

Key Decisions

JANUARY 2009

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1 Good Samaritans Can Be Held Liable

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Van Horn v. Watson

(Cal. Sup. Ct.), filed December 18, 2008

Key Facts

Alexandra Van Horn was a passenger in an automobile. The driver lost control and crashed. Lisa Torti was in another car and witnessed the crash. She saw a liquid coming from under the car, and fearing that it was gasoline and would ignite, pulled Van Horn from the car. Whether as a result of the crash or being pulled from the car, Van Horn was rendered a paraplegic.

Van Horn sued, among others, Torti. Torti moved for summary judgment asserting she was entitled to immunity from liability under the "Good Samaritan" Law embodied in Health and Safety Code, section 1799.102.

The trial court granted the motion. Van Horn appealed.

The Court of Appeal reversed. It held that section 1799.102 has an application only to the rendering of care at the scene of a medical emergency and that since the record demonstrated the absence of a medical emergency, Torti was not entitled to summary judgment on the basis of section 1799.102. It held that there were disputed issues of fact as to (1) whether Torti was negligent; and (2) whether that negligence increased the risk of harm to plaintiff. Thus, summary judgment was inappropriate.

Holding & Reasoning

The California Supreme Court affirmed the decision of the Court of Appeal. It held that section 1799.102 provides immunity only for those providing emergency medical care and that since Torti was not providing emergency medical care, she could not rely on section 1799.102.

The Court noted that any other reading would ignore the plain

language of the section and its legislative history and would render a variety of other statutes granting immunity surplusage.

Analysis

The Court used a variety of interpretive tools to confine immunity to those who voluntarily render emergency medical care at the scene of a medical emergency. The decision leaves room to argue about what constitutes emergency medical care at a medical emergency, paving the way for more litigation against Good Samaritans who try to help at accident scenes. The general rule – that there is no duty to come to the aid of another remains in place.

A Mother's Day Tote Bag Giveaway Did Not Violate The Unruh Civil Rights Act Even Though Only Women Received Them

Cohn v. Corinthian Colleges, Inc.
(Cal. Ct. of App., 4th Dist.), filed November 21, 2008

Key Facts

Michael Cohn sued Corinthian Colleges, Inc. and Angels Baseball LP. He alleged that the Angels' Mother's Day tote bag giveaway violated the Unruh Civil Rights Act and that Corinthian Colleges, which sponsored the bags, conspired with the Angels.

The trial court granted summary judgment in favor of the Angels and Corinthian College.

Holding & Reasoning

The Court of Appeal affirmed. It concluded that unlike discounts for "ladies' night," the bag giveaway was not based on gender even though mothers were, by definition women.

The court noted:

[T]he Unruh Act protects against intentional discrimination that is unreasonable, arbitrary, or invidious. This important piece of legislation provides a safeguard against the many real harms that so often accompany discrimination. For this reason, it is

imperative we not denigrate its power and efficacy by applying it to manufactured injuries such as those alleged by the plaintiff in this case.

As to the fact that only women received bags, the court stated:

The instant case does not emphasize an irrelevant difference, nor perpetuate an irrational stereotype. It is a biological fact that only women can be mothers. Neither men nor women are harmed by this, and the Angels did not arbitrarily create this difference. Cohn presents a parade of horrors as the consequence of this decision (e.g., discriminating in favor of Nordic-Americans on Leif Erikson Day or Jewish-Americans during Jewish-American Week). However, this projection is inapt because such results would fall under the arbitrary discrimination the Unruh Act is meant to protect. Such discrimination would be based solely on ethnicity, and would therefore violate the Unruh Act. Here, the giveaway was based on motherhood, with gender only a secondary consideration. The only comparable situation would be giving tote bags to men on Father's Day, which would also be valid, as it is not based on any irrelevant difference between the sexes. The tote bag giveaway honors mothers as a group of individuals without promoting any irrational stereotypes, and therefore does not violate the Unruh Act.

