

Appellate reports for plaintiff attorneys

Including Hertz Corp. v. Friend: *For the purposes of federal diversity jurisdiction, a corporation's principal place of business is its "nerve center" – typically its HQ.*

By Jeffrey Isaac Ehrlich

Hertz Corp. v. Friend

__ U.S.__, 2010 WL 605601 (U.S. Supreme Court)

Who needs to know about this case: Lawyers who sue corporations

Why it's important: Holds that, for the purposes of federal diversity jurisdiction, a corporation's principal place of business is its "nerve center" – typically its headquarters.

Synopsis: Since 1958, federal law has stated that a corporation is a citizen of its state of incorporation and the state where it has its principal place of business. Since then, federal courts have split on how to determine the principal place of business. Some courts have applied the "nerve-center" test, which looked to where its officers direct, control and coordinate its activities. Others have focused on where the corporation's business activities are centered. The Supreme Court has now resolved the issue: "We conclude that 'principal place of business' is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities. It is the place that Courts of Appeals have called the corporation's 'nerve center.' And in practice it should normally be the place where the corporation maintains its headquarters – provided that the headquarters is the actual center of direction, control, and coordination, *i.e.,* the 'nerve center,' and not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion).

Office Depot, Inc. v. Zuccarini

__ F.3d __, 2010 WL 669263 (9th Circuit 2010)

Who needs to know about this case: Lawyers looking for potential assets to seize to enforce judgments

Why it's important: Holds that Internet domain names can be seized in the Northern District of California ("N.D. Cal.") where Verisign, the official registry for all ".com" and ".net" domain names, has its headquarters.

Synopsis: Office Depot obtained a judgment against Zuccarini under the Anticybersquatting Consumer Protection Act of 1999, 15 U.S.C. § 1125(d) ("ACPA") arising out of his registration of the domain "Offic-depot.com". The district court appointed a receiver to levy on Zuccarini's domain names to satisfy the judgment. Zuccarini appealed, arguing that the N.D. Cal. was not a proper place to levy on his domain names and that the appointment of a receiver was therefore improper. The Ninth Circuit held that the district court in the N.D. Cal. properly exercised *quasi in rem* jurisdiction over Zuccarini's intangible property, the domain names, that were situated within the district's borders. The court recognized that attaching a situs to intangible property is a legal fiction, but a necessary one. The ACPA provides that a trademark owner can proceed *in personam* against the cybersquatter, or *in rem* against the allegedly infringing domain name, "in the judicial district where the domain name registrar or registry is located. Although the collection action was not an action under the ACPA, the statute is authority for the proposition that domain names are personal property located wherever the registrar or registry is located. Here, Verisign, the registry for all ".com" and ".net" domains, is headquartered within the N.D. Cal. The district court therefore has *quasi in rem* jurisdiction to appoint a receiver to levy on the domain names owned by Zuccarini.

Diaz v. Carcamo

__ Cal.App.4th _, 2010 WL 654346 (2d Dist. Div. 6. 2010)

Who needs to know about this case: Attorneys bringing auto-liability cases against drivers and their employers

Why it's important: Holds that plaintiff could properly proceed against driver's employer on both a vicarious liability theory and a direct theory of liability – negligent hiring, and under the latter theory, evidence of the driver's character and prior conduct was relevant.

Synopsis: Dawn Diaz was seriously injured when she was struck by a car

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driven by Karen Tagliaferri, which jumped a freeway center divider and landed on her car following its collision with a truck driven by Jose Carcamo. She sued Tagliaferri, Carcamo, and Carcamo's employer, Sugar Transport. She alleged that Sugar Transport was vicariously liable as Carcamo's employer, and also directly liable for its independent negligence in its hiring and retaining Carcamo. The jury returned a verdict against each defendant awarding plaintiff a total of $22,566,373 in damages. Pursuant to Proposition 51, it apportioned fault among Tagliaferri (45 percent), Carcamo, (20 percent), and Sugar Transport (35 percent). On appeal, Sugar Transport argued that because it admitted it was liable for Carcamo's negligence on a respondeat superior theory as his employer, it was error for the trial court to admit evidence of his involvement in prior accidents and an evaluation by a prior employer who dismissed Carcamo after three months and gave him a poor performance review.

