

Class Action Defense Strategy Blog

Up-to-date information on class action litigation

SHEPPARD MULLIN

SHEPPARD MULLIN RICHTER & HAMPTON LLP

ATTORNEYS AT LAW

Class Action Defense Strategy Blog

Posted at 4:20 AM on July 6, 2010 by Sheppard Mullin

[Time Out: California Court of Appeal Enforces Statute of Limitations in Class Action Brought Under the UCL](#)

By *Suzanna Winslow* and *[Sascha Henry](#)*

The Second District of California Court of Appeal recently refused to extend the continuing violations doctrine to causes of action brought under the Unfair Competition Law ("UCL"). The Court of Appeal held that the trial court properly sustained the defendant's demurrer on the ground that the UCL cause of action was barred by the statute of limitations.

In *Aryeh v. Canon Business Solutions, Inc.*, B213104 (June 22, 2010), the plaintiff brought a class action for violation of the UCL, claiming Canon overcharged him for copies under his copier rental agreements. Shortly after he entered into the rental agreements, the plaintiff noticed that the meter readings taken by Canon's field service personnel differed from the number of copies actually made on the leased copiers. The plaintiff asked Canon numerous times, orally and in writing, to repair the copiers and take accurate readings. When Canon took no action, the plaintiff began keeping his own records and determined that he was being charged for "test" copies that were made when Canon service personnel repaired or serviced the machines. Despite the plaintiff's requests, Canon did not fix the "excessive" copying charges. Additionally, Canon failed to reimburse the plaintiff for the overcharges and charged him late fees.

After two attempts at amending the complaint, the trial court sustained the demurrer without leave to amend on four grounds, including that the causes of action accrued almost six years before the plaintiff filed the complaint.

On appeal, the plaintiff argued that the statutory clock started at the time of the first overcharge, and then re-started each time Canon "invade[d] the plaintiff's rights and cause[d] injury." The plaintiff also argued that the doctrine of continuing violations should apply to violations of the UCL. The Court of Appeal rejected both contentions.

The discovery rule, which delays accrual of certain causes of action until the plaintiff has actual or constructive knowledge of facts giving rise to the claim, does not apply to causes of action brought under California Business & Professions Code section 17200, et seq. Therefore this cause of action accrued when the defendant's conduct occurred, not when the plaintiff learned about the conduct. Further, when the allegations regarding a defendant's conduct cover a period of time, the cause of action accrues at the time of the initial conduct. The plaintiff admitted in the initial complaint that he knew of the alleged inaccurate readings and overcharges in or around February 2002.

As to the continuing violations doctrine, the Court of Appeal reasoned that "routinely billing and collecting for 'test' copies is not the type of harassing and egregious conduct the continuing violations doctrine is designed to deter." The court was not compelled by any policy considerations to extend the continuing violations doctrine to violations of the UCL. Rather, it underlined the legislative intent for the UCL to be a "*streamlined* procedure for the prevention of ongoing or threatened acts of unfair competition." The court stated, "a claim for recovery of past damages is not within the contemplation of the UCL."