Analysis

Interestingly, the court disclosed its thought about Cohn and his lawsuit, noting:

No other fans complained about the giveaway, and Cohn's complaint only came after he went to the game to deliberately generate his "injury." Cohn's complaint gathers further suspicion because Cohn, his friends, and his counsel have been involved in numerous of what have been characterized as "shake down" lawsuits. (E.g., *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 178.) They proclaim themselves equal rights activists, yet repeatedly attempted to glean money from the Angels through the threat of suit. The Unruh Act is a valuable tool for protecting our citizens and remedying true injuries. We are not convinced the Angels' tote bag giveaway was in anyway unreasonable,

arbitrary, or invidious discrimination.

In addition to finding that Cohn's action lacked merit, the court rejected his claim for attorney's fees. Cohn sought these based on his argument that his lawsuit vindicated an important public interest by causing the Angels to revise its position on giveaways. However, the court said:

However, to award attorney fees, the court must determine whether the change was achieved "by threat of victory," not "by dint of nuisance and threat of expense."

Since there was no threat of victory, Cohn was entitled to nothing, but was obligated to pay costs.

Prevailing Party Attorney's Fees Were Covered Under An Insurance Policy's Supplementary Payments Coverage

Employers Mutual Casualty Company v. Philadelphia Indemnity Insurance Company
(Cal. Ct. of App., 2d Dist.), filed November 19, 2008

Key Facts

Philadelphia Indemnity Insurance Company and Employers Mutual Casualty Company insured Louis Simpson doing business as Villa Park Mobilehome Park.

The insuring agreements on the Philadelphia policies stated that Philadelphia would defend and indemnify Simpson with respect to claims seeking damages because of bodily injury or property damage caused by an occurrence within the policy period. The supplementary payments coverage provided that Philadelphia would pay "[a]ll costs taxed against the insured in the 'suit.'"

188 residents of Simpson's mobilehome park sued Simpson for "failure to maintain." Employers and Evanston Insurance Company defended Simpson. Philadelphia denied coverage.

Employers and Evanston eventually settled for \$3 million, allocating \$1.2 million to damages and \$1.8 million for the residents' attorney fees under Civil Code section 798.85. Evanston assigned its rights to Employers, which sued Philadelphia for contribution.

The trial court held the claims were covered under the Philadelphia policy. It held that Philadelphia was required to, among other things, contribute \$164,613.15 for defense fees and costs. It also held that under the supplementary payments coverage in its policies, Philadelphia was required to contribute \$400,000 toward the section 798.85 attorney fees on the theory that they were a taxed cost.

Philadelphia appealed.

Holding & Reasoning

The Court of Appeal affirmed.

The court held that the \$1.8 million which was attributed to the residents' attorneys' fees fell within the supplementary payments coverage of Philadelphia's policies. Those policies stated that Philadelphia would pay "[a]ll costs taxed against the insured in the 'suit.'" They did not, however, define "taxed." As a result of that, sound public policy and equity, the court found it was sensible to treat the sum attributed to the residents' fees as "taxed costs." It explained:

It permits an insured to settle a claim instead of pursuing an action to judgment and risking a greater liability. It also permits one of multiple insurers to settle an action and seek contribution of taxed costs. Public policy encourages settlement.

The court rejected Philadelphia's argument that the obligation to pay taxed costs arises only if the insured's liability is established. Apart from the fact that Philadelphia raised the argument only in its reply brief, the court held that it lacked merit. The court held that even though the settlement agreement stated that Simpson was not admitting liability, it established liability for insurance purposes. The court noted that "when an insured has to defend itself and then sues an insurer for reimbursement, the insured's reasonable settlement of the underlying action may be used as presumptive evidence of [1] the insured's liability on the underlying claim, and [2] the amount of such liability."

Analysis

There are not a lot of cases that consider the supplementary payments clause of an insurance policy and its relation to the

claimant's right to attorney's fees. As a result, this case provides a degree of guidance for practitioners. It also increases the risk when insurers decline requests for defense. The decision appears to leave the characterization of settlement money to the insured or the carriers that fund the defense, at least to a large degree. Because the supplementary payments obligation can attach to cases where a duty to defend exists, regardless of actual coverage, the downside risk for carriers who decline tenders of defense could be significant.

