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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JOHN WEBSTER Plaintiff and Appellant, v. ALLSTATE INSURANCE COMPANY and PROGRESSIVE CASUALTY INSURANCE COMPANY, Defendants and Respondents.	B211390 (Los Angeles County Super. Ct. No. BC338075)

APPEAL from a judgment of the Superior Court of Los Angeles County, Carl J. West, Judge. Affirmed.

Johnson & Johnson, Douglas L. Johnson; Blecher & Collins and Maxwell M. Blecher for Plaintiff and Appellant.

Sonnenschein Nath & Rosenthal, Gayle M. Athanacio, Sonia Martin and Karen Marchiano for Defendant and Respondent Allstate Insurance Company.

Baker & Hostetler, Peter W. James and Ernest E. Vargo for Defendant and Respondent Progressive Casualty Insurance Company.

INTRODUCTION

Plaintiff and appellant John Webster owns and operates an auto body repair shop in Gilroy. Defendants and respondents Allstate Insurance Company and Progressive Casualty Insurance Company provide automobile insurance in California. Plaintiff brings this action on behalf of himself and all members of a putative class of California auto body repair shops who have received payments from defendants based on rates that were allegedly below their "actual repair rate."

The gravamen of plaintiff's suit is that defendants allegedly unlawfully and unfairly steer customers away from plaintiff's business and towards direct repair providers (DRPs) who have a contractual relationship with defendants. Plaintiff contends that defendants pay plaintiff "artificially low" rates for auto body work. This is allegedly accomplished through the use of unlawful and unfair surveys of body shop rates that include rates charged by DRPs who provide volume discounts to defendants.

Plaintiff appeals from a judgment entered in favor of defendants after the superior court found that plaintiff's third amended complaint (complaint) failed to state facts sufficient to constitute a cause of action.[1] Among the issues we address is whether plaintiff, who is not entitled to restitution from defendants because he has not conveyed any money or property to defendants, has standing to assert a claim for injunctive relief under the Unfair Competition Law (UCL). We hold that plaintiff lacks standing to pursue such a claim.

We further hold that that the superior court correctly dismissed plaintiff's UCL cause of action because plaintiff failed to allege unlawful or unfair conduct within the meaning of the statute. In addition, for reasons we shall explain, we hold that the superior court correctly dismissed plaintiff's unjust enrichment and Cartwright Act causes of action. We thus affirm the judgment.

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[1] Defendants filed a series of motions to dismiss and motions regarding threshold legal issues, which the superior court deemed as general demurrers and motions for judgment on the pleadings. The court sustained the demurrers and granted the motions without leave to amend.

SUMMARY OF ALLEGATIONS IN THE COMPLAINT

The complaint alleges the following.

Defendants entered into agreements with unnamed DRPs. The DRPs are "shops that provide discounted rates in exchange for volume referrals."

Under California law, insurance companies may conduct surveys to determine "prevailing auto body rates," which they may use as a basis for settling claims. Defendants have manipulated such surveys to cause the prevailing auto body rates to be artificially low. In particular, defendants' negotiated labor rates typically include rates from defendants' DRPs. These rates are lower than the "actual rate" charged by repair shops.

"Defendants use the 'prevailing auto body rate'—that they determine and set—as the maximum hourly labor rate that they will pay an auto body repair shop for repairs made on their insured's or claimant's behalf." "Defendants' artificially low 'prevailing auto body rate' is, in some instances, $10 less per hour than Plaintiff's actual labor rate."

Defendants are illegally steering insureds and claimants to DRPs by using their artificially lower prevailing auto body rate. "If the insured or claimant prefers to take his or her car to a shop of his or her choice, and the labor rate exceeds the artificially lowered 'prevailing auto body rate,' the insured or claimant is told that he or she must take the car out of the non-DRP shop of the insured's or claimant's choice or pay the difference. The clear inference to the insured or claimant is that the non-DRP shop is 'price-gouging' him or her as to the auto body labor rate charged."

