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CALIFORNIA SUPREME COURT EXPANDS SCOPE OF CONSUMER CLASS ACTIONS

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The California Supreme Court issued its long-awaited opinion in *Kwikset Corporation et al. v. Superior Court*, S171845 on January 27, 2011. The *Kwikset* opinion breathes new life into consumer class actions thought dead after voters approved an initiative in 2004 designed to limit frivolous lawsuits against businesses. It also creates a framework which may prevent a defendant from winning such a case short of trial.

In 2004, California voters approved Proposition 64 to limit lawsuits against businesses under the unfair business practices and false advertising laws. (Business & Professions Code sections 17200 *et seq*. and 17500 *et seq*.) Among other limitations, Proposition 64 barred private individuals who were not actually injured from filing a lawsuit under these statutes, whether on their own behalf or as a class action. "Standing" to file a lawsuit was limited by Proposition 64 to any "person who has suffered injury in fact and has lost money or property as a result of the unfair competition."

The *Kwikset* Court explained that to meet Proposition 64's "injury in fact" requirement, a plaintiff must have suffered an economic injury, distinguishing the test for "injury in fact" from that applied in other contexts. However, the extent of that economic injury need not be significant – it need only be an "identifiable trifle" of injury. "If a party has alleged or proven a personal, individualized loss of money or property in any nontrivial amount, he or she has also alleged or proven injury in fact."

Proposition 64, however, required that a plaintiff establish more than the existence of an "injury in fact" in cases involving alleged misrepresentations to consumers. The initiative required that the injury come "as a result of the defendant's conduct." The *Kwikset* Court explained that this language meant that the economic injury must be causally connected to the defendant's conduct: "The phrase 'as a result of' in its plan and ordinary sense means 'caused by' and requires a showing of a causal connection or reliance on the alleged misrepresentation."

Summarizing its holding, the Supreme Court explained that to satisfy the standing requirements of Proposition 64, a plaintiff must "(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., *economic* injury, and (2) show that the economic injury was the result of, i.e., *caused by*, the unfair business practice or false advertising that is the gravamen of the claim."

The facts of the *Kwikset* case illustrate application of this test. In *Kwikset*, the plaintiff alleged he bought Kwikset brand locksets because of package labeling indicating they were "Made in U.S.A." and that he would not have bought them had he known they contained screws and/or pins made in Taiwan or that were assembled in Mexico. Agreeing with Kwikset's argument that the plaintiff lacked standing to pursue his claims, the Court of Appeal ruled that there was no "lost money or property" because the locksets were not defective.

What is most telling is how the Supreme Court began its analysis: "Simply stated: labels matter." The *Kwikset* Court acknowledged that country of origin labeling and other intangible concerns matter to many consumers, and it rejected the Court of Appeals' analysis by comparing the plaintiff to one who unknowingly purchased a counterfeit Rolex watch, or an orthodox Jew or observant Muslim purchasing foods erroneously labeled as kosher or halal, or a wine connoisseur purchasing wine misidentified as being from a different year or location.

"For each consumer who relies on the truth and accuracy of a label and is deceived by misrepresentations into making a purchase, the economic harm is the same: the consumer has purchased a product that he or she *paid more for* than he or she otherwise might have been willing to pay if the product had been labeled accurately." Thus, "[a] consumer who relies on a product label and challenges a misrepresentation contained therein can satisfy the standing requirement of section 17204 by alleging … that he or she would not have bought the product but for the misrepresentation. That assertion is sufficient to allege causation—the purchase would not have been made but for the misrepresentation. It is also sufficient to allege economic injury."

Most troubling for defendants, however, is the fact that the Supreme Court's opinion seems to prevent a defendant from obtaining a victory short of a trial. The Supreme Court acknowledged that "it will be plaintiff's obligation to produce evidence to support, and eventually prove, their bare standing allegations" as the lawsuit progresses. But whether or not the alleged misrepresentation was material to the plaintiff's decision to purchase a product and relied on by the plaintiff are almost always disputed issues of fact that can only be resolved at trial. Summary judgment motions, therefore, no longer seem available to defendants based on standing. The only hope for an early resolution short of paying a large class settlement now appears to be to either win the class certification battle or obtain summary judgment by developing undisputed facts proving the claims made on the label are true.

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