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Memorandum

To: Junior Associate
Fm: Senior Partner
Re: Castro v. Hilton Hotels
Date: Dec. 18, 2007

We represent the defendants in this case. Erma Castro timely sued our clients after she was terminated from her employment by a Hilton Hotel manager named Daniel Bossman. Please analyze the issues in this file, appearing immediately after the respective pleadings below. As an advocate for this firm, you need to address potential counter-arguments, and reach a reasoned conclusion on each issue.

This exercise consists of five (5) pages. Be sure to read and consider the matters presented in the attached document FILE and law LIBRARY (which does *not* contain all applicable laws/rules). I suggest that you allocate about half of your time to analyzing the first issue group (of four). I do not expect you to use any particular format for your response. Feel free to use the “IRAC” format you may have used in law school.

Your law school hopefully taught you not to write lengthy discourses about matters which are not in issue; nor should you make unreasonable counter-arguments. You would thus know that not every scrap of information will be relevant to some issue.

You’ve achieved a great deal, just by getting to this point in your new profession. This is another opportunity to demonstrate why!

Good luck,
Willy Pratner

LIBRARY

CALIFORNIA CODE OF CIVIL PROCEDURE

§410.10: A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution * * * of the United States.

FEDERAL JUDICIAL CODE

§1331: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

§1332(a): The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state;

* * *

(e): The word “States,” as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 23 Class Actions

(a) *Prerequisites*. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) *Types of Class Actions*. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

* * *

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

PUERTO RICO CODE OF CIVIL PROCEDURE

§3118: In addition to the above-listed bases for suit within the Commonwealth of Puerto Rico, the complaint may include the claims of all workmen and employees who failed to receive their equities, benefits, or wages.

[End of Library]

ISSUE OUTLINE

Issue #1 Attk @:

12b1-> Domicile—given in ¶ 1 Complaint

—P.R. = “State” diversity purposes 1332(e)

Amt—GF secretary one year = 250k?

Q whether legal cert <75k⁺

Facts silent compensation

Filed “one year ago”-> so lost wages ≠likely 250k

12b2-> Long-arm—CA 410.10 outer parameters Due Proc

—PR §3118 irrelevant-> not filed in PR

Due Proc check (min cont)

—Hilton = general jurisd

“hotels all major cities of world”

—Bossman = specific jurisd

non-resident forum

no apparent ties CA

4(m)-> 120 days serve all Ds

“trouble finding Bossman”

problem serving in P.R.?

12b3-> resides/arose & IPJ corp

Hilton—resides all major cities world (general IPJ forum)

Bossman—not reside CA forum

act/omission ≠ CA

12b6-> Notice pldg—R 8(a)(2) short & plain entitled relief

≠ “cross line b/t possibility & plausibility” (D argue *Bell*)

unclear which applies

alleges only “terminated,” not even “improperly/wrongful”

how cross either 8(a)(2) or *Bell* line?

12(e)-> even if traditional standard applies, no charging allegations

claiming only lost wages

how arrive at 250k dam for last year as “secretary”

against both Ds? HH *only*? (“*Hilton* unusually good posit pay”)

12b7-> “having trouble finding Bossman” ~ Bank Cal

“necessary” *complete* adjudication? (could depose in P.R.)

Infeasible join? How CA IPJ D² dom in P.R.?

Indispensible only if not shape

jmt effectively insulate Bossman b/c HH deep pkt?

12(f)-> Motion to strike

¶ 1 allega HH in “an unusually good posit to pay damages”

confuse abil pay irrel & prejudice jury

Issue #2:

FRCP 13a -> compulsory if arises out of opposing
Firing & theft not necessarily part of same occurrence
Great Lakes liberal “logical relationship” test
But for firing, arguably no theft
If permissive, no indep basis SMJ

Supplemental SMJ -> Gibbs “common nucleus” & expect try both together
If compulsory, then supp SMJ over \$1,750.00 laptop counterclaim

Issue #3:

FRCP 11-> Willy duty “investigation reasonable under circumstances”
Bossman presumably told us laptop was missing
Should = enough proper investiga
Reason H file irrel-> fed = objective test

Safe harbor-> Ali cannot file R11 motion “within the hour”
Must provide HH oppor to withdraw
no apparent reason withdraw
Ct supp SMJ “ridiculous” compulsory counterclaim

Issue #4:

3118-> subst law not unimportant
could argue = basis “common Q”

FRCP 23(a)-> *Numerosity?*

only “Puerto Ricans” (Dom only? Reside only? PR now foreign residents?)
why not *all ee’s* regardless whether Puerto Rican
which = *main* Hilton Hotel in Puerto Rico?
no time limitation: all *ee’s ever* worked there?

