

Key Decisions

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A Properly Worded Arbitration Agreement Can Provide For Judicial Review Of Legal Errors

Cable Connection, Inc. v. DIRECTV, Inc.
(Cal. Sup. Ct.), filed August 25, 2008, published August 26, 2008

Key Facts

DIRECTV, Inc., broadcasts television programming nationwide, via satellite. It contracts with retail dealers to provide customers with equipment needed to receive its satellite signal. The contract contained an arbitration clause that stated in pertinent part: "[t]he arbitrators shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error."

Various dealers filed a class action suit against DIRECTV, alleging DIRECTV had wrongfully withheld commissions and assessed improper charges. DIRECTV moved to compel arbitration.

After the arbitrators rendered a decision, DIRECTV petitioned to vacate the award. Among other things, it asserted the arbitrators made errors of law. The trial court granted the petition. On appeal, the Court of Appeal reversed. It held that the trial court exceeded its jurisdiction by reviewing the merits of the arbitrators' decision.

Holding & Reasoning

On DIRECTV's petition for review, the California Supreme Court considered whether the parties to an arbitration agreement can structure it to allow for judicial review of legal error in the arbitration award. It held that the provision quoted above was valid and enforceable under California law and that as a result, the decision of the Court of Appeal was erroneous and had to be reversed.

Analysis

Traditionally, parties who lose a contractual arbitration have had very limited rights of appeal. An arbitrator's pure error of law is typically not subject to appellate review. Arbitrators had the power to make enforceable decisions that were not necessarily consistent with the legal principles that would govern the outcome in litigation.

With this decision, parties to an arbitration agreement now have the ability to write contractual arbitration agreements that allow for more expansive judicial review of arbitration awards.

Justice Moreno's concurring and dissenting opinion says "parties may define the arbitrator's powers in such a way as to broaden somewhat the scope of judicial review beyond the usual narrow grounds for such review set forth in *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1. But I disagree that parties may oblige courts to undertake full-scale judicial review of legal error in arbitration awards." Justice Moreno went on to say that when "an arbitrator's answer to a legal question is not clearly erroneous . . . the statute does not authorize a court to vacate an arbitrator's award merely because it disagrees with the arbitrator's conclusions, no matter what the arbitration agreement provides."

This opinion appears in the August 26, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 13491.

An Exaggerated Fee Request May Justify A Reduced Fee Award

Christian Research Institute v. Alnor
(Cal. Ct. of App., 4th Dist.), filed August 13, 2008,
published August 14, 2008

Key Facts

Christian Research Institute sued William Alnor. Alnor brought a special motion to strike under Code of Civil Procedure, section 425.16, referred to as an Anti-SLAPP motion. The trial court denied Alnor's motion. Alnor appealed and the Court of Appeal ordered the trial court to grant it. Once the trial court granted the motion and dismissed the action against Alnor, Alnor sought an award of attorney's fees.

Alnor argued that his attorneys reasonably dedicated over 600 hours to the motion and the ensuing appeal. Alnor submitted

attorney billings that had vague and indecipherable descriptions of the work. Additionally, much of the work was for things other than the motion and appeal, including time for such items as the preparation of a retainer agreement.

The trial court awarded fees for just 71 hours of time.

Alnor appealed.

Holding & Reasoning

The Court of Appeal affirmed.

The court held that it was for the trial court to determine whether Alnor's submissions were credible, that the appellate court could not disturb such a determination and that if the trial court found the submissions were not credible, it was for the trial court to then decide what was a reasonable award.

The court explained that substantial evidence supports the trial court's conclusion counsel "leavened" the fee request with non-compensable hours. This, combined with vague, indecipherable billing statements, destroyed the credibility of the submission and justified a rejection of the amount Alnor claimed. Moreover, the fact that Alnor appeared to be attempting to "put one over" on the court justified a reduction in the fee claimed.

Significantly, the court noted that obscuring the nature of the work is a risky proposition for one who bears the burden of proof.

Analysis

This is one of two recent decisions by the appellate courts in which fee claims were dramatically reduced because of over-reaching.

A party that is positioned to recover fees takes a risk if the fee request appears excessive.

This opinion appears in the August 14, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 12627.