Based on these allegations, plaintiff asserts causes of action for violation of the UCL, Business and Professions Code section 17200 et seq.,[2] unjust enrichment, and violation of the Cartwright Act, section 16700 set seq.

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[2] Unless otherwise indicated, all future section references are to the Business and Professions Code.

Plaintiff prays for, inter alia, an order certifying a class of auto body repair shops,[3] an order appointing plaintiff as class representative and his attorneys as class counsel, an injunction prohibiting defendants from using negotiated rates in their surveys to determine the prevailing auto body rate in a geographic area, treble damages for violations of the Cartwright Act, attorney fees, interest and costs. Plaintiff also prays for disgorgement of all benefits wrongfully taken from plaintiff and the class in an amount that defendants have been unjustly enriched. However, plaintiff concedes that he cannot pursue restitution as a remedy in his unfair competition cause of action.

DISCUSSION

1. *Standard of Review*

On appeal from a judgment of dismissal following a ruling sustaining a general demurrer or granting a motion for judgment on the pleadings, we determine de novo whether the complaint alleges facts sufficient to state a cause of action. (*SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 82 (*SC Manufactured Homes*); *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 633, fn. 3; *Gami v. Mullikin Medical Center* (1993) 18 Cal.App.4th 870, 876.) " 'We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and facts of which judicial notice can be taken. [Citation.] We construe the pleading in a reasonable manner and read the allegations in context. [Citation.]' " (*SC Manufactured Homes*, at p. 82.) However, we need not accept as true plaintiff's contentions, deductions or conclusions of fact or law. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.)

2. *The Complaint Fails to State a Cause of Action for Unfair Competition*

The purpose of the UCL is to protect consumers and competitors from unfair competition in commercial markets for goods and services. (*Kasky v. Nike, Inc.* (2002)

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[3] Plaintiff alleges that the class consists of "all current and former auto body repair shops who were not paid their actual repair rate by Defendants during the period of four years before the date of the filing of this action . . . ."

27 Cal.4th 939, 949.) Section 17200 defines "unfair competition" to include "any unlawful, unfair or fraudulent business act or practice." Plaintiff contends that he has standing to pursue a UCL cause of action even though he is not eligible for restitution. He further argues that the complaint states facts supporting his allegation that defendants engaged in both unlawful and unfair business practices.

We reject plaintiff's arguments. For reasons we shall explain, plaintiff does not have standing to pursue an unfair competition claim. Even assuming plaintiff had standing, the trial court correctly entered judgment against plaintiff with respect to his UCL cause of action because the complaint does not state facts supporting plaintiff's claim that defendants acted in an unlawful or unfair manner.

a. *Plaintiff Does Not Have Standing to Pursue an Unfair Competition Claim*

Prior to the passage of Proposition 64 in 2004, California law authorized any person acting for the general public to sue for relief from unfair competition. (*Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 227 (*Mervyn's*).) Proposition 64 amended section 17204 to provide that an individual has standing to pursue a claim for violation of the UCL only if he or she "has suffered injury in fact and has lost money or property as a result of the unfair competition." (§ 17204; *Mervyn's*, at p. 228.) The proposition also amended section 17203—the statute authorizing injunctive relief and class actions—by adding the following words: "Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state." (§ 17203; *Mervyn's*, at pp. 228-229.)

"Because remedies for individuals under the UCL are restricted to injunctive relief and restitution, the import of [section 17204] is to limit standing to individuals who suffer losses of money or property that are eligible for restitution." (*Buckland v. Threshold Enterprises, Ltd.* (2007) 155 Cal.App.4th 798, 817; accord *Citizens of Humanity, LLC v. Costco Wholesale Corp.* (2009) 171 Cal.App.4th 1, 22 (*Citizens for Humanity*); *Walker v.*

Geico General Ins. Co. (9th Cir. 2009) 558 F.3d 1025, 1027 (*Geico*).) Restitution allows a plaintiff "to recover money or property in which he or she has a vested interest." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1149.) " 'Compensation for a lost business opportunity is a measure of damages and not restitution to the alleged victims.' " (*Id.* at p. 1151.)

