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## BLOGS

### Vicarious Liability

# Court Dismisses Discrimination and Vicarious Liability Claims Against Franchisor Where No Plausible Facts Existed to Demonstrate Employment Relationship With Franchisee

In *Bricker v. R & A Pizza, Inc.*, 2011 U.S. Dist. LEXIS 39017 (S.D. Ohio Apr. 8, 2011), an Ohio federal district court granted a motion by franchisor Domino's Pizza to dismiss the claims of its franchisee's former employee. The court held that the former employee's complaint failed to state plausible claims against the franchisor under Title VII and for sexual harassment, retaliation, and negligence under state law. Each of those claims requires that there be an employer/employee or agency relationship between the worker and the franchisor, and the court found no allegations to support the existence of such a relationship.

Although the court held that a franchisor generally is not the employer of a franchisee's employee, the franchisor's potential status as an employer is determined in the Sixth Circuit through a four-part test: (a) interrelation of operations; (b) common management; (c) centralized control of labor relations; and (d) common ownership or financial control. The only allegation made by this plaintiff to satisfy any of the four factors was that the franchisor and franchisee were engaged in a joint venture, and thus, "acted as a joint employer." The court found that this was nothing more than a legal conclusion. Applying the heightened pleading standard under the *Twombly* and *Iqbal* Supreme Court opinions, the court found no factual allegations to "cross the line from possibility to plausibility" that Domino's had joint involvement in aspects of the franchisee's relationship with its employees. Therefore, the court found nothing to suggest that Domino's had "constructively employed" the plaintiff. The court also rejected the conclusory allegation that the franchisee served as the agent of Domino's. The court emphasized the necessity for "factual enhancement" of these conclusory statements since it was undisputed that the defendants were in a franchisor/franchisee relationship. For essentially the same reasons, the court dismissed the negligence claims, finding that the plaintiff had failed to establish that the franchisor and franchisee were principal and agent or could be aggregated together and treated as a joint employer for vicarious liability purposes.