The Injured Employee Of A Subcontractor Could Not Recover From The General Contractor

Madden v. Summit View, Inc.
(Cal. Ct. of App., 1st Dist.), filed August 11, 2008,
published August 13, 2008

Key Facts

David Madden worked as an electrical foreman for Busch Electrical. Busch Electrical was the electrical subcontractor on a construction project. The general contractor was Summit View. Summit View did not control the methods Busch used for its work and it did not control the method or means or provide any materials for Madden's work.

Madden was injured when he fell from a raised patio while pulling some electrical wire for installation in the home. He had worked in the area where the fall occurred many times before.

Madden sued Summit View for personal injuries. He pled a single cause of action for negligence.

Summit View moved for summary judgment based on *Privette v. Superior Court*, 5 Cal.4th 689 (1993) and *Toland v. Sunland Housing Group, Inc.*, 18 Cal.4th 253 (1998). Together, these cases are referred to as the Privette-Toland doctrine.

The trial court granted the motion.

Holding & Reasoning

The appellate court affirmed.

Generally, a person who hired an independent contractor was not liable to third parties for injuries caused by the contractor's negligent performance of the work. There were numerous exceptions to this general rule, including one known as the peculiar risk doctrine. Under this doctrine, a person who hired an independent contractor to perform inherently dangerous work could be held liable for tort damages when the contractor's negligent performance of the work caused injury to others. The principal rationale for this exception to the general rule of non-liability was to ensure that an innocent bystander who was injured by a contractor's negligence would have a source of compensation even if the contractor was insolvent. It was also based on the recognition that a hirer who was held vicariously liable to the injured claimant under the peculiar risk doctrine was entitled to seek equitable indemnity from the contractor whose neg-

ligence caused the injury, thus providing some assurance that the ultimate responsibility for the harm caused by the peculiar risk of the work would be borne by the person at fault for the injury. To the extent the contractor was insolvent, the doctrine shifted the risk of loss to the person who contracted for and thus primarily benefited from the contracted work.

The peculiar risk doctrine was eventually expanded to allow an employee of a subcontractor to recover from a non-negligent hirer (usually, a general contractor or a property owner) for injuries caused by the subcontractor's negligence. However, in *Privette* the California Supreme Court reconsidered the applicability of the peculiar risk exception in such cases and concluded that the injured employee of a negligent subcontractor could not prevail against the non-negligent hirer under the peculiar risk doctrine.

The appellate court held that under *Privette*, Summit View could not be liable.

The Supreme Court reasoned that California's previously expansive view of the peculiar risk doctrine gave the employee an undue windfall relative to other employees injured on the job, whose recoveries would be limited to those damages recoverable under the worker's compensation law, and created the anomalous result of imposing greater liability on a non-negligent hirer than that of the contractor whose negligence actually caused that injury. The court concluded that the workers' compensation system was adequate to promote workplace safety and to protect the interests of the injured employee.

Analysis

This is the latest in a series of cases applying the *Privette-Toland* doctrine.

Madden failed to distinguish *Privette* and its progeny. In particular, Madden produced virtually no evidence that Summit View had retained control over the general safety conditions at the site or had instructed that a safety barrier not be erected or had directed Madden as to how to perform his work. Beyond the fact Madden had virtually no evidence Summit View had instructed that a safety barrier not be erected, the condition was open and obvious to everyone, including Madden, who was in an equally good position to put up a barrier.

This opinion appears in the August 13, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 12556.

A Tree Trimmer Who Was Injured By His Own Negligence In Touching An Overhead Electrical Line Could Not Recover On The Theory That The Homeowners Whose Trees He Was Trimming Were Vicariously Liable To Him For His Own Negligence

Ramirez v. Nelson

(Cal. Sup. Ct.), filed August 4, 2008, published August 5, 2008

Key Facts

Thomas and Vivian Nelson hired Julian Rodriguez, the sole proprietor of Julian Rodriguez Landscape and Tree Service, to trim several trees in their backyard so that they would not interfere with electrical lines running across it. Rodriguez was not a licensed contractor.

Rodriguez arrived at the Nelsons' home with a crew of four men, including Luis Flores. Flores worked on the eucalyptus tree while other crew members worked on other trees in the Nelsons' backyard. The Nelsons neither supervised the trimming, nor did they furnish the tools for the job.

