SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

In Re Vehicle Lease Documents Cases	Case No.: BC 236185
	ORDER DENYING PLAINTIFFS' MOTION FOR LEAVE TO CONDUCT DISCOVERY IN ANTICIPATION OF FILING AMENDED COMPLAINT
And All Related Actions.	

This case came on for hearings on July 13, September 14, and October 5, 2007, in Department 309 of the above-entitled court, the Honorable Anthony J. Mohr, Judge presiding. All parties were represented by counsel. The court having considered all documents, pleadings, and oral argument in support and in opposition of the plaintiff's motion and good cause appearing therefore, issues this order.

I

Introduction

This case presents the following question: should discovery to find a named plaintiff be available to an individual who, before Proposition 64 passed, properly filed a class action under Business and Professions Code section 17200 against one defendant and who filed a representative

action against numerous other defendants? A key related question is, could that individual have properly filed a class action against the numerous other defendants.

Louis Trygar filed a class action against one automobile dealership with which he did business. In the same case, he filed representative actions against almost one thousand four hundred other dealerships ("the other dealerships") with which he had no dealings. Parenthetically, the court has never been convinced that joinder was proper. However, dismissing the case would only have resulted in the re-filing of almost 1,500 separate cases, all of which would ultimately be related and managed together, at least up to the time of trial.

No one can fault Mr. Trygar for bringing his representative actions. When he filed them, he was a proper representative plaintiff and had standing in that regard. Thanks to Proposition 64, that kind of action no longer is available, and he must comply with CCP section 382 if his case against the other dealerships is to continue. Even assuming Mr. Trygar could have filed class actions against the other dealerships before the enactment of Proposition 64, they would now fail because he has not lost any money or property by virtue of the other defendants' conduct. Consequently, Mr. Trygar has filed the within motion for leave to conduct discovery in anticipation of filing an amended complaint.

This court concludes that, despite some very excellent arguments made by the plaintiffs' counsel, the motion should be denied.

II

Before Proposition 64 Passed, Could Trygar Have Maintained a Class Action Against the Other Defendants?

In defendants' words, "Trygar could no more serve as a class representative against Acura of Bakersfield, Anaheim Mitsubishi, Broadway Motors or the hundreds of other non-HAK defendants than he could serve as a class representative against Wendy's and Burger King based on his own unhappy experiences with MacDonald's." (Defense Steering Committee's Supp Mem. Concerning the Effect of Plaintiff Trygar's Pre-Proposition 64 Class Allegations on his Post-Proposition 64 Right to Conduct Discovery in Search of New Class Representatives, page 4). Although filed under one caption, he actually commenced almost 1,500 separate actions against almost 1,500 separate defendants involving

almost 1,500 separate groups of plaintiffs. Even if there is any correlation of interests among these plaintiffs, the legal liability of each dealership will depend upon the manner in which each dealership acted and its contractual relationship with its customers. These facts align the instant litigation with at least two decisions: *Baltimore Football Club Inc. v. Superior Court* (1985) 171 Cal.App.3d 352, and *Hart v. Alameda County*, 76 Cal.App.4th 766. In *Baltimore Football Club*, the court found no typicality because the plaintiffs "simply alleged that they purchased their tickets from 'one or more' of the defendant teams. . . . In the absence of an affirmative showing that the class representatives purchased a season ticket from each of the defendant teams, the typicality requirement has not been met." *Id.* at 362. "In short, this action is actually 28 separate actions against 28 separate defendants involving 28 separate groups of plaintiffs without any correlation of interests between them. The legal liability of each team will depend upon the manner in which that team acted, its contractual relationship with its ticket holders, and upon the law of the state where the purchase was made." *Id.* at 363.

In *Hart*, *supra*, the plaintiff sued 26 counties to get a refund of unused jury fee deposits. Although Mr. Hart or his assignors actually had deposited jury fees in four counties, he never deposited funds in the remaining 22 counties that he sued. Refusing to allow him to maintain a class action against those 22 counties, the court, citing *Baltimore Football Club*, *supra*, reiterated that a class action "may only be maintained against defendants as to whom the class representative has a cause of action. Without such a personal cause of action, the prerequisite that the claims of the representative party be typical of the class cannot be met. If the plaintiff class representative only has a personal cause of action against one defendant and never had any claim of any kind against the remaining defendants, his claim is not typical of the class. . . . Th[is] . . . requirement is . . . not fulfilled merely because the plaintiffs allege that they suffered injuries similar to those of other parties at the hands of other defendants. [citations omitted]." *Hart*, 76 Cal.App.4th at 775-76; *accord Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 845 ("A plaintiff cannot use the procedure of a class action to establish standing to sue a class or group of defendants unless the plaintiff has actually been injured by each of the defendants in the class." (Italics deleted).).