Despite Other Claims, *Cumis* Fee Dispute Has To Be Arbitrated

Compulink Management Center, Inc. v. St. Paul Fire And Marine Insurance Company
(Cal. Ct. of App., 2d Dist.), filed December 17, 2008

Key Facts

St. Paul Fire And Marine Insurance Company provided liability insurance to Compulink Management Center, Inc. Pursuant to the policy, St. Paul had a duty to defend and indemnify Compulink against certain claims or suits. The policy also included a provision entitled "Expenses incurred by protected persons." That provision stated that St. Paul would "pay all reasonable expenses that any protected person incurs at [its] request while helping [it] investigate or settle, or defend a protected person against, a claim or suit."

During the policy period, Compulink sued LR Hines Consulting, Inc. Hines and AlphaCorp cross-complained against Compulink. Compulink tendered the defense of the cross-complaints to St. Paul. St. Paul agreed to defend Compulink under to a reservation of rights. St. Paul agreed to allow Compulink to select independent counsel ("Cumis" counsel) to defend it.

After the case settled, Compulink sued St. Paul. It asserted claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief. Compulink alleged that St. Paul failed to comply with its duty to defend by engaging in conduct that included: (1) failing to timely accept the defense of the cross-actions; (2) underpaying and delaying payment of legal fees and costs; (3) reneging on agreements

regarding the allocation of defense costs and a reasonably hourly fee rate; (4) impeding settlement of the action by refusing to participate in mediation; and (5) refusing to contribute an adequate amount to the settlement. Compulink further alleged that St. Paul's bad faith actions prevented a timely settlement of the cross-complaints and forced Compulink to incur additional legal fees and to enter into a less favorable settlement.

St. Paul filed a petition to compel arbitration pursuant to Civil Code, Section 2860(c). St. Paul argued that the central issue in the case was the amount of Cumis fees allegedly owed to Compulink, and as such, the action was subject to mandatory arbitration under section 2860(c).

Compulink opposed the petition on the grounds that its complaint alleged wrongful conduct by St. Paul that extended far beyond the mere failure to pay attorney's fees, and therefore, fell outside the scope of Section 2860's arbitration provision. Compulink also asserted that the parties' insurance policy required St. Paul to pay all "reasonable" attorney's fees which, according to Compulink, exempted their fee dispute from both the rate caps and arbitration provisions of Section 2860.

The trial court denied St. Paul's petition to compel arbitration because Compulink's complaint included allegations beyond a mere attorney's fees dispute.

St. Paul filed a timely notice of appeal.

Holding & Reasoning

The Court of Appeal reversed and remanded.

The court held that Section 2860(c) requires that the amount of Cumis fees be determined by arbitration and does not contain an exception for fee disputes in cases where other claims or issues also are alleged. In reaching this holding, the court rejected Compulink's reliance on cases it asserted stood for the proposition that arbitration is required only when Cumis fees are the only issue.

The court also rejected Compulink's argument that Section 2806(c) did not apply because the policy provided that St. Paul would "pay all reasonable expenses that any protected person incurs at [its] request while helping [it] investigate or settle, or defend a protected person against, a claim or suit." It said: "We

do not construe the policy provision regarding St. Paul's duty to pay all reasonable 'expenses' as encompassing a duty to pay all reasonable 'attorney's fees.'"

Analysis

If, as St. Paul asserted, the central issue in the case was the amount of Cumis fees allegedly owed to Compulink, then an arbitration could resolve a large part of the case. Left unanswered are questions surrounding whether an arbitration award in favor of the policyholder might justify a subsequent "bad faith" case based on underpayment of Cumis fees.

Primary Assumption Of The Risk May Not Bar Volleyball Player's Lawsuit

Luna v. Vela
(Cal. Ct. of App., 2d Dist.), filed December 15, 2008

Key Facts

Fabian Luna tripped over one of the lines used to support the poles for a volleyball net while participating in a recreational volleyball game in Edilberto Vela's front yard. Luna fractured his elbow in the fall.