During the course of the work, Flores' pole saw came in contact with the electrical lines. He was electrocuted and died.

Flores' heirs sued the Nelsons. They alleged the Nelsons negligently failed to keep their property in a reasonably safe condition, and failed to warn about the hazardous condition the electrical lines adjacent to their trees presented.

At trial, Flores' heirs cited Penal Code, section 385(b). That section made it a misdemeanor for any person, either personally "or through an employee," to move any tool or equipment within six feet of a high voltage overhead line. They argued that section 385(b) created a special duty of care which would render the Nelsons liable if Flores were deemed their employee.

Flores' heirs then argued the Flores was the Nelsons' employee by operation of law under the "penultimate paragraph" of Labor Code section 2750.5, as construed in *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.*, 40 Cal.3d 5 (1985). There, the California Supreme Court interpreted section 2750.5 to mean that unlicensed contractors who become injured on the job are not independent contractors in the eyes of the law, but are instead, by operation of law, employees of the party who

hired them.

The trial court disagreed with both prongs of Flores' heirs' negligence per se theory. As a result, the trial court gave the jury only standard negligence instructions.

The jury returned a verdict for defendant the Nelsons.

The Court of Appeal reversed and remanded, concluding a violation of the duty of care embodied in section 385(b) would support the plaintiffs' negligence per se theory of liability if Flores was shown to be the Nelsons' employee, and that under the penultimate paragraph of Labor Code section 2750.5, Flores was the Nelsons' employee, requiring jury instructions on section 385(b) and the resulting presumption of negligence.

Holding & Reasoning

The California Supreme Court reversed. It concluded that the Penal Code did not, under the circumstances, create a special duty of care. The Court did not reach the question of whether Flores was the Nelsons' employee as the absence of a special duty of care rendered such a determination unnecessary.

In concluding that the Penal Code did not create a special duty of care, the Court reasoned that: "The Court of Appeal's rationale effectively makes defendant homeowners vicariously liable in tort for the worker's own negligent acts or omissions which themselves violated the statute and proximately caused his fatal injuries."

The Court held that "the fatally injured worker who, through his own conduct, breached the duty of care embodied in section 385(b), was not 'one of the class of persons for whose protection the statute . . . was adopted.'"

Analysis

This ruling involved a worker whose negligent act resulted in injury to himself. If the worker's conduct had injured another worker, the result may have been different.

This opinion appears in the August 5, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 12180.

Proposition 213 Does Not Automatically Prevent An Uninsured Vehicle Owner's Spouse From Recovering Noneconomic Damages

Ieremia v. Hilmar Unified School District (Cal. Ct. of App., 3d Dist.), filed August 26, 2008, published August 28, 2008

Key Facts

Roy and Puaolele Ieremia were husband and wife. They were in a serious accident while driving a Dodge Durango that Roy had bought without Puaolele's knowledge.

Roy bought the Durango from his boss, Jesse Mauga. Over the course of several months Roy made installment payments to Mauga out of his earnings. When Roy started making payments, Mauga gave him the keys to and full possession of the Durango. Roy was the exclusive driver of the Durango, which he drove to and from work from his sister's home. Mauga submitted a notice of transfer and release of liability to the Department of Motor Vehicles reflecting the sale of the Durango to Roy. Roy made the final payment for the purchase of the After Roy made the final payment, he asked Mauga for the pink slip on the Durango. Mauga intended to give Roy the pink slip, but had not gotten around to it before Roy and Puaolele were involved in a collision. Thus at the time of the accident, neither Roy nor Puaolele was on the title to the Durango.

Puaolele did not know Roy had purchased the Durango using their community funds. She did not know he was using it to get to and from work from his sister's home. She never had possession of the keys to the car. She never drove the car. Roy brought the Durango home for the first time a day or two before the collision. It was Puaolele's understanding from Roy that his boss had lent him the car so that they could make a trip to a casino, which was apparently where they were headed when the accident occurred. The first time Puaolele had ever been in the Durango was the day she and Roy headed to the casino. On that fateful day, Roy and Puaolele were injured in a serious collision.

