming plaintiffs .....	10
B. Even if plaintiffs are allowed to substitute new plaintiffs, the amended complaint should not relate back to the filing of the original complaint for statute of limitations purposes .....	15
C. Public policy also should preclude a plaintiff from substituting new plaintiffs whose claims would relate back .....	17
Conclusion .....	19

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b>FEDERAL CASES</b>	
<i>O'Donnell v. Kusper</i> (N.D. Ill. 1985) 602 F.Supp. 619 .....	18
<i>Saylor v. Lindsley</i> (2 <sup>nd</sup> Cir. 1972) 456 F.2d 896.....	17
<i>Summit Office Park, Inc. v. U.S. Steel Corp.</i> 5 <sup>th</sup> Cir. 1981) 639 F.2d 1278 .....	13, 15
<i>United States v. CMA, Inc.</i> (9 <sup>th</sup> Cir. 1989) 890 F.2d 1070 .....	18
<b>STATE CASES</b>	
<i>Aetna Cas. &amp; Sur. Co. v. Industrial Acc. Comm'n</i> (1947) 30 Cal.2d 388.....	9
<i>Andrus v. Municipal Court</i> (1983) 143 Cal.App.3d 1041 .....	8
<i>Bank of the West v. Superior Court</i> (1992) 2 Cal.4 <sup>th</sup> 1254.....	5
<i>Bartalo v. Superior Court</i> (1975) 51 Cal.App.3d 526 .....	13, 14
<i>Barquis v. Merchants Collection Association of Oakland, Inc.</i> (1972) 7 Cal.3d 94 .....	5
<i>Brenton v. Metabolife International, Inc.</i> (2004) 116 Cal.App.4 <sup>th</sup> 679 .....	6, 8
<i>California Air Resources Bd. v. Hart</i> (1993) 21 Cal.App.4 <sup>th</sup> 289 .....	10, 12

	<u>Page(s)</u>
<i>Callet v. Alioto</i> (1930) 210 Cal. 65 .....	8
<i>Casa Herrera, Inc. v. Beyduon</i> (2004) 32 Cal.4th 336.....	9
<i>Cloud v. Northrop Grumman Corp.</i> (1998) 67 Cal.App.4 <sup>th</sup> 995 .....	12
<i>Dilberti v. Stage Call Corp.</i> (1992) 4 Cal.App.4 <sup>th</sup> 1468 .....	12, 13
<i>Dudley v. Department of Transp.</i> (2001) 90 Cal.App.4th 255 .....	16
<i>Espinosa v. Superior Court</i> (1988) 202 Cal.App.3d 409 .....	16
<i>Evangelatos v. Superior Court</i> (1988) 44 Cal.3d 1188.....	9
<i>Foxborough v. Van Atta</i> (1994) 26 Cal.App.4th 217 .....	15
<i>Governing Board v. Mann</i> (1977) 18 Cal.3d 819.....	4, 6
<i>Haley v. Dow Lewis Motors, Inc.</i> (1999) 72 Cal.App.4 <sup>th</sup> 497 .....	12
<i>Hodges v. Superior Court</i> (1999) 21 Cal.4th 109 .....	7
<i>Howard Guntz Profit Sharing Plan v. Superior Court</i> (2001) 88 Cal.App.4 <sup>th</sup> 572 .....	17
<i>International Assn of Cleaning and Dye House Workers v. Landowitz,</i> (1942) 20 Cal.2d 418 .....	5
<i>Jenkins v. County of Los Angeles</i> (1999) 74 Cal.App.4th 524 .....	8

	<u>Page(s)</u>
<i>Jensen v. Royal Pools</i> (1975) 48 Cal.App.3d 717 .....	11
<i>Klopstock v. Superior Court</i> (1941) 17 Cal.2d 13 .....	11
<i>Kraus v. Trinity Mgmt. Serv.</i> (2000) 23 Cal.4th 116 .....	14
<i>La Sala v. American Sav. &amp; Loan Assn.</i> (1971) 5 Cal.3d 864 .....	14, 15
<i>Lee v. Bank of America</i> (1994) 27 Cal.App.4 <sup>th</sup> 197 .....	16
<i>Marler v. Municipal Court</i> (1980) 110 Cal.App.3d 155 .....	7
<i>McCauley v. Howard Jarvis Taxpayers Assn</i> (1998) 68 Cal.App.4 <sup>th</sup> 1255 .....	16
<i>Norgart v. The Upjohn Co.</i> (1999) 21 Cal.4th 383 .....	15
<i>Parris v. Superior Court</i> (2003) 109 Cal.App.4 <sup>th</sup> 285 .....	19
<i>Parsons v. Tickner</i> (1995) 31 Cal.App.4th 1513 .....	9
<i>Pebworth v. Workers' Comp. Appeals Bd.</i> (2004) 116 Cal.App.4th 913 .....	9
<i>People v. Bank of San Luis Obispo</i> (1910) 159 Cal.65 .....	4
<i>People v. Weitzman</i> (2003) 107 Cal.App.4 <sup>th</sup> 534 .....	18
<i>Personnel Comm v. Barstow Unified School Dist.</i> (1996) 43 Cal.App.4th 871 .....	9

