

Original Content

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What Grandparent-Caregivers Need



Over the next few weeks, those with school-age children will settle into familiar routines, and we will begin to see children boarding and departing the yellow busses in our neighborhoods. More and more, with the increase in the number of dual-income households, there are grandparents waiting to greet the children at the end of the day. According to recent statistics, grandparents are the main child-care arrangement for 42% of families with young children.

Many grandparents happily pitch in with providing meals, helping with homework, and shuttling the kids to soccer and dance. But families should consider what would happen in the event of an emergency. If the child needed medical attention while under a grandparent's care, would the grandparent have the ability to authorize treatment? In a true emergency situation, doctors would certainly treat the child. In the case of a non-life-threatening injury or illness, however, medical professionals would require a parent's consent.

In New York, parents can provide this authority to caregivers in advance of an emergency by executing a "Designation of Person in Parental Relationship." The document can provide authority for a specified period of time (for vacationing parents), or upon the occurrence of certain events (*i.e.*, parental absence or incapacity).

As our lives become increasingly hectic, having certain safeguards in place can give us peace of mind. Contact our estate planning attorneys at 631.694.2400 to discuss which documents are right for your family.

Sexual Harassment Complaints Supported Employer's Breach of Contract Action



In *Pozner v. Fox Broadcasting Company*, Pozner, a former employee of Fox, who was terminated from his executive vice president position at the broadcasting company based on sexual harassment complaints, brought an action against Fox alleging breach of his employment contract. Fox counterclaimed for breach of contract and breach of fiduciary duty, based on the policies and standards of conduct in its handbooks incorporated into the employment agreement.

On Pozner's motion to dismiss the counterclaims,

the Court held that Fox's allegations supported a breach of contract claim against its former employee, but that it failed to allege that the employee acted directly against the employer's interests. The motion was granted in part and denied in part.

According to the decision, from 1994 through 2016, Pozner was employed by Fox in various executive positions. From 2014 until his employment was terminated, he was employed in the capacity of Executive Vice President, Pricing, Planning and Inventory Management. On January 13, 2015, Pozner and Fox entered into a letter agreement, setting forth the terms and conditions of his employment providing that he agreed to abide by, and was provided copies of, the policies set forth in both the Standards of Business Conduct and a document entitled Fox Facts. The Standards defined prohibited sex-based harassment, required Pozner to refrain from harassing conduct, and to report such conduct by others to Fox's human resources or legal departments. Fox Facts stated that Fox did not tolerate sexual harassment by managers, supervisors or co-workers, defined such harassment, and, again, required that members of management report such conduct to the company's human resources or legal departments.

In August 2016, Fox received internal complaints from two employees concerning Pozner's conduct towards them and during its investigation into the allegations, Fox obtained information from other current and former employees corroborating the harassing conduct regarding the two female employees, as well as others. Fox interviewed Pozner and found him to be evasive and defensive. Fox determined that Pozner violated the Standards and the policies and expectations set forth in Fox Facts, including by repeatedly making unwelcome and inappropriate sexually explicit comments in the workplace, and terminated his employment.

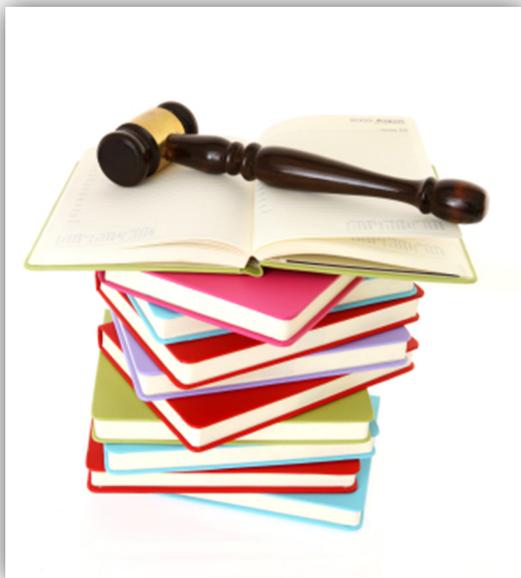
The Court held that Fox's first counterclaim for breach of contract was sufficient to withstand dismissal because Pozner expressly agreed to comply with the Standards and Fox Facts, both of which were incorporated into his employment contract. The Court rejected Pozner's argument that because he had no input in the drafting of the Standards and Fox Facts they should not bind him. This counterclaim sufficiently alleged that as an "executive employee, he was familiar with Fox's workplace expectations, and he was provided with copies of the

Standards beginning as early as 1998, and the Fox Facts as early as 2006,” and sufficiently stated a cause of action.