Neither Roy nor Puaolele had automobile liability insurance and the Durango was not covered by a liability policy of any sort.

Roy and Puaolele sued for personal injuries they sustained in the collision. The jury awarded Puaolele \$128,145 in economic

damages and \$1.9 million in noneconomic damages.

The defendants appealed. They asserted the trial court erred in allowing Puaolele to obtain an award of noneconomic damages at trial. The defendants argued that Civil Code, section 3333.4(a)(2), which was enacted by virtue of Proposition 213, precluded Puaolele's recovery of noneconomic damages because she was an owner of the uninsured vehicle in which she was a passenger at the time of the accident.

Holding & Reasoning

The Court of Appeal affirmed.

The court reasoned that Proposition 213 was enacted as a means of pressuring automobile owners and drivers to maintain liability insurance. The pressure came from the fact that it precluded an uninsured owner or driver from recovering noneconomic damages from a negligent owner or driver of another vehicle.

While Proposition 213 precluded an uninsured owner or driver from recovering noneconomic damages, it did not define what it meant to be an "owner." That determination had to be made on a case-by-case basis.

The court stated:

Considering the electorate's intended purposes, it would be anomalous to adopt a construction of the word "owner" in section 3333.4(a)(2) that would deprive a person of the right to noneconomic damages without regard to their individual culpability for the vehicle's uninsured status. We simply do not believe the voters intended Proposition 213 to be construed to apply to a spouse whose only incident of ownership in a vehicle is a community property interest of which he or she is completely unaware.

Since Puaolele was not even aware she had an ownership interest in the Durango and thus could not have been culpable for it being uninsured and since she was only a passenger in it, the court held that she was not precluded from recovering noneconomic damages.

Analysis

This decision takes some of the sting out of section 3333.4(a)(2)

by allowing a spouse to recover noneconomic damages when he or she is not the driver and is unaware of his or her ownership interest. Although the culpable spouse may not be able to recover noneconomic damages, that spouse may benefit from the nonculpable spouse's receipt of noneconomic damages.

This opinion appears in the August 28, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 13642.

A Landowner Can Be Liable When An Invitee's Dog Bites A Third Party

Salinas v. Martin

(Cal. Ct. of App., 1st Dist.), filed August 28, 2008, published September 2, 2008

Key Facts

Pablo Martin owned a home that he wanted to remodel. He hired Burle Southard to act as general contractor for the project. Southard, in turn, hired Stephen Salinas as an employee to work on the remodel project. With Martin's approval, Salinas and Southard stored equipment and materials in the back yard and garage of the house. Salinas had Martin's permission to enter the yard "at any time" to retrieve equipment or materials he stored there.

Martin also hired two men, Armand and Greg Sanchez, to perform "weeding and gardening" work on the premises. The Sanchezes had two dogs, a pit bull terrier and a smaller pit bull, Labrador mix. Martin allowed the Sanchezes to keep their two dogs loose in the fenced back yard and in a van they kept on the property. Martin, he did not see or hear the dogs attack, bite or appear aggressive with anyone. Even though they were pit bulls, they seemed "tame and friendly" to him.

Although the dogs may have seemed "tame and friendly" to Martin, Southard expressed concern to Martin about the dogs.

One day when Salinas was getting materials from the yard, he was attacked and injured by one of the dogs.

Salinas sued Martin for personal injuries. Martin moved for summary judgment. The trial court found that under the circumstances, Martin did not owe Salinas a duty of care. Therefore, it granted the motion.

Holding & Reasoning

The Court of Appeal reversed. It found that under the circumstances, Martin owed Salinas a duty of care.

In finding Martin owed Salinas a duty of care, the court looked at the interplay between the general rules as to a landowner's duty of care and a landowner's duty of care when the land is leased to a tenant.

As to the general duty of care, a landowner "has an affirmative duty to exercise ordinary care to keep the premises in a reasonably safe condition, and therefore must inspect them or take other proper means to ascertain their condition." If, by the exercise of reasonable care, he would have discovered a dangerous condition which resulted in an injury, he is liable.

As to a landowner's duty when a tenant's dog injures someone, the rule is that the landlord is not liable unless he knows of the dog's dangerous propensity and has the ability to do something about the dog.