-> *Common Quest*: §3118 or cmn law claim (broader than “termina”)
Likely ~ reason all termina?
Ethnic dsicrim case?

-> *Typicality*: facts silent
is Castro P.Rican?

-> *Adeq rep*: Erma now dom CA
Borat no Mojo re *basic* suit (let alone c/a P.R. law)

(b)-> “superior” to other available methods ?
why not indiv suits?
where going bring-> CA? P.R.?

Issue #1: Whether we can attack Castro's complaint under FRCP 12; if so, on what grounds; and whether we will be successful?

Rule 12 (b)(1): Lack of Subject Matter Jurisdiction (SMJ)

The first issue is whether we can attack Castro's (C's) complaint for lack of SMJ. SMJ is the power of a court to hear a particular case. For the federal courts, SMJ can be established in two distinct ways: by federal question and by diversity jurisdiction. Federal question references a case arising under federal law, including the U.S. Constitution, laws and treaties. In this case, C has brought a case for termination from employment, which does not arise under any federal law. As such, the court does not have jurisdiction to hear this case for reason of a federal question.

If the court has SMJ over this case, it would be because of diversity jurisdiction. For diversity jurisdiction to exist, two elements must be met: (1) there must be no plaintiff and no defendant domiciled in the same state, and (2) the matter in controversy exceeds the sum or value of \$75,000. Here, C is domiciled in California and the co-defendant, Daniel Bossman (D) is domiciled in Puerto Rico. Our client, Hilton Hotels, Inc. (H), is a corporation; and a corporation has its domicile in the state in which it is incorporated and in the state in which it has its principal place of business. Therefore, our client's domicile is both in Delaware and New York. Because the plaintiff and both defendants all have different domiciles, there is no plaintiff and no defendant from the same state. As such, the first element required for diversity jurisdiction appears to be met.

The second element of diversity jurisdiction is the matter in controversy, which must exceed \$75,000. It must appear to a legal certainty that the plaintiff cannot prove damages in excess of this amount before a court will dismiss the claim on this ground. Here, C alleges in her complaint that she prays for a \$250,000 judgment. C only stated that she incurred damages for lost wages (however, she did not state with specificity how much her lost wages were, as is required by FRCP 9 for special damages). C was employed at Hilton Hotels as D's secretary, and she was terminated one year ago from the complaint filing date of June 1, 2007. It is unclear from the complaint whether C is asking for lost wages for the period of the entire year since she was terminated, or whether she has gained new employment since that date. At any rate, the maximum period for which C is claiming lost wages is one year. It is highly unlikely that C was earning \$250,000 annually as a secretary, as that type of employment typically pays a much lower salary. However, the court only looks to determine whether the minimum amount of \$75,000 can be exceeded to a legal certainty. It is certainly possible that C may have earned more than \$75,000 yearly at her job, depending on how long she had been employed there and her job duties. Most likely, without more information, the court will not determine that C's claim cannot exceed the minimum amount in controversy to a legal certainty. As such, it appears that the matter in controversy element could be met here.

Without more information regarding C's salary at H at the time of her termination, it appears we likely will not be successful in attacking C's complaint for lack of SMJ.

Rule 12(b)(2): Lack of In Personam Jurisdiction (IPJ)

The next issue is whether we can attack C's complaint for lack of IPJ. IPJ is the power of the court over a particular defendant. IPJ is established by satisfying two elements: (1) the chosen

forum's long-arm statute (LAS) must bring the defendant within its jurisdiction, and (2) it must be shown that the defendant has minimum contacts with the forum. Here, we would specifically be concerned with a lack of IPJ over our client, H.

The first prong of IPJ is regarding the forum's LAS. C has chosen California as the forum. California Code of Civil Procedure section 410.10 states: A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution ... of the United States. This LAS is not limiting and gives the federal court very broad jurisdiction. For this case, the California court exercising jurisdiction over H would not violate the U.S. Constitution. Therefore, the LAS element of IPJ would likely be satisfied.

