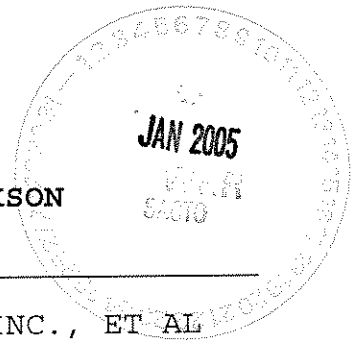


SUPERIOR COURT OF CALIFORNIA
JAN 05 2005 COUNTY OF SACRAMENTO



DATE & TIME: January 3, 2005
JUDGE : LOREN McMASTER
RECORDER :

DEPT. NO: 53
CLERK : J. JACKSON
BAILIFF :

04AS01213 MIKE MUNOZ, ET AL VS. PETRINI VAN & STORAGE, INC., ET AL

MOTION FILED BY: TEDESCO, STEVEN C.

ATTORNEYS PRESENT:

NATURE OF PROCEEDING: Motion For Judgment On Pleadin

TENTATIVE RULING

Defendant's motion for judgment on the pleadings is denied.

Defendant's motion is based on the assertion that Proposition 64 operates retroactively; hence, after its enactment, plaintiff has no standing to maintain this action because he has not suffered any injury.

The general rule is that a new statute operates prospectively, not retrospectively, unless the language of the measure plainly indicates a contrary intent. *Evangelatos v Superior Court* (1988) 44 Cal.3d 118. 1207-1208. The parties agree that 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. Each has pointed to certain words in the Proposition to support their position.

The language to which defendant points (see defendant's Points and Authorities, pages 10-11) is equally susceptible of a retrospective or prospective application. (E.g. "to eliminate," "limits," "requires." "Close the loophole" is merely argument in favor of the initiative.) Defendant also refers to section seven that states legislation enacted between July 1, 2003 and the effective date of the Proposition that is inconsistent is void and repealed. This is "housekeeping" language to ensure that proposition 64 would not be inconsistent with any recently enacted laws. It does not follow that the proposition itself was intended to act retrospectively. The language to which plaintiff refers (see plaintiff's Points and Authorities, pages 5-6) suggests the intent of the voters was that the statute would act prospectively. (For example "to prohibit...from filing..," "restricts who can bring...") Nonetheless there is no language in Proposition 64 that clearly indicates intent that it will operate retrospectively. In the absence of clear language, the court may not infer intent. (*Id.* 1214.).

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Defendant vigorously argues that the changes made by Proposition 64 are procedural only and their application to existing cases is not retrospective. "Even though applied to the prosecution of (wrongful acts) committed before the law's effective date, a law addressing the conduct of trials still addresses conduct in the future....Such a statute 'is not made retroactive merely because it draws upon facts existing prior to its enactment.'" *Tapia v Superior Court* (1991) 53 Cal.3d 282, 288. Defendant argues that procedural changes that merely affect the conduct of litigation are immediately applicable to pending actions. It further argues that standing is only a matter of procedure and does not affect substantive rights.

Defendant contends that plaintiff loses no right because he had no right from the start as he had not suffered any damages. Defendant goes on to assert that Proposition 64 did not repeal any claims plaintiff had because he had no claims in the first place. This is unconvincing sophistry.

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. Proposition 64 alters the procedure for bringing new cases under B & P Code Section 17200. It impacts substantive rights and may not be applied retrospectively. Prior to enactment, plaintiff had a substantive right to pursue this action. He had a right as a member of the general public and as a union representative to ensure fair competition and the welfare of workers generally; he also had a constitutional right to petition for redress.

Defendant also argues that Proposition 64 repealed a statutory right with no savings clause. The court rejects this argument. 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.

Defendant's request for judicial notice of exhibits presented with its moving papers is granted as to exhibits A and B and otherwise

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denied. Its request for judicial notice of decisions of other superior courts submitted with its reply is granted. However, none of these decisions are binding on this court.

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

COURT RULING

Having taken the matter under submission, the court affirms its tentative ruling with the following additional comments.

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. The court is persuaded that this matter is governed by *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).

While the Proposition 64 requirement of actual injury for standing goes to the very existence of a cause of action under Business & Professions Code section 17200, the Court finds that Proposition 64 does not apply to this complaint, which was filed prior to its enactment. Such retroactive application could adversely affect the substantive rights of those persons who were not parties but whose rights and interests were being pursued in this lawsuit.

Pursuant to Code of Civil Procedure section 166.1, the court finds that the question presented here (as well as in many other cases statewide) 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.

Prevailing party plaintiff shall prepare the formal order.

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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: January 5, 2005

J. JACKSON
J. Jackson, Deputy Clerk

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PAGE: 70
DATE: January 3, 2005

SACRAMENTO SUPERIOR and MUNICIPAL COURTS
BY: J. JACKSON DEPUTY

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DISTRIB: