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BLOGS

Vicarious Liability

Florida Court Protects Franchisor's Training and Operations Manuals From Discovery in Connection With Vicarious Liability Claim

In *McDonald's Restaurants of Florida, Inc. v. Doe*, 2012 Fla. App. LEXIS 3807 (Mar. 9, 2012), a Florida court of appeals overturned a trial court ruling that had required McDonald's to produce its training and operations manuals in discovery relating to a vicarious liability claim. The plaintiff had argued that the manuals were necessary to show that McDonald's had control over the franchised restaurant where an assault had taken place. The trial court, while recognizing that the manuals contained trade secrets, ordered their production pursuant to a confidentiality agreement.

Preliminarily, the court of appeals held that it was improper for the trial court to order production of trade secrets without having conducted an *in camera* review of the material to determine whether its production was necessary. In addition, the court of appeals viewed the plaintiff's demand that the full manuals be produced as a "fishing expedition." First, the court observed that counsel for the plaintiff had conceded that not all information in the manuals was necessary to the case and that he wanted them "to parade in front of the jury." Second, the court found that the human resources and security portions of the manuals applied only to franchisor-owned restaurants. Third, the court of appeals indicated its "concern" with the plaintiff's "apparent theory that a franchisor is a guarantor or insurer of every act of a franchisee." Finally, the court referred to Florida precedent that a plaintiff claiming vicarious liability must show that the franchisor "participated in some substantial way in directing or managing acts of the franchisee." The court agreed with McDonald's that the franchisor is not responsible for an assault "just because it requires the [f]ranchisee to follow uniform procedures for troubleshooting the milkshake machine or preparing a hamburger."