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California Supreme Court Bars Preemptive Suits Under the Consumer Legal Remedies Act

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The business community won a significant victory last month as the California Supreme Court clarified the actual damage requirement for bringing suit under the state's consumer protection statute, the Consumer Legal Remedies Act (CLRA). Class action lawyers have long argued that the CLRA allowed plaintiffs to sue without a showing of real injury. In *Meyer v. Sprint Spectrum L.P.*,[1] however, the court held that consumers may sue under the CLRA only if they have been damaged by the allegedly unlawful practices. Consumers cannot bring suit preemptively when they have merely been exposed to such practices. Likewise, courts need not entertain declaratory relief actions where no controversy of practical significance yet exists.

Summary of the *Meyer* Case

Plaintiffs Pamela Meyer and Timothy Phillips are customers of the cellular telephone company Sprint Spectrum L.P. (Sprint). Plaintiffs sued on behalf of all Sprint customers, alleging that Sprint's customer service agreement was unconscionable and violated the CLRA.

In particular, plaintiffs attacked remedial provisions requiring parties to submit disputes to binding arbitration, waive rights to a jury trial, and waive class action in arbitration. Sprint, however, had never attempted to enforce the allegedly illegal restrictions against plaintiffs. The court, therefore, characterized the action as "a preemptive lawsuit to strike these terms should any dispute arise."[2]

Without reaching the merits of plaintiffs' claims, the court addressed: (1) whether plaintiffs had standing to sue for alleged violations of the CLRA, and (2) whether declaratory relief was available under the Code of Civil Procedure to determine plaintiffs' rights under the agreement.

Standing Under the CLRA

The CLRA makes unlawful "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer."[3] The Act allows "[a]ny consumer who suffers *any damage as a result* of the use or employment by any person of a method, act, or practice declared to be unlawful" to bring action.[4] Consequently, the consumer bringing the CLRA action must show actual damage that resulted from the unlawful practice. Damages may include non-pecuniary harms such as transaction costs and opportunity costs.

Here, plaintiffs argued that the mere presence of unconscionable terms within Sprint's customer service agreement constituted "damage" within the meaning of the statute. The court rejected this interpretation, ruling that "in order to bring a CLRA action, not only must a consumer be exposed to an unlawful practice, but some kind of damage must result."[5]

In so ruling, the court distinguished plaintiffs' position from that of *Kagan v. Gilbraltar Sav. & Loan Assn.*[6] In

Kagan, defendant informed plaintiff that it intended to charge her an allegedly fraudulent administrative fee. Plaintiff avoided the charge only by threatening defendant with a lawsuit. Although plaintiff never paid the fee, she suffered damages in the expenditure of time and legal fees. In this case, however, Sprint never sought to enforce any of the disputed terms against plaintiffs. Although this may occur at some future point, at the time of filing, plaintiffs had yet to suffer any damages. Consequently, plaintiffs lacked standing to bring a CLRA claim.

Declaratory Relief Under the Code of Civil Procedure

Independent of the CLRA, plaintiffs also argued that the Code of Civil Procedure entitled them declaratory relief regarding the enforceability of the agreement. Section 1060 provides that "in cases of actual controversy," parties to a written instrument may bring an action "for a declaration of rights and duties." Moreover, the declaration "may be had before there has been any breach of the obligation in respect to which said declaration is sought."

The court acknowledged that there was an "actual controversy" between the parties over the remedial provisions of the agreement. Nonetheless, the court noted that declaratory relief is discretionary and may be denied when "not necessary or proper."[7] Relief is proper when it serves "some practical end."[8] Since the remedial provisions had yet to come into play, resolving the controversy about future remedies would have "little practical effect in terms of altering parties' behavior."[9] Under such circumstances, the court held, the trial court acted within its discretion in denying declaratory relief.

Implications for Companies

Meyer should embolden trial courts to apply greater scrutiny to CLRA claims based on tenuous claims of injury. Courts should dispose of claims where plaintiffs fail to show the allegedly unlawful practice caused them to suffer actual damage. Nonetheless, defendants should be aware the "damage" requirement articulated in *Meyer* does not set a high bar. Any damage, including non-pecuniary transaction costs, may suffice to establish standing.

Earlier this year, Bingham obtained a similar ruling on the CLRA damage requirement from the Fifth District Court of Appeal on behalf of a manufacturing defendant. That ruling affirmed in full a defense judgment that followed a two-month trial of a CLRA claim on behalf of a class of consumers.

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ENDNOTES

[1] *Meyer v. Sprint Spectrum L.P.*, No. S153846 (Cal. Jan. 29, 2009).
[2] Id., slip op. at 4.
[3] Cal. Civil Code § 1770(a).
[4] Id. (emphasis added).
[5] Meyer, slip op. at 6.
[6] 25 Cal.3d 582 (1984).
[7] Meyer, slip op. at 15 (citing Cal. Civil Proc. Code § 1060).
[8] Id., slip op. at 15 (quoting *Maguire v. Hibernia S. & L. Soc.*, 23 Cal.2d 719, 729 (1944)).
[9] Id., slip op. at 17.