Here, plaintiff concedes that he is not eligible for restitution. Plaintiff must make this concession because defendants did not receive money or property in which plaintiff had a vested interest. Further, as an auto body shop owner, if plaintiff continues to have dealings with defendants, he will *receive* money from them, and not *pay* them anything. Accordingly, plaintiff will have no basis to seek restitution from defendants in the future. Plaintiff therefore does not have standing to pursue a UCL claim. (*Citizens for Humanity*, *supra*, 171 Cal.App.4th at p. 22.)

Plaintiff's reliance on *In re Tobacco II Cases* (2009) 46 Cal.4th 298 (*Tobacco II Cases*) is misplaced. There, our Supreme Court concluded that Proposition 64 "was not intended to have any effect on absent class members." (*Id.* at p. 319.) The court thus held that only the class representative, and not each absent class member, needs to comply with the standing requirements of section 17204. (*Tobacco II Cases,* at pp. 306, 320.) This holding does not save plaintiff's action because plaintiff, the class representative, does not himself have standing.

In a footnote, the court stated: "It is conceivable that a named class representative *who met the standing requirements under Proposition 64* could pursue a broad-based UCL class action in which only injunctive relief was sought on behalf of a class that was likely to, but had not yet, suffered injury arising from the unfair business practice. We need not decide here whether such an action would be proper." (*Tobacco II Cases*, *supra*, 46 Cal.4th at p. 320, fn. 13, italics added). The court did not, however, state that a class representative who did *not* meet the standing requirement of Proposition 64 could maintain a class action suit. *Tobacco II Cases* therefore does not support plaintiff's position.

Plaintiff also relies on *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069 (*Fireside Bank*). In *Fireside Bank*, plaintiff Gonzalez and members of a putative class allegedly had their vehicles wrongfully repossessed by defendant Fireside Bank. (*Id.* at p. 1090.) Plaintiff asserted three causes of action, including a claim for violation of the UCL. (*Id.* at p. 1075.)

The court held, inter alia, that Gonzalez had standing to pursue a class action for injunctive and declaratory relief. (*Fireside Bank, supra,* 40 Cal.4th at p. 1090.) The court also stated: "The record further shows Gonzalez (or someone on her behalf) made a postrepossession payment against the alleged deficiency; upon proof she made that payment, Gonzalez also has standing to seek restitution." (*Ibid.*) In a footnote, the court stated: "We leave it for the trial court to determine whether, on remand, it may be appropriate or necessary to designate subclasses consisting of those subjected to demands who made payments and have restitution claims, and those who did not and thus have only injunctive and declaratory relief claims." (*Id.* at p. 1090, fn. 8.) Plaintiff claims that these statements support his position that a class representative has standing to pursue a class action for injunctive relief without being eligible for restitution. We disagree.

Although *Fireside Bank* discussed standing in the context of class certification, it did not specifically address whether plaintiff had standing under the UCL. (*Fireside Bank*, *supra*, 40 Cal.4th at p. 1090.) Moreover, the plaintiff had her vehicle repossessed by the defendant and the plaintiff alleged that she made payments to the defendant after the repossession. The plaintiff thus "lost money or property" within the meaning of section 17204 and, accordingly, had standing to pursue a UCL cause of action. *Fireside Bank* therefore is distinguishable from the present case.

b. *Defendants Did Not Engage in Unlawful Business Practices*

In California, an insurer may, but is not required to, conduct an "auto body repair labor rate survey"[4] to determine the "prevailing auto body rate"[5] in a specific geographic area. If the insurer conducts such a survey, the insurer must report the results to the Department of Insurance. (Ins. Code, § 758, subd. (c).) Further, the results must include certain information regarding the survey.[6]

