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Mazza Not Wonderful Enough For Pom

Law360, New York (October 18, 2012, 1:34 PM ET) -- Almost a year since the Ninth Circuit's decision in Mazza v. American Honda Motor Co. Inc.,[1] the case remains both heralded and, according to at least some California courts asked to apply it, misunderstood. As most who practice consumer protection class action work know, Mazza involved the Ninth Circuit's reversal of certification of a putative nationwide class comprised of automobile purchasers across 44 states, in part, because of material variances in those states' consumer protection laws.[2] These material variances precluded a finding of predominance across the proposed nationwide class.

With this holding, Mazza was properly praised as a significant deterrent to rampant, overbroad putative nationwide consumer protection class actions.[3] Given the prevalence of California class action filings seeking to apply California law to nationwide putative classes, Mazza was also rightly regarded as having nationwide relevance and importance.[4]

In its immediate aftermath, some plaintiffs appeared to concede that Mazza was an immediate death sentence for putative nationwide classes seeking to apply California consumer protection law to purchases made in other states.[5] Since that initial reaction, however, some plaintiffs have challenged the scope of Mazza's reach, and a few decisions have rebuffed defendants' reliance on Mazza to attack putative multistate class actions.[6]

Although these few rulings are generally self-limited to cases that are "materially distinguishable" from Mazza and are certainly nondeterminative of Mazza's full reach and proper application, they nonetheless show that defense practitioners hoping to rely on Mazza must fully appreciate perceptions of the scope and basis for that holding, as the Central District of California most recently highlighted with its decision in In re Pom Wonderful LLC Marketing and Sales Practices Litigation.[7]

Mazza Not So Wonderful for Pom

In Pom Wonderful, the plaintiffs sued the pomegranate juice manufacturer Pom over its advertisements, which the plaintiffs felt oversold the juice drink's health benefits.[8] Asserting claims under California's False Advertising Law, Unfair Competition Law and Consumer Legal Remedies Act, the plaintiffs sought to certify a nationwide class of all "Pom Wonderful" purchasers over a five-year period.[9]

In opposing certification, Pom argued that after Mazza, "the proposed class cannot be certified because California law cannot be applied to consumers nationwide."[10] Discussing Mazza's choice-of-law analysis, the Pom Wonderful court acknowledged that "[i]n some instances, of course, the particular facts of a case will demonstrate that a true conflict of laws does exist."[11] However, the court ruled that "[t]o the extent that Pom argues that California law cannot be applied to consumers nationwide as a matter of law, Pom is incorrect."[12]

The Pom Wonderful court declined to follow Mazza as a "matter of law" proposition and distinguished it by concluding that, in Mazza, "Honda met its burden to demonstrate material differences in state law and show that other states' interests outweighed California's."[13] Conversely, the Pom Wonderful court explained, Pom did not similarly meet its burden because, "[p]erhaps relying upon the mistaken assumption that California law cannot be applied to a nationwide class as a matter of law," Pom appended a chart summarizing each state's consumer protection laws, but never "indicate[d] which of these foreign laws differs from California's laws."[14] Thus, according to the Pom Wonderful court, Pom failed to satisfy any of California's three-part "governmental interests" choice-of-law analysis and certified the nationwide class under California law.[15]

Relying on Mazza After Pom Wonderful

It remains to be seen whether the certification in Pom Wonderful will be appealed and, if so, whether the Ninth Circuit will agree that Pom did not do enough to show material variances after Mazza to preclude certification of the proposed nationwide class.[16] In the meantime, Pom Wonderful is not the first case — and it will likely not be the last case — distinguishing Mazza or declining a defendant's request for the court to follow it as a "matter of law" proposition.[17] In that respect, Pom Wonderful is not unique or groundbreaking. But it is nonetheless instructive, to a degree.

Pom Wonderful highlights that defendants attempting to argue Mazza too broadly and as standing for the proposition that California law cannot be applied to any nationwide class "as a matter of law" in every case regardless of material differences between the facts of their case and those in Mazza may, at least for the time being, find themselves disappointed.[18]

Indeed, where the case at hand is materially factually distinguishable from Mazza, counsel may not be successful in precluding a nationwide class merely by citing Mazza and hoping for the same result because, as Pom Wonderful and other cases show, some courts do not view Mazza as a "one size fits all" result.[19] In such materially factually distinguishable cases, at least in some courts, defendants may need to go beyond mere citation of Mazza by providing a detailed breakdown of the applicable foreign law and a choice-of-law analysis tailored to the unique allegations of the case at hand.

Nonetheless, Pom Wonderful clearly did not — and could not — overrule Mazza, and it likewise does nothing to diminish the reality that Mazza has controlling precedential value in the Ninth Circuit.[20] At the very least, where the facts of a case are materially indistinguishable from Mazza, a court should follow it as a "matter of law" proposition to preclude nationwide class actions under California consumer protection law, as courts have.[21]

For example, in Kowalsky v. Hewlett-Packard Co., the plaintiff sought a nationwide class for claims under California's Unfair Competition Law and Consumer Legal Remedies Act comprising "[a]ll persons residing in the United States who purchased an HP Office Jet Pro Allin-One printer" over a 16-month period.[22] Despite the fact that Kowalsky and Mazza involved, among other points of possible distinction, different defendants, different products, different types of marketing and advertising, and different types of transactions, the Kowalsky court found the two cases were nonetheless "materially indistinguishable," and that Mazza was "therefore controlling."[23] As a result, the court denied class certification, albeit with leave to amend and to renew the request for class certification.[24]

Conclusion

Much remains to be seen in how Mazza will be interpreted, applied and followed in the future in the Ninth Circuit and elsewhere. Nevertheless, Mazza is and remains controlling law in the Ninth Circuit. Thus, giving Mazza proper precedential value requires that defendants should at least be able to rely on its preclusion of nationwide class actions under California consumer protection law as a "matter of law" proposition where their cases are materially indistinguishable from Mazza.

