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NOTICE:

To request limited oral argument on any matter on this
calendar, you must call the Court at (916) 874-7858
(Department 53) by 4:00 p.m. the day before this hearing
and advise opposing counsel. Local rule 31(h). If no
call
is made the tentative ruling becomes the order of
the
court.

TENTATIVE RULINGS

Department 53
Superior Court of California
800 Ninth Street, 3rd Floor
LOREN E. MCMASTER, Judge
T. WEST, Clerk
V. CARROLL, Bailiff
January 27, 2005, 02:00

ITEM 1 00AS00000 DISCLOSURE
Nature of Proceeding:
Filed By:

JUDGE MCMASTER DISCLOSES THAT ATTORNEYS APPEARING IN CASES ON
TODAY'S CALENDAR MAY HAVE DONATED TO THE COMMITTEE FOR JUDICIAL
INDEPENDENCE WHICH WAS FORMED TO OPPOSE THE ATTEMPTED RECALL OF JUDGE
MCMASTER. A LIST OF DONORS AND AMOUNTS DONATED IS UNDER THE CUSTODY OF
COURT EXECUTIVE OFFICER JODY PATEL AND CAN BE REVIEWED AT ROOM 611,
SIXTH
FLOOR, COURTHOUSE, 720 NINTH STREET.

ITEM 2 03AS03547 PREMIER INDUSTRIES, INC., ET AL VS. WEST COAST COMPANY ET AL
Nature of Proceeding: MOTION TO SET ASIDE DEFAULT
Filed By: FERRIS, FRANK J.

Continued to 02/10/2005

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Nature of Proceeding: Motion To Compel
Filed By: BUCKMAN, MARK F.

Plaintiff's Motion to Compel Further Responses to Requests for Production is ruled on as follows:

Nos 17 and 18: Granted, defendant agrees to provide a further response and produce all documents.

19, 20, 21; Granted. The documents are relevant to the Torres' financial condition at the time of the sale and are relevant to the determination of whether the sales price was fair and reasonable. The categories of documents sought are reasonably particularized.

Verified compliance to be on or before February 7, 2005.

Mandatory monetary sanctions are to be paid to plaintiff by defendants in the amount of \$486.30 since defendants opposed only part of the motion. Such sanctions shall be paid no later than February 28, 2005.

The minute order is effective immediately. No formal order or further notice is required, the tentative ruling providing sufficient notice.

ITEM 8 04AS02857 CARPENTERS WORK PRESERV. COMM. VS. A-MAZING INSTALL., E
Nature of Proceeding: Demurrer
Filed By: CRONE, BRIAN S.

Defendant's Demurrer to the 1st amended complaint was continued to this date for further briefing on the issue of whether Proposition 64 is retroactive. Upon reviewing the additional briefs filed by the parties, the Court overrules the demurrer.

Answer to be filed and served on or before February 28, 2005, in order to allow time to file a petition for writ if that is what Defendants chose to do.

Carpenters Work Preservation Committee, a self described joint labor-management committee, brings this action "on behalf of itself and the general public." (1st Am. Complaint paragraph 1). Plaintiff contends that defendant, a modular furniture installer, violated various Business and Professions Code sections by contracting without a license (section 7028), applying for a contractor's license within one year of conviction (7068(c)), making misrepresentations to obtain a license (475, 498, 7112) and bidding public works projects without a license (7028.15.) The original complaint was filed after defendants were cited for installing modular furniture at CSUS (California State University Sacramento) without a license. After the original complaint was filed, defendant sought and obtained a contractors license on an expedited basis. Defendant contends, however, that no license is required for installation of modular furniture. The Amended Complaint adds allegations that defendants concealed from the Contractors State Licensing Board the fact that they had been cited for contracting without a license.

The Amended Complaint contains 3 causes of action: 1st Violation of B&P 17200 based on the predicate statutes cited above; 2nd Violation of B&P 475, 498 and 7112; and 3rd Violation of B&P 7028, 7028.3, 7028.4.

The Plaintiffs concede in the opposition that the 2nd and 3rd causes of action should be dismissed. There is no private right of action to bring the 2nd cause of action and the 3rd cause of action is moot because defendant obtained a contractors license after the original complaint seeking injunctive relief was filed.

Thus, the only cause of action remaining is the violation of B&P 17200. The moving papers in support of the demurrer make only two arguments as to this cause of action. The first argument is that one of the predicate statutes does not form a basis for this cause of action, because there was no underlying "conviction" for not having a license. Plaintiff concedes this point in the opposition, thus there remain three predicate statutes for violation of B&P 17200. The second attack on this cause of action is as to the claim for restitution. However, since plaintiff's B&P 17200 claim also seeks injunctive relief, the attack on this single remedy does not defeat this cause of action. Thus, neither of the above arguments warrant sustaining the demurrer. The court will not "Lillienthal" the claims for relief in a single cause of action on a general demurrer.