Plaintiff argues that defendants acted in an "unlawful" manner by manipulating their auto body repair labor surveys to obtain an "artificially low" prevailing auto body rate. In particular, plaintiff alleges that defendants have unlawfully included the DRPs in their surveys. However, "although some states preclude insurers from including [DRPs] in auto repair labor rate surveys, California does not." (*Levy v. State Farm Mutual Automobile Ins. Co.* (2007) 150 Cal.App.4th 1, 9.) Indeed, there is no California law or regulation that specifies the method by which auto body repair labor rate surveys shall be

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[4] "An 'auto body repair labor rate survey' is any gathering of information from auto body repair shops regarding what auto body repair labor rate the repair shops charge to determine and set a specified prevailing auto body repair rate in a specific geographic area." (Cal. Code Regs., tit. 10, § 2698.91, subd. (a).)

[5] " 'Prevailing auto body rate' means the rate determined and set by an insurer as a result of conducting an auto body labor rate survey of auto body repair shops in a particular geographic area and used by the insurer as a basis for determining the cost to settle automobile collision, physical damage, and liability claims for auto body repairs." (Cal. Code Regs., tit. 10, § 2698.91, subd. (b).)

[6] "Any labor rate survey results reported to the Department of Insurance pursuant to Insurance Code section 758 shall including the following: [¶] (1) The name of each auto body repair shop surveyed in the labor rate survey; [¶] (2) The address of each auto body repair shop surveyed in the labor rate survey; [¶] (3) The total number of shops surveyed in the labor rate survey; [¶] (4) The prevailing rate established by the insurer for each geographic area surveyed; [¶] (5) A description of the specific geographic area covered by the prevailing labor rate reported; [¶] (6) A description of the formula or method the insurer used to calculate or determine the specific prevailing auto body rate reported for each specific geographic area." (Cal. Code Regs., tit. 10, § 2698.91, subd. (c).)

conducted. The complaint therefore fails to state facts supporting plaintiff's allegation that defendants acted in an unlawful manner.

c. *Defendants Did Not Engage in Unfair Business Practices*

In *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163 (*Cel-Tech*), our Supreme Court addressed the issue of what constituted "unfair" business acts and practices within the meaning of section 17200. The court stated: "Although the unfair competition law's scope is sweeping, it is not unlimited. Courts may not simply impose their own notions of the day as to what is fair or unfair." (*Cel-Tech,* at p. 182.) The court also criticized certain decisions of the Courts of Appeal as setting a too "subjective" or "amorphous" standard, and warned against vague references to "public policy," which provide little real guidance. (*Id.* at pp. 184-185.)

The court held that "any finding of unfairness to competitors under section 17200 [must] be tethered to some legislatively declared policy or proof of some actual or threatened impact on competition." (*Cel-Tech*, *supra*, 20 Cal.4th at pp. 186-187.) The court thus adopted the following test: "When a plaintiff who claims to have suffered injury from a direct competitor's 'unfair' act or practice invokes section 17200, the word 'unfair' in that section means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." (*Cel-Tech,* at p. 187.)

In a footnote, the court stated: "This case involves an action by a competitor alleging anticompetitive practices. Our discussion and this test are limited to that context. Nothing we say relates to actions by consumers or by competitors alleging other kinds of violations of the unfair competition law such as 'fraudulent' or 'unlawful' business practices or 'unfair, deceptive, untrue or misleading advertising.' " (*Cel-Tech*, *supra*, 20 Cal.4th at p. 187, fn. 12.)

Following *Cel-Tech,* "appellant court opinions have been divided over whether the definition of 'unfair' under the UCL as stated in *Cel-Tech* should apply to UCL actions brought by consumers." (*Bardin v. DaimlerChrysler Corp.* (2006) 136 Cal.App.4th 1255, 1267; accord *Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 646-647 [summarizing cases].) In *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 719, the court held that in a UCL action alleging an injury to a consumer, an "unfair" business practice occurs when that practice " ' "offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." ' "

In *Gregory v. Albertson's, Inc.* (2002) 104 Cal.App.4th 845, 854, the court concluded: "*Cel-Tech* . . . may signal a narrower interpretation of the prohibition of unfair acts or practices in all unfair competition actions and provides reason for caution in relying on the broad language in earlier decisions that the court found to be 'too amorphous.' Moreover, where a claim of an unfair act or practice is predicated on public policy, we read *Cel-Tech* to require that the public policy which is a predicate to the action must be 'tethered' to specific constitutional, statutory or regulatory provisions." (Fn. omitted.)