	<u>Page(s)</u>
<i>Powers v. Ashton</i> (1975) 45 Cal.App.3d 783 .....	12
<i>Rose v. State Bar</i> (1989) 49 Cal.3d 646 .....	19
<i>Southern Service Co. v. Los Angeles</i> (1940) 15 Cal.2d 1, 11-12.....	4
<i>Strauch v. Superior Court</i> (1980) 107 Cal.App.3d 45 .....	9
<i>Tapia v. Superior Court</i> (1991) 53 Cal.3d 282.....	9
<i>Thompson v. Palmer Corp.</i> (1956) 138 Cal.App.2d 387 .....	10
<i>Younger v. Superior Court</i> (1978) 21 Cal.3d 102 .....	4
 <b>FEDERAL STATUTES</b>	
Fed. R. Civ. Proc. 17(a) .....	18
 <b>STATE STATUTES</b>	
<i>Business and Professions Code</i> § 17200 .....	1
<i>Business and Professions Code</i> § 17203 .....	11, 14
<i>Business and Professions Code</i> § 17204 .....	1, 2, 7, 14
<i>Business and Professions Code</i> § 17500 .....	2
<i>Business and Professions Code</i> § 17535 .....	2, 7
<i>California Gov. Code</i> § 9606.....	4

	<u>Page(s)</u>
<i>Civil Code</i> § 3369 .....	5
<i>Civil Procedure Code</i> § 425.17 .....	6
<i>Civil Procedure Code</i> § 425.16 .....	6
<i>Code of Civil Procedure</i> § 382 .....	7, 14
<i>Government Code</i> § 9606 .....	6
<i>Health and Safety Code</i> § 11361.7 .....	6
<i>Education Code</i> § 13403(h).....	6
 <b>OTHER</b>	
<i>Black's Law Dict.</i> (6 <sup>th</sup> ed. 1990) at 1221 .....	7
Witkin, <i>California Procedure</i> § 1147 (3d ed. 1985) .....	12

## **Issues for Review**

In granting review, this court specified the issues to be decided:

1. “Does Business and Professions Code section 17204 (as amended by Prop. 64, Gen. Elec. (Nov. 2, 2004)), which limits standing to bring an action under the Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.) to ‘any person who has suffered injury in fact and has lost money or property as a result of such unfair competition’ (id., § 17204), apply to actions filed before November 3, 2004, the date on which Proposition 64 took effect?”

2. “If the standing limitations of Proposition 64 apply to actions under the Unfair Competition Law that were pending on November 3, 2004, may a plaintiff amend his or her complaint to substitute in or add a party that satisfies standing requirements of Business and Professions Code section 17204, as amended, and does such an amended complaint relate back to the initial complaint for statute of limitations purposes?”

## **Factual and Procedural Background**

As was typical in pre-Proposition 64 actions under California’s Unfair Competition Law in Business and Professions Code sections 17200 and 17500 (the “UCL”), plaintiffs Thomas Branick and Ardra Campbell lent their names to this lawsuit even though they never had a loan with Downey Savings and Loan Association, F.A. (“Downey Savings”). They nevertheless alleged that Downey Savings’ lending practices violated the UCL.

In their complaint, plaintiffs purport to describe a “typical real estate transaction” involving an “old lender” and a “new lender.” [Appellants’ Appendix (“AA”) at 5, ¶¶ 16-17.] In connection with these transactions,

plaintiffs alleged that Downey, as an “old lender,” engaged in a pattern and practice of unfair business practices by charging more than is necessary or fair for various loan document recording services. They also alleged, in effect, that a lender is not allowed to charge more than “actual costs” for certain services (e.g., no more than the cost charged by county at the recording window), insisting in effect, therefore, that private citizens have a right to regulate the profit margins and fees charged for services by federal savings and loans. They then allege that these practices are not allowed by law or contract, without pointing to any specific statutory or contractual prohibition. [AA 9-10, ¶¶ 31(b), (c), (f), (h) and (i).]