The court distinguished the cases in which a landowner was found not liable because a tenant's dog injured someone. It explained:

First and foremost, [Martin] was not an absentee landlord with limited access to the property. He did not surrender his possessory interest in the property in any way; he continued to control the premises at least intermittently while the construction project proceeded. The dog owners were not [Martin's] tenants who had sole possessory rights associated with the property, but rather temporary invitees who performed landscaping services. And unlike tenants, they were neither vested with exclusive possession of the property nor were entitled to keep their dogs there without express permission granted by [Martin]. Thus, the essential foundation that underlies the carefully circumscribed duty imposed upon landlords – the restraint upon the landlord's right to engage in intrusive oversight or control of the tenant's use of the property – is absent here.

The court, having distinguished the cases involving injuries by tenants dogs then looked at the factors which go into determining the existence of a duty of care. After examining these, the

court found a duty of care.

Analysis

This case emphasizes that an owner in possession is expected to exercise more control over the property than we expect of an owner who leases property to a another.

This opinion appears in the September 2, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 13805.

OTHER CASES OF INTEREST

An Insurance Policy Covering Liability Arising Out Of “Garage Operations” Could Cover The Buyer Of A Car

Spangle v. Farmers Insurance Exchange (Cal. Ct. of App., 2d Dist.), filed August 29, 2008, published September 3, 2008

Sixteen-year-old Kevin McCarty lived with his mother and step-father. Kevin’s father, Anthony McCarty, purchased a used Chevy Blazer from Triple Crown Auto Sales, Inc. for Kevin while Kevin was visiting him. Anthony paid the full purchase price in cash. Triple Crown required Anthony to sign the purchase agreement because Triple Crown had a policy of not entering into purchase agreements for automobiles with minors. Although a minor, Kevin signed the DMV “Report of Sale—Used Vehicle” form as the purchaser of the Blazer. Kevin also executed the DMV power of attorney form authorizing Triple Crown to forward the necessary documentation to the DMV to transfer ownership of the Blazer. At the time, Triple Crown was insured under a commercial automobile and garage operations liability policy issued by Mid-Century.

Approximately one week later, Kevin was driving the Blazer when he collided with and seriously injured Pamela Spangle.

Spangle obtained a judgment against Kevin far in excess of the insurance available to him under his mother and step-fathers’ policy.

Spangle sought to recover against a “garage operations” liability policy issued to Triple Crown by Mid-Century Insurance Company. Her theory was that, because Triple Crown incorrect-

ly filled out the Department of Motor Vehicles paperwork, title never transferred to Kevin, Triple Crown was still an owner of the Blazer when the accident occurred, and therefore Kevin was insured as a permissive user of the Blazer under Mid-Century’s policy.

Mid-Century rejected Spangle’s settlement demand, contending that regardless of whether Triple Crown might be deemed an “owner” of the Blazer at the time of the accident, Kevin and Anthony were excluded from coverage as “customers” of Triple Crown. Further, Mid-Century asserted that the accident did not “result from” Triple Crown’s “garage operations” under the policy. It asserted that the coverage for “garage operations” applied only to the service and repair of automobiles.

In the ensuing lawsuit, the trial court granted Mid-Century’s motion for summary judgment. It concluded that the accident did not result from Triple Crown’s “garage operations” and that as such its policy provided no coverage.

The Court of Appeal reversed.

In analyzing coverage, the court stated that coverage turns on the meaning of “garage operations.”

The court dissected the policy definition of “garage operations” and concluded that Kevin’s use of the Blazer was within that definition.

The court rejected Mid-Century’s reliance on a “customer” exclusion in the policy. It reasoned that since Anthony bought the car for his minor son, Anthony, not Kevin, was the customer.

In remanding for further proceedings, the court left open the question of whether Kevin was an “insured” under Triple Crown’s policy. The answer to that question turned on whether Kevin was a “permissive user” of the Blazer, a matter that was still unresolved.

This opinion appears in the September 3, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 13852.

