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New Rules on Equitable Tolling

By resolving a district split, the court charts a new course for California's unfair competition law, explain Ropes & Gray attorneys.

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In January the California Supreme Court in *Aryeh v. Canon Business Solutions*, 55 Cal.4th 1185, ruled that equitable exceptions can be applied to the four-year statute of limitations under the state's unfair competition law, Business & Professions Code §17200. The decision resurrected the plaintiff's UCL claim, which lower courts had dismissed as time-barred. It also potentially opened the door to UCL claims in other cases asserting unfair acts that fall under common-law equitable exceptions that either delay accrual of claims or toll the statute of limitations. Most significantly, *Aryeh* may signal a new course for California antitrust jurisprudence in general, and UCL jurisprudence in particular, that could diverge from prior interpretations of analogous federal statutes.

Aryeh was brought by Jamshid Aryeh, the owner of a copy business, who had entered into a 60-month lease for Canon copy machines. The lease included monthly copy limits that Canon monitored during regularly scheduled service visits. Aryeh allegedly noticed that Canon employees ran test copies during these visits and counted them towards the monthly limit. According to the complaint, Canon made in excess of 5,000 test copies over the course of 17 months, allegedly causing Aryeh to exceed his monthly limit and incur excess copy charges and late fees. Aryeh sued Canon on a single claim of unfair and fraudulent business practices under the UCL.

The trial court dismissed Aryeh's complaint, which had been filed in January 2008, alleging wrongful conduct beginning as early as 2002, on the ground that his claim was time-barred by the UCL's four-year statute of limitations. A divided court of appeal affirmed the dismissal, with the majority agreeing with the trial court that equitable doctrines could not be applied to extend the statute of limitations for UCL claims. The California Supreme Court unanimously reversed.

Legislative History and appellate court split

In reaching its decision, the Supreme Court looked to the purpose of the statute of limitations, the legislative history of the UCL and the underlying split among the courts of appeal over whether a single exception — the delayed discovery rule — applied to the UCL. First, the court observed that the limitations period is a legislatively determined point at which the interests of protecting defendants from stale, dilatory claims is deemed to outweigh the interest of adjudicating otherwise valid claims. Second, the court noted the Legislature was conspicuously silent on the question of when UCL claims accrued for limitations purposes, opting instead to leave that issue open to judicial determination. Finally, the court resolved the split among the lower courts of appeal, holding that the delayed discovery rule, as well as other equitable exceptions to the statute of limitations, can be applied to claims under the UCL.

Interestingly, the same justice from California's Fourth District Court of Appeal penned the two decisions that led to the court of appeal split on the issues ultimately decided in *Aryeh*. In *Snapp & Associates Insurance Services v. Robertson*, 96 Cal.App.4th 884 (2002), Justice Patricia Benke followed the existing precedent that the "discovery rule," which delays accrual of claims until the plaintiff has actual or constructive knowledge of the harm, does not apply to UCL actions. In a subsequent opinion in *Massachusetts Mutual Life Insurance v. Superior Court of San Diego County*, 97 Cal.App.4th 1282 (2002), Benke wrote that the statute of limitations for a UCL claim would "probably" accrue at the time that a reasonable person would have discovered the basis for the claim.

With this simple adverb, the court of appeal created a small crack in UCL precedent up to that point. Another court of appeal later widened that rift in *Broberg v. Guardian Life Insurance Company of America*, 171 Cal.App.4th 912 (2009), holding the delayed discovery rule was the "better view" for UCL claims alleging nondisclosure of material information in insurance cases. The California Supreme Court subsequently acknowledged this split, but did not resolve it until *Aryeh*.

In *Aryeh*, the Supreme Court expressly disapproved of the federal district court decision relied on in *Snapp* that had ruled that application of the delayed discovery rule to the UCL's statute of limitations was categorically foreclosed. In *Stutz Motor Car of America v. Reebok International*, 909 F.Supp. 1353 (C.D. Cal. 1995), the district court held that federal antitrust laws that do not permit delayed accrual applied fully to California's antitrust laws, and thus should also apply to the UCL. The *Aryeh* court observed that the Cartwright Act, which is California's main antitrust law, is modeled on statutes in sister states, not on the federal Sherman and Clayton Acts. Thus, the court stated the interpretations of federal antitrust law are "at most instructive, not conclusive" when interpreting the Cartwright Act. The court further explained that the Cartwright Act and the UCL, although each addressing aspects of unfair business competition, have "markedly different origins and scopes," such that interpretations of the Cartwright Act should not be considered equally applicable to the "unrelated UCL." Stripping the *Stutz* line of decisions bare, the court opened the UCL's statute of limitations not just to the delayed discovery rule, but also to other common-law rules of claim accrual.

Equitable Rules of Accrual and Tolling

The *Aryeh* court decided that equitable doctrines can be applied to the UCL's statute of limitations, which otherwise follows the "default" last-element accrual rule. Under the last-element rule, a claim accrues once all of its elements — wrongdoing, harm and causation — are complete. The five equitable exceptions to this rule either delay the moment of accrual or toll the clock after it has already started to run:

(1) The continuous accrual exception (which was applied in *Aryeh*) holds that each wrong or injury in a series triggers its own limitations period, such that only those occurring more than four years prior to the complaint are time-barred.

(2) The equitable tolling exception extends the statute of limitations when a plaintiff pursues one of many possible remedies in good faith.

(3) The fraudulent concealment exception extends the clock when a defendant's deceptive conduct causes the time on a claim to expire.

(4) The continuing violation exception aggregates a series of wrongs and applies a single limitations period beginning after commission of the last wrong suffered.

(5) The delayed discovery exception postpones accrual of the limitations period until the plaintiff discovers, or has reason to discover, the cause of action.

As they did for Aryeh, these equitable exceptions have the potential to resurrect claims that are otherwise stale. *Aryeh* does not, however, create a free-for-all. Rather, the equitable doctrines remain exceptions — albeit significant ones — to the statute of limitations for actions under the UCL. Moreover, UCL claims often "borrow" violations of other laws, presenting varied circumstances that could merit modification of the limitations analysis. After *Aryeh*, courts will be "free to determine whether the circumstances in each case call for application of either the general last element rule of accrual or any of its equitable exceptions."

Implications for UCL and Antitrust Jurisprudence

The language in *Aryeh* signals a new yet unclear course in UCL jurisprudence beyond statute of limitations issues. California courts have until now consistently relied on interpretations of federal statutes like the Federal Trade Commission Act to construe the UCL. For instance, in *Cel-Tech Communications v. Los Angeles Cellular Telephone*, 20 Cal.4th 163 (1999), the court relied on the FTCA's definition of "unfair," stating that the similarity in language between the two statutes made the decisions of federal courts interpreting the FTCA more than ordinarily persuasive.

In contrast, the *Aryeh* court opined that the UCL is historically distinct from the Cartwright Act, and that the Cartwright Act is historically distinct from federal antitrust laws. While *Aryeh* did not specifically hold that California's UCL is analytically distinct from its federal counterparts, it did show the court's willingness to delve into the origins of the law and construe it without reliance on federal interpretations. Both plaintiffs and defendants now have an opportunity to guide the future of UCL and California antitrust jurisprudence using *Aryeh* as a springboard. Its wider impact has yet to be seen.

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