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2009 Massachusetts Avenue, NW
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202.588.0302 wlf.org

July 27, 2020

Ninth Circuit Deals Mortal Wound to Equitable Restitution Claims Under California Law

by Jeffrey Margulies

Fresh on the heels of a California Supreme Court opinion holding that litigants have no right to a trial by jury in Unfair Competition Law (UCL) cases, the Ninth Circuit has relied on equitable principles to reject a class action plaintiff's gambit to force a court trial by dismissing her damages claim. The decision in *Sonner v. Premier Nutrition Corp.*, 962 F.3d 1072 (9th Cir. 2020), not only furthers the divide between California state and federal courts regarding the right to jury trial in such cases, it calls into question whether federal courts will even hear many state claims for equitable restitution brought in federal court where damages are available.

We wrote about the stark differences in approach to the right to jury trial in a recent Washington Legal Foundation Legal Backgrounder, which discussed the opinion in *Nationwide Biweekly Administration, Inc. v. Superior Court*, 9 Cal. 5th 279 (2020). There, the California Supreme Court held that litigants had no right to jury trial under the California Constitution for UCL cases, because claims brought under the law are inherently equitable claims. And, unlike the Seventh Amendment's requirement that a jury's decision on legal claims are binding on the court's equitable findings, the California preference is for courts to decide equitable claims first, rendering it unnecessary for a jury to decide parallel legal claims based on the same facts.

A mere two months after *Nationwide Biweekly*, a Ninth Circuit panel issued its opinion in *Sonner*. There, the plaintiff made a strategic decision to dismiss her claim for damages under the Consumer Legal Remedies Act (CLRA), leaving only equitable claims for restitution under the CLRA and UCL to be decided by the court. Upon reading the presiding judge's past rulings, Sonner's counsel became convinced that the district court was predisposed to rule in his client's favor. The attorney thus tried to compel a court trial by seeking only equitable restitution (in the same amount and based on the same facts as her damages claim), depriving the defense of its right to trial by jury. The district court agreed with Premier's argument that California had not abrogated the common-law rule that a plaintiff seeking equitable relief had to demonstrate an adequate remedy at law, and dismissed the remaining claim for equitable restitution under the UCL and CLRA because it deemed the now-dismissed CLRA damages claim as adequate.

On appeal, the parties—and *amici*, including the California Attorney General—primarily briefed the issue through the lens of California law. Sonner asserted that the UCL's "cumulative" remedies language reflected the legislature's view that plaintiffs need not demonstrate absence of an adequate legal remedy. Premier argued that the court could not repeal the common-law equitable rule by implication. The Ninth Circuit panel, however, focused exclusively on federal law,

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Jeffrey Margulies is Partner-in-Charge at the Los Angeles and San Francisco, CA offices of Norton Rose Fulbright US LLP.

and what the court termed the "threshold jurisdictional question: do federal equitable principles independently apply to Sonner's equitable claims for restitution or must we, as a federal court, follow only the state law authorizing that equitable remedy?" 962 F.3d at 1076.

As every first-year law student knows, the *Erie* doctrine requires a federal court exercising diversity jurisdiction to apply the substantive law of the forum state, and looks to whether applying state vs. federal law would be "outcome-determinative." The question the Ninth Circuit addressed in *Sonner* was whether, under *Erie*, a federal court is subject to state rules regarding equitable remedies on state-law claims, or whether the federal common law on equity controlled.

To answer that question, the court looked to a 75-year old precedent, issued seven years after *Erie*, *Guaranty Trust Co. of New York v. York*, 326 U.S. 99 (1945). The court found *York* directly on point and controlling:

> *Equitable relief in a federal court is of course subject to restrictions*: the suit must be within the traditional scope of equity as historically evolved in the English Court of Chancery; *a plain, adequate and complete remedy at law must be wanting*; explicit Congressional curtailment of equity powers must be respected; [and] the constitutional right to trial by jury cannot be evaded. *That a State may authorize its courts to give equitable relief unhampered by any or all such restrictions cannot remove these fetters from the federal courts*.

962 F.3d at 1077 (quoting *York*, 326 U.S. at 105-06, emphasis added by *Sonner* opinion).

From there, the court concluded that state law cannot "expand a federal court's equitable powers, even if allowing such expansion would ensure a similar outcome between state and federal tribunals." *Id.* at 1078-79. Because the equitable remedy sought by plaintiff was restitution in the exact same amount as her CLRA damages claim, the court held that the CLRA damages claim was an adequate remedy at law. This adequate remedy therefore precluded the plaintiff's attempt to seek restitution, and required dismissal since she had dismissed her damages claim. *Id.* at 1081.

The court then put a stake through plaintiff's attempt to amend her complaint to replead her CLRA damages claim after her gambit failed. It noted that the district court did not commit error in refusing the amendment where the dismissal occurred on the eve of trial, and the district court had warned plaintiff when she dismissed the damages claim that she could not amend to reallege damages if her equitable claims were subsequently dismissed because it "would be unfair, prejudicial, and an affront to the judicial system." *Id.* at 1082.

If *Sonner* survives an anticipated petition for rehearing or rehearing *en banc*, the opinion will have a profound impact on litigating equitable restitutionary claims in federal court, with the exact opposite result from California state-court litigation. As we discussed in the *Legal Backgrounder*, a case with equitable and legal claims based on the same set of operative facts filed in state court would likely be tried mostly to the court, based on the preference in California for equitable claims to be tried first. The court's finding would be binding on legal claims based on the same facts. Since restitution under California law is often equivalent to (if not more limited than) compensatory damages, in cases brought in federal court under diversity jurisdiction, defendants are likely to deluge plaintiffs with motions to dismiss equitable claims for restitution under the CLRA and UCL. Defendants will reason that the plaintiffs have adequate remedies at law in available damages claims, regardless of whether those claims are pleaded.

