

A yellow right-angled triangle pointing downwards and to the right, positioned to the left of the "BLOGS" header.

BLOGS

Vicarious Liability

California Supreme Court Rules in Favor of Franchisor in *Patterson v. Domino's* Case

In a highly anticipated case involving franchisor vicarious liability, the California Supreme Court ruled, in a 4-3 decision issued today, that Domino's is not vicariously liable for the acts of a franchisee's employees. *Patterson v. Domino's Pizza, LLC*, Case No. S204543 (Cal. Aug. 28, 2014).

The case began when Patterson, a teenage worker at a Domino's franchise, filed an action against both the franchisee (Sui Juris) and Domino's alleging that the assistant manager of the restaurant sexually harassed and assaulted her. Patterson claimed that Sui Juris and Domino's were the manager's employers and that Domino's was vicariously liable for the assistant manager's actions under the doctrine of respondeat superior. Domino's filed a motion for summary judgment, which the trial court granted, finding that Domino's had no role in the franchisee's employment decisions.

Patterson appealed to the California Court of Appeals. Adopting the "totality of the circumstances" test, the appeals court reversed. Although the franchise agreement stated that Sui Juris was solely responsible for recruiting, hiring, training, scheduling for work, supervising and paying its employees, the appellate court found that other provisions in the franchise agreement substantially limited franchisee independence in areas that went beyond food preparation standards. The court took particular note of provisions in Domino's operations manual that describe specific employment hiring requirements, including physical appearance, clothing, jewelry, facial hair, and body piercings. The owner of Sui Juris also testified that he was pressured by Domino's to fire the assistant manager after the sexual harassment was reported. The franchisee claimed that he had to follow the directions of the Domino's personnel or "[y]ou are out of business very quickly."

In a comprehensive 39-page ruling, the California Supreme Court acknowledged the "special features of the franchise relationship," including system-wide standards and controls that provide a means of protecting the trademarked brand and building customer trust by ensuring consistency and uniformity in the quality of goods and services. In business format franchises, this could include "a long list of marketing, production, operational, and administrative areas... that can take the form of printed materials, training programs, advertising services, and managerial support, among other things." The court, however, rejected the plaintiff's argument that the detailed controls over a franchisee's general operation should result in liability for personal harm sustained in the course of the franchisee's

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com

business. Instead, the court concluded that the “means and manner” test used by the Court of Appeals could not stand for the proposition that a comprehensive operating system alone constituted the “control” needed to support vicarious liability for claims like sexual harassment. Because most business format franchise agreements allocate local personnel issues almost exclusively to the franchisee, a franchisor becomes potentially liable for actions of the franchisee’s employees “only if it has retained or assumed a general right of control over factors such as hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of the franchisee’s employees. Any other guiding principle would disrupt the franchise relationship.” The court noted that this test was more in line with franchise cases in other states, in which courts have focused on the franchisor’s lack of control over the “instrumentality,” the “conduct,” or the “specific aspect of the franchisee’s business” that caused the alleged injury.

The court rejected Patterson’s contention that an adverse ruling would immunize franchisors from vicarious liability for enterprise related harm because it would contravene the public interest in protecting employees from sexual harassment. The court found these policy arguments lacking when the party from whom compensation is sought did not directly control the workforce, and could not have prevented the misconduct or corrected its effects. “We cannot conclude that franchise operating systems necessarily establish the kind of employment relationship that concerns us here. A contrary approach would turn business format franchising ‘on its head.’”

Applying these principles, the court found that nothing in the franchise agreement granted Domino’s any of the functions commonly performed by employers. The contract stated that there was no principal/agent relationship and that Sui Juris operated as an independent contractor. The contract also stated that no employment relationship existed, and Sui Juris had no authority to act on behalf of Domino’s. Domino’s had no duty to operate Sui Juris’ store, provide direction to its employees or have any involvement in the hiring or firing process. More specific to the claims raised in the case, neither the contract nor the operations manual gave Domino’s the power to establish a sexual harassment policy or training program for Sui Juris’s employees. Domino’s had no procedure for monitoring or reporting sexual harassment complaints. In short, “Domino’s lacked contractual authority to manage the behavior of Sui Juris’s employees while performing their jobs, including any acts that might involve sexual harassment.” In fact, the evidence indicated that Sui Juris implemented its own sexual harassment policy and training program for its employees and retained the authority to impose discipline for any violations. When Patterson complained of sexual harassment, Sui Juris suspended the offender and started an investigation. The offender subsequently lost his job when he failed to report to work, and, when he asked for his job back, Sui Juris refused to rehire him. The court acknowledged that there was no evidence that Sui Juris solicited Domino’s advice or consent on any of its decisions, or that it was required to do so. In short, Sui Juris acted on Patterson’s complaint by taking unilateral disciplinary action. The court found no reasonable inference could be drawn that Domino’s retained or assumed the right of general control an employer or principal has over factors such as hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of the franchisee’s employees. Therefore, there was no basis upon which to find a triable issue of fact that an employment or agency relationship existed between Domino’s and Sui Juris and its employees.

Justice Werdegar issued a separate dissent in which he disagreed with the majority “not so much with its statement of the applicable law as with its application of the law to the facts.” The dissent felt that the majority placed too much emphasis on the terms of the franchise agreement and not enough on the parties’ real-world in interaction. The dissent noted actual or implied threats made by the Domino’s area leader when she allegedly told Sui Juris “You’ve got to get rid of this guy” shortly after the sexual harassment was reported. The dissent felt the franchisor’s relationship with Sui Juris gave it the power to force it to fire employees; thus, employees were subject to the control of both Sui Juris’s and Domino’s and were employees of both.

The decision in *Patterson* represents a significant shift in California law and places it more in line with appellate decisions from other states. Although in the employment context, the court makes clear that franchisors operating in California will not be held vicariously liable for the acts of its franchisees or their employees merely because the franchisors manage business format franchise systems with all of the controls necessary to operate in a uniform manner. In order to get past summary judgment, plaintiffs will be required to demonstrate that the franchisor retained or assumed a general right of control over factors directly relating to the issue that caused the alleged injury.