Vela moved for summary judgment on the ground any recovery was barred by the doctrine of primary assumption of the risk. Vela argued being injured by tripping over a volleyball net pole line is a risk inherent in a front yard volleyball game. Luna opposed the motion, contending Vela had unreasonably increased the risk of injury inherent in the sport by his negligent placement of the net pole lines and by his use of nearly invisible string or wire, unmarked by flags or distinctive coloring, to secure the net poles.

The trial court granted the motion. Among other things, it noted: "The net was set up in defendant's front yard and the location at which to place net poles and tie ropes was limited. Even if one could find negligence in defendant's placement of the tie ropes, attaching liability would chill the participation in common, casual recreational activities."

Luna appealed.

Holding & Reasoning

The Court of Appeal reversed.

The court explained the primary assumption of risk doctrine:

In *Knight [v. Jewett]*, 3 Cal.4th 296 (1992) ... the Supreme Court explained in a sports setting, under the primary assumption of the risk doctrine, the plaintiff is said to have assumed the particular risks inherent in a sport by choosing to participate and the defendant generally owes no duty to protect the plaintiff from those risks.

The court continued:

As applied to the potential liability of sports participants themselves, careless conduct alone is not enough; a participant owes no duty to protect a coparticipant from particular harms arising from ordinary or simple negligence. Rather, "coparticipants' limited duty of care is to refrain from intentionally injuring one another or engaging in conduct that is 'so reckless as to be totally outside the range of the ordinary activity involved in the sport.'"

The reason for this rule is that if coparticipants could be liable for ordinary or simple negligence, it would discourage vigorous participation in many sporting activities and thereby alter the fundamental nature of those sports.

Although coparticipants are not liable for ordinary or simple negligence in the conduct of the game, other defendants, such as coaches and the owner of the premises do not enjoy such protection. For example, "a batter in baseball has no duty to avoid carelessly throwing a bat after hitting the ball — such conduct being an inherent risk of the sport — but 'a stadium owner, because of his or her different relationship to the sport, may have a duty to take reasonable measures to protect spectators from carelessly thrown bats. For the stadium owner, reasonable steps may minimize the risk without altering the nature of the sport.'"

Against these principles, the court acknowledged that "We do not doubt tripping over a tie line used to secure the net poles while retrieving a ball hit out of bounds is a risk inherent in a front yard volleyball game." However, that did not mean that

Vela's placement of the pole and line did not increase the risk of Luna's tripping beyond that inherent in the game.

Because there was an issue of whether Vela's placement of the pole and line did not increase the risk of Luna's tripping beyond that inherent in the game, he had the burden, in moving for summary judgment, of proving that his placement of the pole and line did not increase the risks inherent in the game. Since Vela did not satisfy this burden, he was not entitled to summary judgment.

Analysis

It is important to note that the court did not say Vela was liable or would be found liable, only that it would be for the trier of fact to determine if his conduct increased the risks inherent in the game. There seems to be a growing trend away from summary judgment based on primary assumption of the risk.

A Health Club Could Not Be Liable On A Strict Products Liability Theory When Its Predominant Role Was To Provide Recreational Services

Ontiveros v. 24 Hour Fitness Corporation
(Cal. Ct. of App., 2d Dist.), filed December 19, 2008

Key Facts

Susana Ontiveros joined the health club operated by 24 Hour Fitness Corporation. The club provided a variety of services in addition to making exercise equipment available to members. When Ontiveros joined the club, she signed an agreement stating that 24 Hour Fitness was providing "recreational services" and purporting to waive claims for defective exercise equipment.

Ontiveros did not use any of the club's services. She just used the exercise equipment. One day while exercising at the club, the exercise machine that Ontiveros was using malfunctioned and injured her.

Ontiveros sued. Among other things, she asserted a cause of action for strict products liability against 24 Hour Fitness.