The appellate court affirmed, finding that Diaz's negligent hiring and retention theory was an independent basis for direct liability against Sugar Transport, which could not be negated by Sugar Transport's concession that it was vicariously liable for Carcamo's negligence. It further held that his employment and driving history was not inadmissible character evidence. Hence, although it could not be admitted to show that Carcamo was at fault for the accident with Diaz, it was relevant to show that Sugar Transport had knowledge of his involvement in prior accidents before it hired him to drive its trucks. The evidence was highly probative, and its probative value was not outweighed by its potential for prejudice, so it was not necessary to exclude it under Evidence Code section 352.

While Sugar Transport's concession of vicarious liability established that it was liable, the direct-liability claim against it constituted a theory of fault that imposed greater responsibility on Sugar Transport than would have been attributed to it simply for being Carcamo's employer. It was therefore appropriate for the trial court to allow Diaz to proceed on that theory, as well as on the vicarious-liability theory.

Pellegrino v. Robert Half International

181 Cal.App.4th 713, modified on denial of rehearing 2010 WL 316808

Who needs to know about this case: Employment lawyers; lawyers bringing unfair competition ("UCL") claims under Business & Professions Code section 17200, et seq.

Why it's important: Holds that (1) provision in employment agreement limiting the statute of limitations for claims for failure to pay overtime or for failure to give rest periods or meal breaks was unenforceable; (2) trial court's decision to try UCL claims first, without a jury, was proper and did not deprive RHI of a right to jury trial; and (3) employees were not exempt from overtime pay under the "administrative exemption."

Synopsis: RHI is a staffing company that places temporary employees or "candidates" with its clients. It has several divisions that place candidates in various fields, such as a Legal Division, which places attorneys, paralegals and legal support specialists; a management resources division, which places employees providing high-level accounting and finance-related services; a creative group, which places employees who provide Web-site development, marketing, and advertising; and an office team, which places administrative staff. Plaintiffs worked in various divisions. Their employment agreements with RHI contained a provision requiring that all claims be brought within six months of the termination of employment.

The trial court denied RHI's motion for summary judgment based on the shortened limitations provision in its employment agreement, finding that private agreements that contravened statutory remedies were against public policy. Before trial, the court bifurcated plaintiffs' unfair competition claims, which were equitable, and ordered them to be tried to the court. As agreed by RHI, the court then bifurcated RHI's exemption defense and tried that issue first. After 17 days of trial, the court granted judgment for plaintiffs, finding that they performed a production or sales role in RHI's business, and did not have an impact on RHI's policies or general business operations, and were therefore outside of the administrative exemption. The parties then entered into a stipulation re: damages, and judgment was entered against RHI, from which it appealed. Affirmed.

The court first held that plaintiffs' claims for violations of the wage-and-hour laws are based on unwaivable fundamental statutory rights, and that the provision in RHI's employment agreement improperly sought to restrict its employees' rights to enforce their unwaivable statutory rights. It could therefore not be enforced. Next, the court held that trial courts may properly resolve equitable issues first in an action involving both legal and equitable issues, and that the trial court's findings on the equitable issues may conclusively resolve factual issues, leaving nothing for the jury to decide.

Finally, the court affirmed with respect to the administrative exemption, finding that substantial evidence supported a finding that RHI failed to establish that plaintiffs were engaged in "office or non-manual work directly related to management policies or general business operations of his/her employer or his employer's customers." Plaintiffs were account executives for RHI, and their duties were not directly related to management policies because they instead constituted sales work.