There Is A Right To A Jury Trial On A Claim For Quantum Meruit

Jogani v. Superior Court

(Cal. Ct. of App., 2d Dist.), filed August 1, 2008, published August 5, 2008

Shashikant Jogani sued his brother after his brother forced him out of his business in which the brother had invested. Jogani asserted claims for breach of contract, breach of fiduciary duty, fraud, conspiracy to defraud, dissolution of partnership, a common count for quantum meruit, unjust enrichment, and constructive trust. The trial court granted summary adjudication in favor of defendants on all of Jogani's claims except quantum meruit and unjust enrichment. It then struck his request for a jury trial.

Jogani sought review of the order striking his request for a jury trial.

The Court of Appeal held that the trial court should not have stricken the request. It held that an action for quantum meruit was an action at law and that as a result, the parties had the right to a trial by jury.

This opinion appears in the August 5, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 12145.

Defense Counsel's Communications With A Plaintiff Acting In Pro Per Were Not A Basis For Disqualification

McMillan v. Shadow Ridge At Oak Park Homeowners Association

(Cal. Ct. of App., 2d Dist.), filed August 4, 2008, published August 6, 2008

Denise McMillan sued the Shadow Ridge At Oak Park Homeowners Association. McMillan was initially represented by one law firm as attorneys of record. She then substituted in different attorney as attorney of record. After a period of time, filed another substitution of attorney removing this attorney and substituting herself as attorney of record in propria persona.

Although McMillan was acting as her own attorney of record, she had another attorney, John Schlaff, "helping" her. Schlaff advised defense counsel he would be helping with depositions

and certain appearances. However, he did not substitute or associate into the case.

In connection with an anticipated motion to compel, defense counsel called McMillan to meet and confer. This conference was mandated by the Code of Civil Procedure. During that call, McMillan and defense counsel discussed other issues regarding the case, including Schlaff's formal entry into the case, upcoming court dates, a scheduled mandatory settlement conference and the possibility of settlement. McMillan said she was still the attorney of record and that Schlaff was not planning to substitute into the case.

Five days later, Schlaff, though not having formally substituted into the case, filed a motion seeking to disqualify defense counsel. The motion asserted defense counsel's conversation with McMillan violated rule 2-100 of the Rules of Professional Conduct (rule 2-100). The trial court denied the motion finding the conversation was appropriate because McMillan was the attorney of record at the time.

McMillan appealed.

The Court of Appeal affirmed. It explained that rules relative to substitutions of attorney and appearances existed so it was clear who was attorney of record at any given time and with whom the court or an opponent should be communicating. Regardless of who might have been helping McMillan, she was attorney of record and defense counsel acted properly in communicating with her.

This opinion appears in the August 6, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 12211.

Evidence Of A Prior Conviction Was Admissible To Show A Witness's Bias

Piscitelli v. The Salesian Society

(Cal. Ct. of App., 2d Dist.), filed August 20, 2008, published August 22, 2008

Joseph Piscitelli sued the Salesian Society for damages he suffered as a result of child sexual abuse at the hands of one of the Society's priests. The Society asserted the statute of limitations as a defense. In refuting the defense, Piscitelli called a former Salesian brother, Salvatore Billante, as a witness. Piscitelli called

Billante as a hostile witness.

The trial court permitted Piscitelli to introduce evidence that Billante had himself been convicted of child molestation. However, it instructed the jury that it could only consider this evidence for the purpose of assessing Billante's credibility.

The jury found for Piscitelli. The Society appealed. It cited the admission of evidence of Billante's conviction as error.

The Court of Appeal affirmed. It held that evidence of a felony conviction is admissible to attack the witness's credibility. Such evidence is a general attack on a witness's character for honesty.

The Society argued that evidence of the conviction violated Evidence Code, section 786, which makes inadmissible evidence of a witness's character for traits other than honesty or veracity and that there was no authority for admitting evidence of a felony conviction such as Billante's to show bias.

The court rejected the Society's argument. It held that if evidence of a prior felony conviction tends to show a witness's bias, it is admissible to show that bias regardless of the nature of the felony. The court observed:

Consider, for example, an eyewitness to a car accident testifying for the plaintiff that the defendant ran a red light. If that witness had once been convicted of a felony for assaulting the defendant, that conviction would be very probative of the witness's prejudice against the defendant and a possible motive to lie at trial about the cause of the accident.