As for Fox’s breach of fiduciary duty counterclaim, however, the Court found it was “not tenable.” “Pozner had a contractual employment relationship with Fox. As a Fox executive and employee, he owed a duty of loyalty to Fox, which bound him to exercise ‘the utmost good faith and loyalty in the performance of his duties.’ Further, he was prohibited from acting in any manner that was inconsistent with his agency.”

The Court concluded that this duty of loyalty “has only been extended to cases where the employee ‘acts directly against the employer's interests—as in embezzlement, improperly competing with the current employer, or usurping business opportunities.’” Because there were no such allegations against Pozner in the breach of fiduciary duty counterclaim, the Court dismissed it for failure to state a claim.

Foreign Corporation’s Registration with Secretary of State Does Not Confer Court with General Jurisdiction



In *Amelius v. Grand Imperial LLC*, rent-stabilized tenants in a 227–unit, single-room occupancy (“SRO”) building, brought an action against the owner and operator of the building alleging they used the building for short-term stays in violation of multiple dwelling law and in contravention of the warranty of habitability.

On a motion to compel Yelp, Inc., a non-party, to comply with a subpoena to produce records that would demonstrate the short term stays, the Court concluded that Yelp’s registration with the State’s Secretary of State to do business in New York, did not confer the Court with general jurisdiction over the foreign corporation.

According to the decision, Yelp is a Delaware corporation with a principal place of business in San Francisco, California. It has registered to do business in New York. Yelp objected to a request for an order compelling compliance with a subpoena on, among other things, the ground that the Court lacked personal jurisdiction over it.

In agreeing with Yelp, the Court said that a registration to do business “in and of itself, does not confer general personal jurisdiction.” The Court reasoned that “for a court to have any power over an individual or entity, it must have both subject matter jurisdiction over a live case or controversy as well as personal jurisdiction over the individuals or entities involved. Authority for personal jurisdiction in the courts of New York must first be found in a statute,

and then must not violate any due process considerations. Personal jurisdiction falls into two main categories: specific jurisdiction and general jurisdiction. Specific jurisdiction, sometimes referred to as long-arm jurisdiction, refers to jurisdiction over an individual or entity for the purpose of adjudicating a particular controversy that arises from the entity's contacts with the forum State. General jurisdiction is all-purpose jurisdiction to adjudicate disputes regardless of where they took place or whether they bear any relationship to the entity's contacts with the forum State."

The Court found that it was "essentially undisputed that there is no basis for specific jurisdiction over Yelp under these circumstances," and that "in the absence of a basis to assert general jurisdiction over Yelp," the "Court would be powerless to enforce the subpoena against it."

Although the Court found that New York courts and federal courts sitting in New York State have traditionally held that registration to do business under Business Corporation Law §§ 304 and 1304 constitutes consent to general jurisdiction, this Court determined that New York's statutory law "does not contain any explicit language in reference to consent to jurisdiction—specific or general. Although New York courts have held that the registration has the effect of constituting consent, it is true that the statute itself does not notify registrants that it will carry such a consequence. Business Corporation Law § 1304(a) requires a foreign corporation applying to do business here to provide its name, jurisdiction and date of incorporation, purpose for which it has been formed, county in this State where its office is to be located, a designation of the Secretary of State as its agent for the service of process, an address within or without the State where process can be forwarded, and, if so desired, a registered agent. Nothing in the statute requires the corporation to execute a form in which it explicitly consents to subject itself to unlimited jurisdiction in the courts of this State. Business Corporation Law § 1305, titled 'Application for authority; effect,' merely provides that, 'upon filing by the Department of State of the application for authority, the foreign corporation shall be authorized to do in this state any business set forth in the application.'"

Because the statutes do not adequately apprise foreign corporations that they will be subject to general jurisdiction in the courts of this State and that foreign corporations are required to register for conducting a lesser degree of business in this State than the Supreme Court of the United States has ruled should entail general jurisdiction, the Court concluded that Yelp is not subject to general jurisdiction merely because it has registered to do business in New York.

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