In *Camacho v. Automobile Club of Southern California* (2006) 142 Cal.App.4th 1394 (*Camacho*), the court took a third approach in consumer cases. The court determines whether a business practice is unfair by analyzing three factors: "(1) The consumer injury must be substantial; (2) the injury must not be outweighed by any countervailing benefits to consumers or competition; and (3) it must be an injury that consumers themselves could not reasonably have avoided." (*Id.* at p. 1403.) This court recently adopted the *Camacho* test in consumer cases. (*Davis v. Ford Motor Credit Co.* (2009) 179 Cal.App.4th 581, 584.)

We need not adopt a particular definition of "unfair" here because defendants' alleged business practices are not actionable under any of the definitions adopted by the Supreme Court or the Courts of Appeal. Defendants' alleged conduct does not constitute a violation of the letter or spirit of any constitutional, statutory or regulatory provision.

Moreover, defendants' alleged business practices are not substantially injurious to consumers. Although plaintiff alleges that defendants' business practices cause him to lose profits, plaintiff does not allege that he is a consumer of defendants' products. Further, according to plaintiff's allegations, as a result of defendants' business practices, insureds and claimants are charged a *lower* rate for auto body repairs.

In addition, defendants' alleged business practices do not threaten or harm competition. Because plaintiff is not defendants' competitor, defendants are obviously not unfairly competing with plaintiff. Plaintiff contends that defendants conspired with DRPs to give the DRPs an unfair competitive advantage over plaintiff. We reject that argument for the reasons stated in our discussion of plaintiff's Cartwright Act claim in Section 4, *post*.

3. *The Complaint Fails to State a Cause of Action for Unjust Enrichment*

Plaintiff purports to state a cause of action for unjust enrichment. However, "there is no cause of action in California for unjust enrichment. 'The phrase "Unjust Enrichment" does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so.' [Citation.] Unjust enrichment is ' "a general principle, underlying various legal doctrines and remedies," ' rather than a remedy itself. [Citation.] It is synonymous with restitution. [Citation.]" (*Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793 (*Melchior*); accord *Jogani v. Superior Court* (2008) 165 Cal.App.4th 901, 911.)

Relying mainly on *Ghirardo v. Antonioli* (1996) 14 Cal.4th 39 (*Ghirardo*), plaintiff contends that *Melchior* was incorrectly decided. We disagree.

In *Ghirardo*, a borrower asked a lender to demand the amount due under a promissory note, so that the borrower could pay the note in full. The borrower paid the lender in the sum demanded, $1,167,205.56. (*Ghirardo*, *supra*, 14 Cal.4th at p. 45.) Subsequently, the lender determined that he had mistakenly underestimated the amount due on the note by $151,566.82. (*Ibid.*) The lender sought recovery of that amount pursuant to a common count " 'for payment of money[.]' " (*Id.* at p. 54.) Our Supreme Court held that the lender could pursue this common count, which the court noted "rests

on a theory of unjust enrichment." (*Ibid*.) The court, however, did not hold that unjust enrichment was an independent cause of action, separate and apart from the common count.

The *Ghirardo* court made clear that unjust enrichment is a principle underlying restitution. The court stated: "Under the law of restitution, an individual may be required to make restitution if he is unjustly enriched at the expense of another. [Citation.] A person is enriched if he receives a benefit at another's expense. . . . Even when a person has received a benefit from another, he is required to make restitution 'only if circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it.' " (*Ghirardo*, *supra*, 14 Cal.4th at p. 51.)