The second prong of IPJ is whether the defendant has minimum contacts with the forum, California. The court looks to what minimum contacts the defendant has with the forum, if any; whether the defendant has purposefully availed him/her/itself of the protection of the laws of the forum; and whether the defendant could have reasonably anticipated being haled into court in the particular forum. Here, C mentions in the complaint that H owns, operates and controls hotels in all major cities of the world. California contains major metropolitan cities such as San Diego, Los Angeles and San Francisco. H owns and operates hotel properties in all of those cities. This constitutes minimum contacts with California. Because of these contacts, H has also purposefully availed itself of the protection of the laws and the courts of California. H has undoubtedly been involved in litigation in California courts before now and would expect to be protected by California laws while doing business there. Since H conducts business in California, a court would likely find that H could have reasonably anticipated being haled into a California court for litigation purposes in general, although perhaps not for this particular case, as it is regarding employment at a Puerto Rico property. Therefore, a court would likely find that H has minimum contacts with the forum state and that the second prong of IPJ is, therefore, satisfied.

It appears we would not likely be successful in attacking C's complaint for lack of IPJ over H.

Rule 12(b)(3): Improper Venue

The next issue is whether we can attack C's complaint for improper venue. Venue is the place where trial will take place. Venue may be appropriately laid either where the defendant resides or where the claim (or a substantial portion of the claim) arose. For a corporation, such as our client, venue may be laid wherever the court has IPJ over the corporation. Here, C has laid venue in California. As discussed above, the court would likely have IPJ over H in California, so it appears that the venue could be considered correct here in terms of H. However, D resides in Puerto Rico, which poses a problem, because venue would be incorrect based on that residence. C's termination claim would likely be considered to have arisen in Puerto Rico, as she was employed there and terminated there. Therefore, for proper venue, it appears that C should have laid venue in Puerto Rico, where the claim arose and where D resides; the court there would likely also have IPJ over H for the same reasons that California would (as discussed above). At any rate, it appears that venue is indeed improper here, and that we can attack the complaint on this basis. We should be successful in this regard.

Rule 12(b)(6): Failure to state a claim upon which relief may be granted

The next issue is whether we can attack C's complaint for failure to state a claim upon which

relief may be granted. It must appear to a legal certainty that the plaintiff cannot prove any set of facts that would entitle the plaintiff to relief in order for the court to dismiss a complaint for failure to state a claim. The federal notice pleading standard, as set out in FRCP 8, requires the plaintiff to plead a short and plain statement of his/her claim that shows that he/she may be entitled to relief. There is a heightened pleading standard for fraud and for special damages. Here, in paragraph 2 of her complaint, C simply states that she was terminated one year ago from her employment in Puerto Rico, where she was employed as D's secretary. It does not state that C was terminated unlawfully, wrongfully or on the basis of breach of contract. No further facts are stated. Termination from at-will employment in and of itself is not always actionable; people are terminated from jobs every day for legitimate reasons. The court could find that C has not given enough of a statement of her claim to show that she is entitled to relief here.

However, the court could find, and C would argue, that it is obvious that her claim is for wrongful termination, otherwise she would not be bringing the claim. C stated that her claim was for termination and that she is seeking lost wages. C failed to state the special damages for her lost wages, though, which violates the heightened pleading requirement in FRCP 9.

Although C's complaint is lacking facts and detail regarding her termination claim, a court most likely would not dismiss the complaint for failure to state a claim. There is likely enough information here that it could not be stated, to a legal certainty, that C cannot prove any set of facts entitling her to relief. As such, although it is not clear-cut, we most likely would not be successful in attacking C's complaint for failure to state a claim.

Rule 12(b)(7): Failure to join a party necessary for complete adjudication of the matter

The next issue is whether we can attack C's complaint for failure to join a party necessary for complete adjudication of this matter. If a party is not named as a defendant and the court deems that party indispensable to a complete adjudication of the action, then the action must be dismissed for failure to join that party. Here, C has named both H and D as defendants in this suit. There do not appear to be any other parties involved in this matter or necessary to go forward with the action. Therefore, there is no need to attack C's complaint for failure to join a party, and we would not want to do so based on the information currently known to us.

Rule 12(e): Motion for a more definite statement of the facts

The next issue is whether we can attack C's complaint with a motion for a more definite statement of the facts. The short and plain statement of the plaintiff's claim in the complaint must provide the defendant(s) with sufficient information to prepare an answer and any defenses it/they may have. Here, C simply stated in her complaint that she was terminated one year ago from her employment in Puerto Rico, where she was employed as Bossman's secretary. From this limited information, our client, H, cannot ascertain why C is claiming her termination was wrongful. H does not have to infer C's reasons for her claim. H is entitled to enough information in C's complaint so that H can effectively respond to the claim and assert any affirmative defenses to C's argument that it may have. Also, although we are aware that D was employed by H as a manager, C's complaint does not even note the connection between H and D. It is likely that the court would agree that C's complaint needs to contain more definite information to allow H to properly respond. As such, we can likely attack C's complaint for a more definite statement of the facts successfully.