The court held that by the same logic, Billante could be biased in favor of the Society, his former order, and against Piscitelli, who was suing it for the same kinds of wrongs for which Billante was convicted. Thus, the evidence of Billante's conviction was admissible.

This opinion appears in the August 22, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 13203.

A Plaintiff Could Voluntarily Dismiss Before The Defendant's Motion For Summary Judgment Was Heard

Gogri v. Jack In The Box, Inc.
(Cal. Ct. of App., 4th Dist.), filed August 25, 2008, published August 27, 2008

Maheshkuimar Gogri sued Jack In The Box, Inc. as a result of a dispute over franchise rights. Jack moved for summary judgment. It asserted that Gogri's answers to certain interrogatories established that he could not meet his burden of proof at trial. Gogri opposed the motion.

Before the hearing on the motion and before the trial court even made a tentative ruling, Gogri filed a voluntary dismissal without prejudice. Jack filed a motion to set aside the dismissal.

The trial court granted Jack's motion to set aside the dismissal and then Jack's motion for summary judgment. Then, the trial court awarded Jack contractual attorney's fees as the prevailing party.

The Court of Appeal reversed. It held that under the circumstances Gogri could dismiss his action and that the dismissal precluded Jack from recovering fees as the prevailing party.

The court distinguished cases in which the plaintiff dismissed only after the court indicated how it was likely to rule on the motion. It also distinguished cases in which the plaintiff chose to dismiss only after failing to file an opposition to a dispositive motion.

This opinion appears in the August 27, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 13555.

A One Year Contractual Limitation Of Actions Provision In An Employment Agreement Is Permissible

Pearson Dental Supplies, Inc. v. Superior Court
(Cal. Ct. of App., 2d Dist.), filed August 21, 2008, published August 25, 2008

Luis Turcios sued his former employer, defendant Pearson Dental Supplies, Inc., for age discrimination under the California Fair Employment and Housing Act (FEHA), among

other claims. His employment agreement with Pearson Dental Supplies contained a mandatory arbitration clause for employment-related claims. It also provided that any such claim is waived, unless submitted to arbitration within one year from the date the dispute arose or from the date employee first became aware of facts giving rise to the dispute.

In a court-ordered arbitration, the arbitrator found that Turcios had failed to timely submit his FEHA claim to arbitration. Therefore, the arbitrator granted summary judgment for Pearson Dental Supplies.

The trial court, however, vacated the arbitration award. Among other things, it found that the one-year limitation period impermissibly infringed on Turcios' unwaivable statutory rights under the FEHA, and that therefore the arbitrator had exceeded his power in enforcing the one-year limit.

Pearson Dental Supplies petitioned for a writ of mandate to compel the trial court to confirm the award. The Court of Appeal issued the writ. It held that on the facts of the particular case, the one-year limitation period did not unreasonably restrict Turcios' ability to vindicate his rights under the FEHA.

This opinion appears in the August 25, 2008 edition of the Los Angeles Daily Journal, Daily Appellate Report, at p. 13299.

Contact

Lance A. LaBelle
Orange County
llabelle@bergerkahn.com
949-474-1880

David B. Ezra
Orange County
dezra@bergerkahn.com
949-474-1880

Leon J. Gladstone
Los Angeles
lgladstone@bergerkahn.com
310-821-9000

Gene A. Weisberg
Los Angeles
gweisberg@bergerkahn.com
310-821-9000

Roberta T. Winston
San Diego
rwinston@bergerkahn.com
858-547-0075

Ann K. Johnston
S.F. Bay Area
ajohnston@bergerkahn.com
415-899-1770

Los Angeles
4551 Glencoe Ave.
Suite 300
Marina del Rey, CA
90292
(310) 821-9000
(310) 775-8775 (f)

Orange County
2 Park Plaza
6th Floor
Irvine, CA
92614
(949) 474-1880
(949) 474-7265 (f)

San Diego
10085 Carroll
Canyon Rd.
Suite 210
San Diego, CA
92131
(858) 547-0075
(858) 547-0175 (f)

S.F. Bay Area
7200 Redwood
Boulevard
Suite 325
Novato, CA
94945
(415) 899-1770
(415) 899-1769 (f)

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