Based on these two decisions, any class action Mr. Trygar would have filed against the other defendants would have lacked typicality, either before or after Proposition 64.

That Mr. Trygar wants to pursue a class action under section 17200 makes no difference. The requirements to certify such a cause of action are no less stringent. Even before the advent of Proposition 64, the Court of Appeal concluded that "a trial court may certify a UCL claim as a class action when the statutory requirements of section 382 of the Code of Civil Procedure are met." *Corbett v. Superior Court* (2002) 101 Cal.Appl4th 649, 663; *accord Quacchia v. DaimlerChrisler Corp.* (2004) 122 Cal.App.4th 1442, 1449.

III

Nevertheless, Should Trygar be Allowed Discovery to Locate New Class Representatives?

As the defense points out, Mr. Trygar was not - and never was - a member of the numerous classes against the other defendants. He only was a member of the class against HAK. It follows that further analysis must take into account the holding of *First American Title Co. v. Superior Court* (2007) 146 Cal.App.4th 1564. In effect, Louis Trygar is a stranger to the claims against the other defendants, and for that reason "the grant of such discovery would sanction an abuse of the class action procedure." *Id.* at 1566.

In discussing the earlier cases that allowed discovery, the First American court pointed out that "[t]his rule is usually applied in situations where the class representative originally had standing, but has since lost it by intervening law or facts. [citations omitted]." *Id.* at 1574. For this reason, the court does not believe it must engage in the analysis originally articulated in *Parris v. Superior Court* (2003) 109 Cal.App.4th 285, 300-01, and used in *First American* to determine whether "the potential abuse of the class action procedure greatly outweighs the rights of the parties under the circumstances." *First American*, 146 Cal.App.4th at 1576. But even under that analysis, the scales tip against granting relief.

The first consideration in the *Parris* weighing process involves the potential abuse of the class action procedure. 109 Cal.App.4th at 300-01. While Mr. Trygar originally did not try to make an end-run around Proposition 64, granting his motion will allow his counsel, based on his single claim against HAK, to extract discovery from almost one thousand five hundred other dealerships throughout the state. Even if technically legal, this scenario troubles the court. The potential for abuse exists regardless of counsel's best intentions.

The second consideration in the weighing process involves the rights of the parties under the circumstances. *Id.* at 301. The court in *First American* found:

> [Plaintiff's] interest in obtaining a proper plaintiff to represent the class is nonexistent. [Plaintiff] is not a member of the class and never has been; he has no cognizable interest in seeing this class action proceed. We acknowledge that the members of the putative class may have an interest in pursuing the class action. However, we are not blind to the fact that this is not a case in which [Plaintiff] has uncovered an apparent wrongdoing that will remain unaddressed without this class action. . . . Any further legal action can be pursued by members of the class, if they so desire. [Plaintiff] makes no argument that any future action they might pursue would be time-barred, or offer any other reason why the class members might be denied relief if this action is unable to proceed on their behalf. In short, the potential for abuse of the class action procedure is overwhelming, while the interests of the real parties in interest are minimal. Precertification discovery under these circumstances would be an abuse of discretion.

Id. at 1577.

Similarly here, Mr. Trygar's interest in obtaining a proper representative plaintiff is almost non-existent. He will not be a member of the classes against the other defendants if any of them is certified. He has no cognizable interest in seeing these actions proceed. While it is true that Mr. Trygar wishes to enforce rights, he will suffer no detriment himself if this action does not proceed against the other defendants because he never was harmed by their alleged conduct. While unlike *First American*, Trygar does raise the statute of limitations issue, he does not state that that will bar the continued prosecution of these class actions on behalf of persons harmed within the last four years. Since the claims he filed against the other defendants never were purported class actions, they have not tolled the statute of limitations against them. *See American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974). Finally, and parenthetically, it appears that purported class members will not be denied relief if Mr. Trygar is unable to proceed on their behalf. If anything, according to the plaintiffs, his own class action and

representative actions have already sparked industry-wide reforms. (Exhibit C and page 6, Plaintiffs' Further Supplemental Memorandum in Support of Plaintiffs' Motion for Leave to Conduct Discovery in Anticipation of Filing Amended Complaint).

IV

Conclusion

Mr. Trygar is free to amend his complaint (*Branick v. Downey Savings & Loan Association* (2006) 39 Cal.4th 235; *LaLiberte v. Pacific Mercantile Bank* (2007) 147 Cal.App.4th 1), but he is not entitled to the discovery he seeks in this motion. His motion for leave to conduct discovery is DENIED.

Pursuant to Code Civ. Proc section 166.1, this court believes that there is a controlling question of law as to which there are substantial grounds for difference of opinion, appellate resolution of which may materially advance the conclusion of this litigation.

DATED: November 26, 2007

Anthony J. Mohr

Judge of the Los Angeles Superior Court