The trial court granted a summary adjudication in favor of 24 Hour Fitness on the strict products liability claim.

Holding & Reasoning

The Court of Appeal affirmed.

The court recognized that a waiver is ineffective as to strict product liability claims. It also recognized that strict products liability applies only to defendants in the chain of distribution. Thus, if 24 Hour Fitness was providing predominantly services, rather than the use of products, it could not be strictly liable on a products theory.

The court held that based on the membership agreement and the evidence about the services available at the club, there was no triable issue as to the predominant purpose of the health club membership. Despite the fact Ontiveros did nothing but use the exercise equipment, this did not change the fact that the club's predominant purpose was providing services. As such, the club could not be liable on a strict products liability theory.

Analysis

This case provides a helpful overview of the law of strict products liability. It also shows the importance of having the right agreements in place. Had the membership agreement talked in terms of using equipment instead of providing services, the plaintiff might have had a viable strict products liability claim.

The Workers' Compensation Law Protects One Who Hires A Contractor From Claims By That Contractor's Employees, But Not From Claims By Independent Contractors

Tverberg v. Fillner Construction, Inc.
(Cal. Ct. of App., 1st Dist.), filed December 5, 2008

Key Facts

Fillner Construction, Inc. was the general contractor on a gas station project. Fillner contracted with Lane Supply, which in turn hired Perry Construction, Inc. to install a canopy at the project site. Perry hired Jeffrey Tverberg to erect the canopy. Tverberg fell into an uncovered hole that had been dug near where the canopy was to be installed. He sustained physical and

emotional injuries. His injuries affected his relationship with his wife, Catherine Tverberg.

At the time, Tverberg was working as an independent contractor for Perry, not as its employee.

In the ensuing litigation, the trial court granted a motion for summary judgment in favor of Fillner. It reasoned that under *Michael v. Denbeste Transportation, Inc.*, 137 Cal.App.4th 1082 (2006), Fillner could not be liable because it did not affirmatively contribute to Tverberg's injuries.

Holding & Reasoning

The Court of Appeal reversed. The court recognized that under the authority of *Privette v. Superior Court*, 5 Cal.4th 689 (1993), the hirer of a contractor owes no duty of care to the contractor's injured employee because the employee has an alternative remedy through the workers' compensation system. However, it reasoned that the *Privette* doctrine did not apply to the Tverbergs' case because Jeffrey Tverberg was injured while working as an independent contractor, not as an employee.

In concluding that the *Privette* doctrine did not apply, the court observed that all of the *Privette* doctrine cases decided by the California Supreme Court involved employees, not independent contractors. Thus, the court did not feel *Privette* was binding precedent.

The court also noted that the Supreme Court's decisions involving the *Privette* doctrine all addressed the impact of the workers' compensation laws. Those laws ensured an injured employee would be compensated for his or her injuries. The workers' compensation laws did nothing to protect independent contractors, such as Tverberg. Thus, if *Privette* applied to an independent contractor, the independent contractor might be deprived of any recovery.

Besides these points, the court criticized the decision in the *Michael* case as having been poorly reasoned and decided. It said: "In our view, *Michael* fails to make any reasoned analysis of the public policy reasons set out in *Privette* at all."

Next, the court did its own public policy analysis. It concluded that an independent contractor should not be foreclosed from

suing as an employee was.

Analysis

Although the court reversed the judgment for the general contractor, it did not hold the general contractor was liable. It merely held that Tverberg was not precluded from suing Fillner. Thus, it is possible Fillner might successfully defend itself on some other basis than the exclusivity of workers' compensation.

This decision confines *Privette* to injuries that are likely to involve an available workers' compensation remedy.