In the meantime, unless and until the Ninth Circuit provides further clarification, in other arguably "materially distinguishable" matters, defendants hoping to prevent nationwide class certification may need go beyond mere reliance on Mazza and provide the court with a detailed differentiation of the applicable foreign law and a choice-of-law analysis tailored to the unique allegations of the case at hand.[25]

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[1] 666 F.3d 581 (9th Cir. 2012).

[2] See generally 666 F.3d 581 (9th Cir. 2012).

[3] See, e.g., Neal Walters & Michael Carroll, A Red Light for Federal Class Certification in California, Law360 (Feb. 2, 2012). Given the amount of time since Mazza was issued, and the amount of discussion it has already received, this article does not discuss at length the underlying analysis or holding in Mazza as background.

[4]Mazza also garnered attention from other jurisdictions as to whether their circuit courts would reach the same result. E.g., Montich v. Miele, 849 F. Supp. 439, 450 n.6 (D.N.J. 2012) (discussing Mazza's holding that "[b]ecause the law of multiple jurisdictions applies here to any nationwide class ... variances in state law overwhelm common issues and preclude predominance for a single nationwide class" and

noting that "[w]hether the jurisprudence of the Third Circuit would compel a similar holding is a question for a later day").

[5] E.g., Kowalsky v. Hewlett-Packard Co., No. 5:10-cv-02176 at *7 (N.D. Cal. Mar. 14, 2012) ("HP argues, and Plaintiff does not dispute, that the Ninth Circuit's recent decision in Mazza ... precludes class certification here. Indeed, Plaintiff acknowledges that Mazza is 'controlling law' and 'is likely to result in denial of this [class certification] Motion.' Plaintiff also acknowledges that '[a]pplying Mazza to this case would ... preclude a nationwide class.' ... The Court agrees that Mazza controls and forecloses certification of the proposed nationwide class."); see also Granfield v. NVIDIA Corp., No. C11-05403 at *3 (N.D. Cal. July 11, 2012) ("Here, Plaintiff concedes that under Mazza, she is not entitled to bring a claim under California law in light of the fact that she purchased her computer in Massachusetts.").

[6] E.g., Allen v. Hyland's Inc., No. CV 12-01150 DMG (MANx) at *2 (C.D. Cal. May, 2, 2012) ("Mazza did not hold — as Defendants maintain — that 'where an out-of-state plaintiff claims to have been deceived or harmed as a result of misrepresentations or omissions received outside of California, that Plaintiff's consumer protection claims must be brought under that Plaintiff's own state laws.'"

[7] No. 2:10-ml-02199 DDP (RZx), MDL No. 2199 (C.D. Cal. Sept. 28, 2012) (certifying nationwide class).

[8] Id. at *1.

[9] Id.

[10] Id. at *2.

[11] Id. at *3.

[12] Id. (citing cases).

[13] Id.

[14] Id.

[15] Id. at *4 ("[T]he court is satisfied that California law applies here to a nationwide class, and that common questions of law predominate."); see also id. at *7 ("For the reasons stated above, Plaintiff's Motion for Class Certification of a class comprised of all persons who purchased a Pom Wonderful 100% juice product between October 2005 and September 2010 is GRANTED.").

[16] As of the drafting of this article, Pom had not sought immediate appellate review under Fed. R. Civ. P. 23(f).

[17] E.g., Bruno v. Eckhart Corp., 280 F.R.D. 540, 549-50 (C.D. Cal. 2012) ("Mazza is distinguishable from the present case because there the defendants 'exhaustively detailed' material differences in California and other states' laws, whereas here, Defendants simply cited a case reaching the legal conclusion they urged. ... Defendants cannot profitably rely on the work of a different party in a different case with different facts — or on the Ninth Circuit finding error in a district court rejecting an argument

Defendants did not themselves present to this Court — to correct their failure."). But see Kowalsky at *7 n.2 ("With all due respect to the Central District, as discussed below, this Court is bound by the Ninth Circuit's decision in Mazza and declines to follow Bruno.")

[18] But see In re High-Tech Employee Antitrust Litig., 876 F. Supp. 2d 1103, 1125 n.13 (N.D. Cal. 2012) (noting that, based on Mazza, the plaintiffs' proposed nationwide class action under California's UCL "would likely face an insurmountable hurdle at the class certification stage given that the Ninth Circuit has foreclosed the certification of nationwide classes under the UCL").

[19] Forcellati v. Hyland's, Inc., No. CV 12-01150 DMG (MANx) at *4 (C.D. Cal. May 2, 2012) (Gee, J.) ("Merely citing other courts' choice-of-law analyses [e.g., Mazza], based on the facts before those courts, fails to discharge Defendants' burden of showing a 'compelling reason' justifying the displacement of California law on Plaintiff's claims."); see also supra. n.17.

[20] E.g., Gianino v. Alacer Corp., 846 F. Supp. 2d 1096, 1099-1103 (C.D. Cal. 2012) (following Mazza and relying on the defendant's "comprehensive nationwide analysis" of the "significant variances in the states' consumer protection and fraud laws" to conclude that, as in Mazza, those differences were material and, therefore, the laws of all 50 states would have to be applied, thereby defeating predominance and class certification).

[21] E.g., Kowalsky at *7.

[22] Id. at *6.

[23] Id. at *7.

[24] Id. at *8.

[25] Neither the authors nor their firm represented American Honda Motor Co. Inc. in Mazza. However, Honda is a longtime client of Bowman and Brooke LLP. The authors have raised and relied on Mazza in support of motions to dismiss and to strike class allegations in other nationwide putative class action matters.