The Official Newsletter of Hart King

FALL 2014

HART | KING
ATTORNEYS AT LAW

Legal Briefing

SICK LEAVE

ALERT: All California Employers

Paid Sick Leave in 2015

California has adopted legislation that will mandate sick pay for ***ALL*** employees, effective July 1, 2015. There are plenty of rules and bookkeeping requirements imposed upon employers to satisfy the new mandate. However, in a nutshell, the bill guarantees employees the right to earn one hour of paid sick leave for every 30 hours worked, up to 24 hours annually. So, basically three [additional] days of paid time off per year for each and every employee.

Please make sure you review your company policies and handbooks to reflect these new changes. Violations of this new legislation can result in penalties.

TRIAL VICTORY:

Real Estate Disclosure Case

Hart King partner, Andrew Kienle, recently prevailed in a seven-day bench trial in a real estate disclosure litigation case in Orange County Superior Court. He represented the sellers of a multi-million dollar custom home who were being sued by the buyer for breach of contract and intentional and negligent failure to disclose known defects in the house. The plaintiffs sought money damages in excess of $500,000, plus rescission (refund of their $3 million purchase price) in the original sale. The Court ultimately entered judgment in favor of our client on all claims. Andrew also obtained an award for recovery of their attorney fees and costs. *Great result for our client!!*

CASE CLOSED

Questions :
Contact Barbara Ericson at (657) 622-4714 or *bericson@hartkinglaw.com*.

Negligent Design: Do Architects Have a Duty of Care to Future Buyers of Condominiums?

by C. "Bill" William Dahlin

The California Supreme Court recently decided the case entitled, *Beacon Residential Community Association v. Skidmore, Owings & Merrill*. The issue in the *Beacon Residential* case was whether the design professionals (architects and engineers) could be held responsible for negligent design of a large San Francisco condominium project. The Association (made up of owners of the 595-unit project) filed suit against the design professionals, as well as the contractors, alleging defective design and oversight.

The California Supreme Court, in a 7 – 0 decision, applied the factors established by the 1958 California Supreme Court in *Biakanja v. Irving* 49 Cal.2nd 647 in deciding whether the architectural firm owed a duty of care to a third party (the eventual purchasers of the condominiums) who were obviously not in privity of (direct) contract with the design professional. The Court, in a fairly exhaustive analysis of the factors set forth over fifty years ago, concluded that the law in California had certainly progressed to the point where design professionals could be held liable to 3rd party buyers/owners.

The decision is not really surprising for its result. Indeed, the surprise is that the issue had not been directly decided in California prior to 2014. Construction defect litigation has frequently named architects and related engineers as defendants. However, many of those cases have involved situations where the architects and other engineers are brought in as co-defendants by reason of a developer/builder filing a cross-complaint for contribution or indemnity. The unique aspect of this case is not that architects and engineers are now involved in construction defect litigation; it is that the indirect 3rd party purchaser of an allegedly defectively designed structure can sue the design professional directly.

Architects and engineers will, by reason of this decision, certainly want to re-evaluate the type and scope of their professional liability insurance coverage. The potential for a direct claim by an occupant/buyer of a building or other project designed by a design professional has been expanded.

The California Supreme Court's decision in *Biakanja* has been a focal point of similar "duty of care" disputes in cases heard all over the United States since 1958. It will be interesting to see whether this newest application of *Biakanja* on "duty of care" will now be followed by courts in other states.

Bill Dahlin is a partner with Hart King and can be reached at bdahlin@hartkinglaw.com or (714) 432-8700.

ALERT: New Law!

California Public Works Contractors and Subcontractors

The California legislature recently passed a new law that requires contractors and subcontractors involved in public works projects to register with the California Department of Industrial Relations (DIR) in order to fund the monitoring and enforcement of prevailing wage laws. The registration period is now open, and contractors and subcontractors that want to bid public works projects **must be registered by March 1, 2015.** Public agencies are not permitted to hire any contractor or subcontractor who is not registered. Notice will be in the bid documents. The registration form is on the DIR's website, and the fee is $300.

The registration process requires contractors and subcontractors to: (1) provide workers' compensation coverage to employees, (2) have a valid license for their trade if required, (3) have no delinquent unpaid wage or penalty assessments, (4) not be subject to federal or state debarment, and (5) have no prior violation of the registration requirement once it becomes effective. First time violators can pay a penalty.

This requirement will be phased in on March 1, 2015 on projects already under Compliance Monitoring Unit (CMU) monitoring and all new projects after April 1, 2015. There are some exceptions to this law. Should you have questions in regard to these exceptions, please contact Kimberly Wind, senior associate at Hart King at kwind@hartkinglaw.com or (714) 432-8700.

Giving Back

Rachelle Menaker

Business and real estate transactional partner, Rachelle Menaker, was selected to participate in the UC Irvine School of Law's Mentor Program, which provides first-year law students with a system of support and guidance. This year there are approximately 90 first-year students. Along with attorneys from other prominent Orange County law firms, Rachelle is donating her time to a mentee by providing him with her real world experience and insight as he transitions into law school. Rachelle and her mentee will not only continue to discuss general issues related to the practice of law and how to develop professional relationships, but Rachelle will also continue to provide advice on how to cope with the pressures of law school, and recommend ways to manage the workload of being a first-year law student, while maintaining a good physical and emotional balance.

The guidance these mentees receive from the attorneys is invaluable and we are very proud of Rachelle's involvement. We end this mention by congratulating Rachelle on her 24 years with Hart King!

So, You've Registered Your Trademark.

Now What?

by David Christopher Baker

Almost every business has a trademark or service mark. Unfortunately, many businesses inadvertently impair or even lose the right to exclusive use of their own marks by not using them properly and consistently.

The proper use of trademarks is crucial. Trademarks identify the origin of products or services and proper usage strengthens trademark registrations and overcomes defenses raised in trademark litigation while minimizing the likelihood that a mark will become generic, or be unintentionally abandoned.

TEN TRADEMARK TIPS:

1. Give notice of trademark rights.
2. Use trademarks as adjectives, but not as nouns or verbs.
3. Use trademarks distinctively.
4. Use trademarks in connection with their approved product or service.
5. Do not use trademarks in the possessive or the plural.
6. Use trademarks consistently. Do not vary them.
7. Diligently avoid "genericide" (a form of abandonment; when a brand becomes generic, i.e., Kleenex, Xerox, Baggies).
8. Draft and implement trademark usage policies and guidelines.
9. License trademarks carefully.
10. Police trademarks.

Should you have any questions about trademarks or other intellectual property issues, please contact Dave. He may be reached at dbaker@hartkinglaw.com or (714) 432-8700.

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