The Victim Of Identity Theft Had No Remedy Under State Law For Misinformation Provided To A Credit Reporting Bureau

Liceaga v. Debt Recovery Solutions
(Cal. Ct. of App., 1st Dist.), filed December 29, 2008

Key Facts

Rebecca Liceaga apparently was the victim of identity theft. Her identity was used to obtain a Sprint cell phone account. Although Liceaga had never done any business with Sprint, when the identity thief failed to pay the account, Sprint assigned the debt to Debt Recovery Solutions, a debt collection agency. Debt Recovery Solutions began "dunning" Liceaga. Despite her pleas to the agency that she was a victim of identity theft and had no Sprint account, they appear to have disbelieved her and ultimately reported her "default" to several credit reporting agencies, without advising that the debt was contested, thus harming her credit score and damaging her credit reputation. This action followed.

The trial court granted a motion for judgment on the pleadings in favor of Debt Recovery Solutions on ground that the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.) (FCRA) preempts all private, state law rights of action that are based upon the wrongful acts of a furnisher of credit information.

Holding & Reasoning

The Court of Appeal affirmed. In reaching its decision, the court looked at the principles of federal preemption and at the FCRA and the Consumer Credit Reporting Reform Act of 1996. It concluded that there is no private right of action under California law and that despite any injury Liceaga may have sustained, California law provided no remedy.

Analysis

This decision does not mean that a consumer injured by virtue of a collection agency's providing incorrect or incomplete information to a credit reporting bureau, is without recourse. It simply means that any suit must be brought pursuant to the FCRA or CCRA.

Given the increase in identity theft, it is noteworthy that the CCRA provides that if the furnisher receives an identity theft report from the consumer it may not submit credit information to a reporting agency unless the furnisher "knows or is informed by the consumer" that the information is correct.

OTHER CASES OF INTEREST

A Borrower Was Not Able To Continually Defer Student Loans

Davies v. Sallie Mae, Inc.
(Cal. Ct. of App., 1st Dist.), filed October 31, 2008

Stephen T. Davies obtained Federal Stafford student loans from Sallie Mae, Inc. and EdFund to fund his education between 1993 and 1997. In connection with his student loans, Davies signed a promissory note.

In 1998, Davies graduated from law school and his repayment obligations began. From 1998 through 2005, Sallie Mae and EdFund granted his economic hardship deferment requests. These requests were supported by letters from Davies' employer substantiating Davies's minimum income and employment status.

In October 2005, Sallie Mae and EdFund placed Davies's student loans in default and commenced collection activities.

Davies sued. He asserted that as a result of his employer's letters, a contract was formed between his employer on the one hand and Sallie Mae and EdFund on the other, to which Davies was a third-party beneficiary, and that Sallie Mae and EdFund breached this by failing to provide further deferments. He also asserted Sallie Mae and EdFund breached the terms of the promissory note by declaring him in default.

The trial court eventually sustained Sallie Mae And EdFund's demurrers without leave to amend. Davies appealed.

The Court of Appeal affirmed.

The court first held that the trial court did not err in rejecting Davies third party beneficiary argument. It stated that at the appellate level Davies had conceded his employer's letters did not create a contract. And, it held that even without the concession, there was no offer, promise, consideration, etc. and thus, no contract.

The court then held that the trial court did not err in concluding that Davies could not state a cause of action based on the promissory note itself. It found that there was no obligation to continue deferring Davies payment obligations. Neither the language of the promissory notes, statutes or conduct created a right to continued deferments.

Absent Damages, An Improper Application Is Not Actionable

Starbucks, Corporation v. Superior Court
(Cal. Ct. of App., 4th Dist.), filed December 10, 2008

The court held that a class of unsuccessful job applicants who were asked about convictions for marijuana that were more than two years old, could not recover against the prospective employer.

The court held that the particular lawsuit suffered from two fundamental flaws, either of which was fatal. First, in its application, Starbucks attempted to disclaim an interest in seeking information about old convictions in California and two of the plaintiffs understood Starbucks was not seeking it. Second, no plaintiff had any marijuana-related convictions to reveal and thus could not have been damaged.

The court noted that: “Nothing in the statutes in question authorizes job applicants to automatically recover \$200 per person without proof they were aggrieved persons with an injury the statute was designed to remedy.”

