

Class actions in Puerto Rico

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Last week I gave a seminar on class actions at the convention of the Puerto Rico Bar Association held in Río Mar. The seminar was offered in conjunction with the presentation of the fourth edition of my book on Civil Procedure.

Puerto Rican society and our economy have gone through a profound transformation since the first edition of my book was published in 1969. A more complex economy and a society more and more apart from the moral values that govern human conduct generate more and more litigation and impose greater demands on our judicial system.

One of the changes that has occurred since the publication of my book in 1969 has been in the area of class actions. Class actions are representative suits on behalf of persons similarly situated. At the time I wrote the first edition, our rule of Civil Procedure on class actions was not a useful tool for litigation. It was copied from Rule 23 of the Federal Rules of Civil Procedure, which was also ineffective. But, Federal Rule 23 underwent important amendments in 1966, which opened the field of class-action litigation in an important way and many states of the Union adopted rules similar to Federal Rule 23.

Since class actions permit hundreds, thousands or even millions of people to join in a civil suit, they are an instrument available to the citizenry to protect their rights and to enforce compliance with the law and with public policy. They have been used in the U.S. in mass tort cases arising from accidents, product liability or toxics; also in consumer credit and consumer fraud actions; in shareholders derivative suits; in claiming government benefits, in employment discrimination cases and a host of other cases where there is a class of persons similarly situated who have suffered injury.

The first move in Puerto Rico to provide for a more practical and efficient procedure for class actions than that afforded by the rules that existed when I published the first edition of my book, came with Law 118 approved June 25, 1971. This law established the consumer class action in Puerto Rico. It was inspired by Federal Rule 23 but was simpler in its requirements inasmuch as it was directed only to consumers. The statement of motives expresses that “Usually consumer actions involve sums of money so small they do not justify an individual case; it is more economic and just that claims that are essentially identical be filed in a class suit on behalf of all consumers that have been defrauded or deceived.”

After Law 118 went into effect, we had an effective mechanism for class actions but only for consumer class actions. When the Supreme Court and the Legislature revised the Rules of Civil Procedure in 1979, they did away with the old rule 20 for class actions, which was ineffective and in turn incorporated

Federal Rule 23. They went even further because they provided for a more liberal and practical method for notifying absent class members.

A few class actions were presented in Puerto Rico during the '80s. One of these cases was *Cuadrado v. Romero Barceló*, 120 DPR 434, an employment discrimination case. In this seminal case on class actions, the Supreme Court stated in an opinion by the now Chief Justice Federico Hernández Denton that class actions:

1. Promote judicial economy inasmuch as they reduce the number of cases that must be adjudicated by the courts by allowing them to adjudicate once and for all matters that belong to several cases; they also avoid the possibility of multiple and repetitive claims;
2. They provide justice to people who would otherwise not obtain it specially when the individual sums in controversy are not substantial and therefore the affected people do not feel motivated to file suit and,
3. They protect the parties from inconsistent judgments.

Even after this case was decided, we did not see much class-action litigation in Puerto Rico. Nevertheless as we have turned the corner into the 21st century class actions have begun to spring up in our courts. Gasoline consumers have sued the oil companies, electric power consumers have sued Prepa, milk consumers have sued Vaquería Tres Monjitas and a number of other cases.

The class action against Vaquería Tres Monjitas went all the way to the Supreme Court and produced a most lucid opinion by Associate Justice Liana Fiol Matta (2006 TSPR 187), which integrated Law 118 with Rule 20 for consumer class actions. In this case, the Superior Court had not certified the plaintiff class and the Supreme Court, in an unusual move, interfered with the Superior Court's discretion and reversed the lower court.

The Supreme Court explained the Superior Court's discretion was limited in this case by the public interest in favor of the consumers shaped in Law 118. The court went on to say the Legislative Assembly in enacting Law 118 intended to discourage improper and deceitful conduct on the part of suppliers of goods and services toward the consumers.

Law 118 is similar to various laws approved in different states of the union, such as California, for the protection of consumers. In its intention to discourage improper and deceitful conduct it provides for remedies that can be obtained in the class action in addition to the compensation for the damages suffered by the consumers. Under Law 118, when a court finds for the consumer in the class action it must also impose double damages plus interest on the damages from the date that the cause of action accrued and a sum for attorneys fees, which must be not less than 25% of the amount of damages suffered by the consumers. The 25% attorney fee is to be paid by the defendant and does not come out from plaintiff's compensation.

Class actions are coming of age in Puerto Rico. They are powerful instruments through which our Judiciary can protect our rights and enforce public policies.