Downey Savings moved for judgment on the pleadings, arguing that plaintiffs’ state law claims were preempted by federal law. The trial court agreed and granted Downey Savings’ motion for judgment on the pleadings. Plaintiffs appealed.

On November 2, 2004, while the appeal was pending, California voters passed Proposition 64, repealing the rights of a private litigant to assert a UCL claim unless he or she “suffered injury in fact and has lost money or property as a result of such unfair competition.” Bus. & Prof. Code § 17204 (as amended); *see also* Bus. & Prof. Code § 17535 (imposing the same standing requirements on claims for false advertising under Bus. & Prof. Code § 17500). In light of Proposition 64’s passage, the court of appeal requested supplemental briefing on whether Proposition 64 applies to this action.

The court of appeal determined that Proposition 64 applied and held that plaintiffs “cannot maintain this action unless they have ‘suffered injury in fact and ha[ve] lost money or property as a result of [the alleged] unfair

competition.” [Typed Op’n at 15.]<sup>1</sup> Plaintiffs acknowledged that they could not meet the standing requirements under the amended statutes, but urged the court to authorize them on remand to “amend the complaint to substitute an affected plaintiff to preserve the claims of the represented group.” [Typed Op’n at 16.] Asserting a policy of great liberality in amending pleadings, the court of appeal remanded with directions to the trial court “to determine whether, if there is a request to amend the amended complaint, the circumstances of this case warrant granting leave to amend.” [Typed Op’n at 17.]

This court granted Downey Savings’ petition for review to decide— if Proposition 64 applies to cases filed prior to the date the new law took effect—whether plaintiffs who lack standing may amend their complaint to substitute in new plaintiffs who have standing and whether the amended complaint would relate back to the filing of the original complaint. After granting review limited to that issue, this court issued an order directing the parties also to address whether Proposition 64 should apply to cases pending at the time the new law took effect..

## **Legal Discussion**

### **I**

#### **Proposition 64 Applies to Cases Pending at the Time the Initiative Became Effective**

##### **A. Proposition 64 applies to pending cases because it repealed a statutory right**

“Although the courts normally construe statutes to operate prospectively, the courts correlatively hold under common law that when a pending action rests solely on a statutory basis . . . ‘a repeal of [the] statute

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<sup>1</sup> The court of appeal rejected Downey’s federal preemption argument.

without a saving clause will terminate all pending actions based thereon.” *Governing Board v. Mann* (1977) 18 Cal.3d 819, 829 (citing *Southern Service Co. v. Los Angeles* (1940) 15 Cal.2d 1, 11-12); *Younger v. Superior Court* (1978) 21 Cal.3d 102, 109, (“[A]n action wholly dependent on statute abates if the statute is repealed without a saving clause before the judgment is final”). As this court observed in *Mann*, this “repeal rule” has been applied in a wide variety of criminal, quasi-criminal, and civil cases. *Mann, supra*, 18 Cal.3d at 829-30 and n.8 (citing cases).

“The justification for this rule is that all statutory remedies are pursued with full realization that the legislature may abolish the right to recover at any time.” *Mann, supra*, 18 Cal.3d at 829. The Government Code expressly provides that “[a]ny statute may be repealed at any time, except when vested rights would be impaired. *Persons acting under any statute act in contemplation of this power of repeal.*” Cal. Gov. Code § 9606 (emphasis added).

For the repeal rule to apply it is only necessary to show:

(i) plaintiffs’ action was pending when the repeal became effective; (ii) plaintiffs’ action rests solely on statutory grounds; (iii) the repeal was of the statute on which plaintiffs’ cause of action was based; and (iv) the repeal measure does not contain a saving clause. All of these elements are met here.

First, plaintiffs’ action was pending on November 3, 2004, when the statute took effect. Plaintiffs had no vested rights because they were not the beneficiaries of a final, nonappealable judgment. To the contrary, the trial court dismissed their action based on federal preemption and had entered judgment against them, and in favor of Downey Savings. *See People v. Bank of San Luis Obispo* (1910) 159 Cal. 65, 79-80 (no vested rights exist