An Injured Worker Was Not Permanently Disabled Even Though Vocational Rehabilitation Was Not Feasible

Hertz Corporation v. Workers’ Compensation Appeals Board
(*Cal. Ct. of App., 6th Dist.*), filed December 16, 2008

Manuel Aguilar sustained specific and cumulative injuries to both of his knees, shoulders and wrists, and to his right ankle while working as an auto washer for Hertz. Due to Aguilar’s injuries and his inability to read and write English, the workers’ compensation judge found him to be non-feasible for vocational rehabilitation and thus permanently totally disabled. The Workers’ Compensation Appeals Board affirmed.

Hertz petitioned for review of the Board’s decision. It asserted that an employer should not be liable for permanent total disability benefits when an injured worker’s inability to participate in rehabilitation is due, in part, to nonindustrial causes.

The court first determined that Aguilar’s permanent disability should be rated using the 1997 rating schedule rather than the 2005 rating schedule.

It then determined that a finding of permanent total disability was not appropriate. It held that

Under our revised worker’s compensation system, even when the 1997 rating schedule is used, an employer is liable for only the portion of an injured worker’s permanent disability that is directly caused by the industrial injury. The finding of permanent total disability in Aguilar’s case is based in part on the finding that vocational rehabilitation is not feasible, and the finding of non-feasibility is due in part to pre-existing nonindustrial factors.

Therefore, the court concluded that Hertz was not liable for that

portion of Aguilar’s permanent disability that was caused by pre-existing nonindustrial factors.

Time Limits On Motions For Summary Judgment Are Mandatory

Robinson v. Woods
(*Cal. Ct. of App., 2d Dist.*), filed December 12, 2008

Terry Robinson sued Aaron Woods. Woods moved for summary judgment. Woods set the hearing for less than the statutorily required period and within 30 days of the trial date without prior court approval.

Robinson filed opposition papers raising these errors but did not address the motion on the merits.

At the noticed hearing, the trial court continued the hearing for four days, directed Woods to file papers showing good cause for entertaining the motion within 30 days of trial, and gave Robinson an opportunity to file opposition papers on the merits. Despite the “opportunity” to file an opposition on the merits, Robinson chose not to do. Instead, his counsel objected to this procedure and moved to dismiss the motion. The trial court denied the motion to dismiss.

At the hearing four days later, the trial court ruled that Woods had shown good cause to have the summary judgment motion heard within 30 days of trial. It then granted the motion.

Robinson appealed.

The Court of Appeal reversed. It concluded that the trial court abused its discretion by continuing the noticed hearing for only four days instead of the statutorily required period. It also held that the trial court erred when, after deciding at the continued hearing that Woods had made the requisite showing of good cause, it ruled on the summary judgment motion.

An Arbitrator Was Not Required To Disclose His Firm's Prior Representation

Agri-Systems, Inc. v. Foster Poultry Farms
(Cal. Ct. of App., 5th Dist.), filed December 1, 2008

Agri-Systems, a general contractor, entered into a construction contract with Foster Poultry Farms. The contract called for arbitration of disputes.

A dispute arose between Agri-Systems and Foster. They submitted the dispute to arbitration.

After the arbitrator rendered an award, Agri-Systems filed a motion for an order correcting or vacating the arbitration award. It asserted that the arbitrator had an undisclosed conflict of interest.

The trial court denied Agri-Systems' motion.

The Court of Appeal affirmed. It explained that the record demonstrates that (1) another attorney in the arbitrator's law firm represented the debtor company at the beginning of a bankruptcy proceeding; (2) the debtor company's interests were adverse to the general contractor's interests; (3) those adverse interests resulted in litigation between the debtor company and the general contractor; (4) the arbitrator's law firm had withdrawn from representing the debtor company before the litigation between the debtor company and the general contractor began; and (5) the arbitrator was appointed in the present case a year and a half after his firm's withdrawal as attorney of record for the debtor company in its bankruptcy proceeding.

Based on these factors, the appellate court concluded that the superior court's finding that disclosure was not required was supported by substantial evidence.

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