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Treble Damages Available for Seniors and Disabled Adults Beyond CLRA Claims

But Not UCL Restitution Claims

In an August 9, 2010 opinion, the California Supreme Court answered two previously unsettled questions regarding the ability of senior citizens and disabled adults to obtain a trebled award under California Civil Code section 3345:

- (1) Does California Civil Code section 3345 only apply to claims by senior citizens and disabled adults brought under the Consumer Legal Remedies Act?¹ (*No.*)
- (2) Can individuals obtain trebled damages based on a restitution award under California Business and Professions Code section 17200? (*No.*)

In *Clark v. Superior Court*² plaintiffs, who were senior citizens, sued National Western Life Insurance Company alleging deceptive business practices regarding the sale of annuity contracts. Plaintiffs sought a monetary award and to treble the monetary award under California Civil Code section 3345.³ Section 3345 applies to actions brought by senior citizens and disabled persons to redress unfair or deceptive acts or practices or unfair competition. Section 3345 allows the trier of fact to award a remedy of treble damages.⁴

The *Clark* plaintiffs filed a class action complaint against the defendant insurer, alleging the insurer violated California Business and Professions Code section 17200 (the “UCL”) by using deceptive practices to induce seniors to buy high-commission annuity contracts with large penalties for “early surrender.”⁵ The plaintiffs sought an injunction, restitution, and treble the amount of any monetary award under section 3345. The trial

court granted plaintiff’s motion for class certification. The trial court also ruled on defendant’s motion for judgment on the pleadings that Civil Code section 3345 did not apply to private actions brought under the UCL. The plaintiffs appealed the ruling.⁶

Only injunctions and restitution — not damages — are available to a private party under the UCL. Therefore, the question was whether a plaintiff could treble a UCL restitution award under section 3345. The defendant insurer claimed section 3345 did not apply to a private UCL claim because restitution is not a “penalty” as required by section 3345. The defendant insurer also alleged that section 3345 was only applicable to actions under the Consumer Legal Remedies Act (the “CLRA”).⁷

The California Supreme Court rejected the insurer’s contention that section 3345 only applied to actions brought under the CLRA.⁸ The Supreme Court found that it was apparent from the language of section 3345 itself that its applicability is not limited to actions brought by the CLRA.⁹ The Supreme Court also reasoned that had the Legislature intended section 3345 to be limited to actions under the CLRA, it could have simply amended the CLRA to state so.¹⁰ Therefore, the Supreme Court held that Civil Code section 3345 is not limited to actions under the CLRA.¹¹

However, the Supreme Court rejected the plaintiffs’ claim that Civil Code section 3345 could be used to treble a monetary award of restitution under the UCL. The Supreme Court noted that the statutory language of section 3345 made clear that it applies only to

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Beyond CLRA Claims** (cont'd.)

penalties. Restitution, which is the return of monies or property wrongfully acquired, is not a “penalty.”¹² The object of restitution is not to “penalize” the defendant but to return the plaintiff to the status quo. As such, the Supreme Court concluded that restitution in a private UCL action is not a penalty and thus, does not fall within the trebled recovery provisions of Civil Code section 3345 for actions brought by seniors and disabled adults.

Endnotes

- 1 The Consumer Legal Remedies Act allows consumers to recover against persons who use unlawful practices with respect to the sale of goods and services. California Civil Code section 1750 *et seq.*
- 2 California Supreme Court Case No. S174229, Ct.App. 2/7 B212512, LASC Case No. BC3211681 (real party in interest National Western Life Insurance Co.).
- 3 *Id.*, Slip Op. at p. 1.
- 4 California Civil Code section 3345.
- 5 Slip Op. at p. 2.
- 6 *Id.*
- 7 Slip Op. at pp. 2, 5.
- 8 Slip. Op. at p. 5.
- 9 *Id.*
- 10 Slip Op. at p. 6.
- 11 Slip. Op. at p. 7.
- 12 Slip. Op. at p. 9 (citing *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1148).

About the Author

Karen R. Palmersheim is a litigation partner in the Los Angeles office of Locke Lord. Ms. Palmersheim is a member of the firm’s class action practice group and she represents health care entities, insurers and other companies in complex business and reimbursement litigation, class actions and related regulatory matters.