Rule 12(f): Motion to strike

The last issue regarding FRCP 12 is whether we can attack C's complaint with a motion to strike. A motion to strike may be raised to remove any redundant, immaterial, impertinent or scandalous matter from the complaint. Here, C has included information in her complaint that may be considered immaterial, impertinent or scandalous. C stated in paragraph 1 of the complaint that H owns, operates and controls hotels in all major cities of the world and that, therefore, H is in an unusually good position to pay the damages requested below. This information could be deemed irrelevant to C's claim; a person's claim for damages should (theoretically) be independent from the amount of assets that the defendant has. For this claim, it is only pertinent that H owns a hotel property in Puerto Rico where C was employed. This information could also be deemed scandalous, for it could influence a jury improperly by enforcing the idea of the big bad corporation with deep pockets versus the tiny little employee, which should not have any bearing on the merits of this case. Therefore, because this information is included in the complaint, it appears that we can attack C's complaint with a motion to strike this material, and we will likely be successful in this regard.

Issue #2: Will the court have the subject matter jurisdiction to hear our claim against Erma Castro?

There are three ways by which the California federal court could have SMJ to hear our claim against C: federal question, diversity jurisdiction and supplemental jurisdiction. Each is discussed separately below.

First, would the court have SMJ based on a federal question? See rule above under issue #1 for lack of SMJ. Here, our client's claim is for conversion and does not arise under any U.S. law, treaty or the Constitution. This is a tort claim. Therefore, the court would not have SMJ based on a federal question.

Second, would the court have SMJ based on diversity jurisdiction? See rule above under issue #1 for lack of SMJ. Here, our client, H, is domiciled in both Delaware and New York. C is domiciled in California. Therefore, the first element of diversity jurisdiction, no plaintiff and no defendant from the same state, is met. However, the amount of controversy for our client's conversion claim is only \$1,750, which does not meet the required matter in controversy of more than \$75,000. As such, the court would not have jurisdiction to hear this claim based on diversity jurisdiction.

Third, would the court have SMJ based on supplemental jurisdiction? Supplemental jurisdiction allows a federal court that has SMJ over a particular claim to also adjudicate over a related state law claim over which it would not have SMJ on its own. In order for the state law claim to be heard, two elements must be met: (1) the state and federal claims must have a common nucleus of operative fact, and (2) there must be an evidence overlap between the state and federal claims. Here, assuming that the California federal court has SMJ over C's original claim for termination, the court would look to see if our client's conversion claim meets the two elements for supplemental jurisdiction.

The first subissue is whether there a common nucleus of operative fact between the termination and the conversion claims? The termination claim is based on C's employment with H and

under D and will encompass the basis for her termination as well as the actions she has taken since her termination to gain other employment. The conversion claim involves actions taken by C after she was terminated, and thus will involve similar facts to answer the questions that will be raised in litigation. Although these two claims are not interdependent, it certainly seems that, since they both involve actions surrounding C's termination, a court could find that the two claims have a common nucleus of operative fact.

The second subissue, then, is whether there would be an evidence overlap between the termination and conversion claims. The evidence to be considered includes witnesses, parties, depositions and other discovery. Here, C's claim undoubtedly will involve depositions and testimony of C, D and qualified representatives of H, including a human resources representative. H's conversion claim will also involve depositions and testimony of C and representatives of H, including a human resources representative, because the claim concerns C's alleged failure to return a laptop computer to H at the time of her termination. Although the laptop computer issue is unlikely to arise in C's original claim, because it involves something C allegedly did subsequent to her termination, there appears to be enough overlap in evidence here that the court could concede it is sufficient for supplemental jurisdiction.

Therefore, it appears that the court will have SMJ to hear our claim against C based on supplemental jurisdiction.

Issue #3: Will we be sanctioned for filing our conversion claim?

Based on FRCP 11, every pleading or motion filed with the court must be signed by an attorney. Also, the attorney for a party must conduct an investigation reasonable under the circumstances before filing a pleading, and, by filing it, concedes that the information contained in the pleading is true to the best of his/her knowledge. This rule seeks to weed out frivolous claims from the federal caseload and to hold attorneys accountable for the claims they decide to bring. If the court finds that any of these requirements is not met, it can impose sanctions on the attorney.