Gravillis v. Coldwell Banker Residential Brokerage Co.

__ Cal.App.4th __, 2010 WL 670133 (2d Dist. Div. 1 2010)

Who needs to know about this case: Lawyers drafting or litigating cases involving arbitration agreements

Why it's important: Holds that provision in arbitration agreement that re-

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quired arbitrator to render an award "in accordance with California law" did not explicitly and unambiguously create expanded judicial review of arbitration award.

Synopsis: Gravillis sued Coldwell Banker, his real-estate broker, for failing to disclose structural damage to the home he purchased. The case was arbitrated, and the arbitrator ruled in favor of Gravillis. Coldwell Banker petitioned to vacate the award, based on various errors it contended the arbitrator had made. The trial court confirmed the award, and Coldwell Banker appealed. It contended that because the arbitration agreement required the arbitrator to render an award "in accordance with California law," and because the arbitrator's award contained errors and was therefore not in accordance with California law, it was subject to judicial review. The appellate court affirmed. In *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334 [82 Cal.Rptr.3d 229], the court recognized that an arbitration agreement may, if properly worded, require the courts to review an arbitrator's errors of law on the merits. The arbitration agreement in *DIRECTV*, expressly provided that, "The 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." Coldwell Banker's arbitration agreement did not contain a similar clear statement, and also contained a disclosure stating that, by executing the agreement, the parties were "giving up your judicial rights to discovery and appeal." Accordingly, the court applied the default rule that arbitration awards are not subject to judicial review based on factual or legal issues made by the arbitrator.

Young Seok Suh v. Superior Court [CHA Hollywood Medical Center]

181 Cal.App.4th 1504
[___Cal.Rptr.3d___] (2d Dist. Div. 5 2010)

Who needs to know about this case: Lawyers drafting and opposing arbitration agreements

Why it's important: Holds that arbitration agreement that prohibits arbitrator from awarding consequential or punitive damages is unconscionable and unenforceable.

Synopsis: Plaintiffs Suh and Chung are anesthesiologists who were with a medical group that entered into two anesthesia contracts with a hospital. They review by writ of mandate of a trial court order compelling arbitration of their discrimination claims against a hospital. The hospital relied on two arbitration agreements, one executed in 2006, and one in 2008. The 2006 agreement provided for arbitration under the rules of the American Health Lawyers Ass'n ADR rules (AHLA rules), and the 2008 agreement provided for arbitration under the JAMS rules. Suh and Chung argued that the 2006 agreement was unconscionable, in part because the AHLA rules prevent the arbitrator from awarding damages for consequential, exemplary, incidental, punitive or special damages in an action other than an action arising from a tort unrelated to employment or the termination of employment. They argued that they were not parties to the 2008 agreement, and it therefore could not bind them.

The appellate court granted the writ. First, the court determined that the record showed that plaintiffs never executed the 2008 agreement and never saw it until months after it was executed. The Hospital conceded that plaintiffs were non-signatories, but claimed they were bound by it because they were employees of the medical group that contracted with the Hospital, and were therefore either third-party beneficiaries of the agreement, or had obtained benefits under it. The court rejected this argument, finding that simply because the plaintiffs were employees of a corporation that had entered into an arbitration agreement, that the agreement was not necessarily binding on their discrimination claims.

The court also found that the 2006 agreement was unconscionable because the AHLA rules contain restrictions on remedies that make the agreement substantively unconscionable. There was also uncontradicted evidence of procedural unconscionability. The arbitration clause is on page 13 of the contract, and printed in the same typeface as the rest of the agreement. In addition, the AHLA rules were not made available to review before signing. Because the agreement does not provide for any replacement rules, the AHLA rules cannot be severed from the arbitration clause. The court added, "The limitation on damages in this case is so egregious and so draconian that it should not be permitted to be severed. Otherwise, parties will be encouraged to insert such clauses, with the only sanction being the removal of the clause."


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