

California Supreme Court: Holding Franchisor Liable as Employer Depends on Level of Control Over Day-to-Day Employment Decisions

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Author: Ameneh K. Ernst (Torrance)

Patterson v. Domino's Pizza, LLC, No. S204543 (August 28, 2014): On August 28, 2014, the California Supreme Court issued a decision holding that a franchisor that did not exhibit the characteristics of an “employer” was not vicariously liable for the wrongful conduct that one franchisee employee directed toward another franchisee employee. The state high court held that Domino's Pizza, LLC, the franchisor, did not have the right or duty to control the employment of the franchisee's employees or the franchisee's personnel matters and was not involved in the franchisee's day-to-day decisions involving the hiring, supervision, and discipline of the franchisee's employees. Thus, the court found that the franchisor cannot be held liable for the conduct of an employee of the franchisee.

Sui Juris, LLC owned a Domino's Pizza franchise. One of the franchise's employees filed a lawsuit under California's Fair Employment and Housing Act alleging sexual harassment by a supervisor and failure to take reasonable steps to avoid harassment, among other claims. The employee filed the lawsuit against both the franchisee, Sui Juris, LLC, as well as the franchisor, Domino's Pizza, LLC.

In November 2010, Domino's Pizza requested a dismissal of the suit. Domino's Pizza argued that there was no employment relationship between Domino's Pizza and the franchisee's employees and, therefore, that it cannot be held vicariously liable for a franchisee supervisor's misconduct toward an employee.

The trial court determined that Domino's Pizza did not control the day-to-day operations and employment practices of Sui Juris and dismissed the suit. The California Court of Appeal disagreed with the trial court on the basis that the franchise contract and a manager's guide that was provided to franchisees by Domino's Pizza raised some issue of fact as to whether Sui Juris had “managerial independence” in operating the store. Therefore, the Court of Appeal reversed the dismissal. Domino's Pizza appealed the decision.

On appeal, the California Supreme Court disagreed with the Court of Appeal and sided with the franchisor. The court found that the facts do not show that Domino's Pizza exhibited characteristics of an employer by asserting control over the franchisee's personnel decisions. In fact, the state high court noted, “there was considerable, essentially uncontradicted evidence that the *franchisee* made day-to-day decisions involving the hiring, supervision, and disciplining of his employees.” The court held that since Domino's Pizza did not have the right or duty to

control employment or personnel matters for Sui Juris, it cannot be held liable for the actions of Sui Juris's supervisor toward another employee. The court clarified that its decision does not imply that franchisors can never be held accountable for harassment at franchise locations. The court also emphasized that a franchisor that imposes and enforces "a uniform marketing and operational plan cannot *automatically*" be held responsible for the wrongful actions of a franchisee's employee.

According to Thomas M. McInerney, the managing shareholder of the San Francisco office of Ogletree Deakins, "This is a welcome decision on the hotly contested issue of when franchisors are liable for acts of employees working at a franchisee. The California Supreme Court's thoughtful, reasoned decision correctly appreciates the operational reality that it is the franchisees, not the franchisors, that make the day-to-day decisions involving employment issues at the franchise level. As a result, the franchisees are generally the sole 'employer' of the employees, at least as that term has been generally understood for decades."

McInerney also noted that the California Supreme Court's decision stands in stark contrast to current efforts by the National Labor Relations Board's General Counsel to hold franchisors liable for the alleged unfair labor practices of franchisees, despite long-established precedent to the contrary.

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