Here, you cannot be sanctioned for failure to sign the pleading for the conversion claim, because you signed it. The issue that Mr. Borat is arguing is regarding the claim being ridiculous or frivolous. The conversion complaint states, succinctly, that C, upon leaving her employment with H, failed to return a laptop computer belonging to H. C was permitted to use the computer while employed by H but did not receive permission to take it with her after she was no longer employed by H. The prayer is for \$1,750, the fair market value of the laptop computer, which appears to be a reasonable amount, considering the current prices of laptop computers. The facts plead are clear and concise. These are facts that you easily could have ascertained from our client prior to the filing of this claim. Whether C kept the computer or had permission to do so could be disputed issues to be resolved at trial based on the evidence, but for purposes of filing this claim, it appears that you have done a reasonable investigation under the circumstances.

Mr. Borat may argue that because our client, H, has considerable assets, that it is unconscionable for it to file a complaint for a mere \$1,750 against his client, C. However, a party's assets or worth do not determine how entitled that party is to bring a rightful claim for damages. Claims are litigated all the time based on principal and to establish precedent rather than for the benefit of recovering damages. It is more likely that the court will not sanction you for filing this conversion claim, because it does not appear to be frivolous.

Issue #4: Whether a federal judge would likely certify Borat's law suit against H as a class action?

Based on FRCP 23, the prerequisites that must be satisfied before one or more members of a class may sue or be sued as representative parties on behalf of all are: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Each of these four prerequisites shall be discussed below.

First, is the class so numerous that joinder of all members is impracticable? Borat intends to seek damages for all Puerto Ricans who have been improperly terminated from employment at Hilton's main Hotel in Puerto Rico. There is no indication as to how many members may constitute this group. Borat is zeroing in on one Hilton hotel only, and it can only be hypothesized as to how many employees have been improperly terminated from that property. Therefore, it is unclear whether the numerosity prerequisite will be met.

Second, are there questions of law or fact common to the class? Assuming that there was a class of past Hilton employees claiming to be improperly terminated, some of the class members are likely to have common questions of law or fact. Some may be claiming they were terminated in violation of their civil rights, based on gender, race, religion, or the like. Others may be claiming they were improperly terminated based on subpar job performance or attendance/timeliness. There are any number of reasons that any given employee could claim s/he was improperly terminated. It is unclear whether all class members, or even most, would share common questions of law or fact. As such, it is possible that this commonality prerequisite could be met, but it is unclear.

Third, are the claims or defenses of the representative parties typical of the claims or defenses of the class? For purposes of this argument, assume that C is the class representative. At this point, it is not known why C is claiming that she was wrongfully terminated. Whatever her reason(s) for claiming such, though, would likely be typical of the claims or reasons of the class. Not all class members may share the same claims, but likely a substantial number of them would. Without more information to the contrary, it is likely that the typicality prerequisite could be met here.

Lastly, will the representative parties fairly and adequately protect the interests of the class? Here, assuming that C is the class representative, would she fairly and adequately protect the interests of the class of Puerto Ricans who have been improperly terminated from employment at this Hilton hotel? Without knowing more about the basis for the class members' claims and C's claim, it is tough to argue this issue either way. C would likely adequately represent employees who claim termination for the same reasons as C. As for employees claiming termination on other grounds, it is not so clear. Given the variety of reasons for which the class members could claim improper termination, it seems more likely that the representative party/parties may not adequately protect the interests of all parties.

Based on the above analysis, it does not seem that the prerequisites for class certification would be met here. However, assuming that a court found that the prerequisites were met, Rule 23 goes on to state: An action may be maintained as a class action if the prerequisites ... are satisfied, and in addition: *** the court finds that the questions of law or fact common to class

members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Here, the relevant issue is improper or wrongful termination from employment. This issue is very personal to people and typically involves circumstances specific to just one employee. The isThe sue of wrongful termination seems to be one that should be reviewed and decided on a case-by-case basis. A subjective issue such as improper termination seems like an individual member's questions of law or fact would actually predominate over the questions of law or fact common to the class. A class action for improper termination does not seem to be superior to having each terminated employee bring his/her own claim based on its merits; it seems like an individual action, based on its specific facts and circumstances, would be the best way for each plaintiff to be fairly heard. Also, although there could potentially be many claims brought by ex-employees of this Hilton hotel, it does not seem that the claims would be so numerous that it would be inefficient for the court to adjudicate them separately. Therefore, even if the prerequisites for class certification are met, a federal judge would not likely certify this action as a class action, because it fails to satisfy FRCP 23(b)(3).

* * *

END OF EXAM