The Court rejects defendant's third argument that Proposition 64 is retroactive. The demurrer on this ground is overruled. The general rule is that a new statute operates prospectively, not retrospectively, unless the language of the measure plainly indicates a contrary intent. *Myers v Phillip Morris Cos.* (2002) 28 Cal.4th 828, 839; *Evangelatos V Superior Court* (1988) 44 Cal.3d 118, 1207-1208. There is no specific language in Proposition 64 stating that it is the people's intent that the changes to Business and Profession Code Section 17200 be applied retrospectively. The initiative does not contain any provision specifying retroactive application, and does not use the words "retroactive" or "pending" in relation to cases pending at the time it was passed. In the absence of clear language, the court may not infer intent. (*Id.* 1214.).

Absent clear voter intent to apply a statutory enactment retroactively, Proposition 64's amendment to the UCL cannot be applied to pending cases unless the proposition's amendments are purely procedural and have no retrospective application. The changes made by Proposition 64 are not merely procedural; they affect substantive rights and can operate only prospectively. *Russell v Superior Court* (1986) 185 Cal.App.3d 810, 815-817. It is the law's effect that controls, not the label given to it. *Tapia v Superior Court* (1991) 53 Cal.App.3d 282, 289. Even if the amendments alter the procedure for bringing new cases under section 17200, if the change in procedure impacts substantive rights, then the change has a retroactive application and cannot be applied to pending cases absent clear electoral intent to the contrary. *Russell v Superior Court* (1986) 185 Cal.App.3d 810, 815-817. Prior to enactment, plaintiff, as a member of the general public concerned with enforcement of California's contractor's licensing laws, had a substantive right to pursue this action.

Furthermore, Proposition 64 is not a repeal of a statutory right, thus the "Statutory Repeal Rule" is not applicable. None of the substantive provisions of Section 17200 have been repealed. All the causes of actions and remedies remain. The changes are only as to who may bring an action on behalf of the public. In addition, a cause of action for unfair competition existed at common law as a tort of unfair business competition; thus it is not a cause of action unknown at common law.

Plaintiff's request to amend the Complaint to allege a claim for declaratory relief based on the dispute over whether installation of

modular furniture requires a license is granted. Proposed amended complaint to be filed and served on or before February 7. Response to be filed and served within 10 days of service of the amended complaint, 15 days if served by mail.

Pursuant to Code of Civil Procedure section 166.1, the court finds that the question presented here is a controlling question of law concerning which there are substantial grounds for difference of opinion. The court further finds that the appellate resolution of the legal question -- whether or not Proposition 64 should be applied prospectively only or retroactively -will materially advance the conclusion of this litigation.

Plaintiff shall submit a formal order pursuant to CRC Rule 391. □

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ITEM 9 04AS03539 MINERAL ASSOC. COALITION, ET AL VS. CA STATE MINING, ET AL
Nature of Proceeding: JUDGMENT ON THE PLEADINGS (2)
Filed By: MILLS, MICHAEL N.

The plaintiffs' Mineral Associations Coalition, the California Mining Assoc., the Construction Minerals Assn. of California and the S. California Rock Products Assn. and defendant State Mining and Geology Board's ("Mining Board ") cross-motions for Judgment on the Pleadings are denied as to plaintiffs and granted as to defendant. Code of Civil Procedure section 438.

Defendant's Request for Judicial Notice is granted.

Plaintiffs' Request for Judicial Notice is granted.

Plaintiffs complaint alleges causes of action for declaratory and injunctive relief against defendant. The complaint alleges that the Mining Board exceeded its statutory authority by promulgating a regulation, 14 C.C.R. section 3805.5(d), which allegedly violates the enabling legislation, the Surface Mining and Reclamation Act of 1975 ("SMARA"), Pub. Resources Code section 2710, et seq. The challenged regulation requires the lead agency to obtain the concurrence of the director of conservation ("director") that the mined land has been reclaimed in accordance with the approved regulation plan, prior to release of financial assurances.

RELIEF REQUESTED

Plaintiffs seek a judicial declaration that subsection (d) of 14 C.C.R. section 3805.5 is void and of no effect because it conflicts with SMARA, which does not provide the statutory authority to adopt the regulations, and which vests the lead agency in charge of permitting a mining operation with the exclusive authority to determine when mine land has been fully reclaimed.

REGULATORY AUTHORITY