Even assuming unjust enrichment were a cause of action, plaintiff is not entitled to restitution under the standard set forth in *Ghirardo*. Plaintiff alleges that defendants received a benefit at his expense, namely savings they achieved by paying plaintiff a lower rate for auto body repair work than plaintiff desired. We do not, however, find anything unjust about allowing defendants to keep such savings. If plaintiff believed that the labor rate defendants were willing to pay was unreasonable, he could have refused to provide his services to defendants' insureds and claimants. It would be improper for this court to determine by judicial fiat what the "reasonable" rate for auto body repair work was when plaintiff provided services to defendants' insureds and claimants. That rate was determined by the market.

4. *The Complaint Fails to State a Cartwright Act Cause of Action*

Plaintiff alleges that defendants and unnamed DRPs entered into a price-fixing conspiracy to depress the price charged for auto body repairs in violation of the Cartwright Act.[7] In particular, plaintiff alleges that defendants used their immense

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[7] In his complaint, plaintiff merely alleges that defendants "and each of them" violated the Cartwright Act. On appeal plaintiff contends that defendants entered into a conspiracy with the DRPs. For reasons we shall explain, assuming plaintiff was given leave to amend his complaint to allege that the DRPs were part of the conspiracy, the complaint would still not state a cause of action for violation of the Cartwright Act.

buying power to combine with and perhaps coerce auto body shops to agree to discounted negotiated rates in order to set "artificially low" prevailing auto body rates. This allegedly adversely affected competition in the business of repairing automobiles.

"The Cartwright Act prohibits every trust, defined as 'a combination of capital, skill or acts by two or more persons' for specified anticompetitive purposes. (Bus. & Prof. Code, §§ 16720, 16726.)" (*Chavez v. Whirlpool Corp.* (2001) 93 Cal.App.4th 363, 369.) "A cause of action for violation of the Cartwright Act ' " 'must allege (1) the formation and operation of the conspiracy, (2) the wrongful act or acts done pursuant thereto, and (3) the damage resulting from such act or acts. [Citations.]' " ' " (*Id.* at p. 373.) Because we conclude that defendants did not engage in any wrongful acts, we do not need to decide whether the other two elements of the cause of action are satisfied.

In *Walker v. USAA Cas. Ins. Co.* (E.D.Cal. 2007) 474 F.Supp.2d 1168 (*Walker*), the plaintiff asserted the same three causes of action plaintiff asserts in this case based on virtually identical factual allegations. In rejecting the plaintiff's Cartwright Act claim, the district court stated: "Although Plaintiff has identified agreements between Defendant and other entities, those agreements are neither unlawful nor made for any anticompetitive purpose. This is not price-fixing: it is just buying and selling with an agreement on transaction prices." (*Id.* at p. 1175.)

The district court further stated: "It is difficult to imagine that numerous independent auto body shops would conspire with Defendant for the purpose of depressing auto body rates paid to those same auto body shops. Plaintiff's allegations reveal only a well-functioning market for auto body repair; Defendant, a willing buyer, and willing sellers negotiate a fair price for labor the Defendant's insureds need and the sellers want to perform. Plaintiff's desire to charge more than the market will bear does not transform Defendant's lawful formation of service contracts into a forbidden conspiracy to destroy competition." (*Walker*, *supra*, 474 F.Supp.2d at p. 1175.) The United States Court of Appeals for the Ninth Circuit adopted the district court's reasoning and affirmed its judgment. (*Geico*, *supra*, 558 F.3d at pp.1027-1028.)

The superior court relied on *Walker* in rejecting plaintiff's Cartwright Act claim. We agree with the superior court that the reasoning of *Walker* is sound and dispositive of plaintiff's Cartwright Act cause of action. The complaint alleges only a well-functioning market for auto body repair; no anticompetitive or wrongful conduct is alleged. The trial court therefore correctly entered judgment against plaintiff with respect to plaintiff's Cartwright Act cause of action.

DISPOSITION

The judgment is affirmed. Defendants are awarded costs on appeal.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.