Chapter 3

Judicial, Alternative, and E-Dispute Resolution

Answers to Critical Legal Thinking Cases

4.1 Summary Judgment

No, the defendants' motions for summary judgment should not be granted. The U.S. district court found that substantial issues of fact needed to be decided at trial, which included whether the butter popcorn flavoring made by the defendants was dangerous, and if so the extent of the danger caused to someone who smelled and ate microwave popcorn, the amount of popcorn flavorings eaten by Deborah that was produced by each of the three defendants—Chr. Hansen, Inc., Symrise, Inc., and Firmenich, Inc.—and, if liability was found, what damages should be awarded and to what degree would each defendant be responsible. The court stated, "I find that the information and circumstances generate genuine issues of material fact as to whether defendants knew or had reason to know that their butter flavorings posed a potential risk, at some level, to consumers, thus triggering the necessity for a warning." The U.S. district court denied the defendants' motion for summary judgment based on failure to warn claims, thus permitting the case to go to trial. *Daughetee v. Chr. Hansen, Inc.*, 2013 U.S. Dist. Lexis 50804 (United States District Court for the Northern District of Iowa, 2013)

4.2 Service of Process

No, plaintiff Jon Summervold did not properly serve defendant Wal-Mart, Inc. South Dakota law requires that service of process on a corporate defendant be made on president, officer, director, or registered agent of a defendant corporation. Here, plaintiff served a nonofficer employee of Walmart, the assistant manager of the apparel department of the Walmart store in Aberdeen, South Dakota. Based on the fact that the president, directors, or officers of Wal-Mart, Inc. were not located in South Dakota at the time of the plaintiff's lawsuit, the plaintiff should have had the process server serve the registered agent the service of process. Because the plaintiff had failed to comply with South Dakota's applicable service of process statute, the court held that the

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service of process was invalid. Because the three year statute of limitations had run on the plaintiff's claim, the court dismissed the plaintiff's lawsuit against Walmart. The judge stated "It is a most unpleasant task for any judge to dismiss a case at this stage." *Sommervold v. Wal-Mart, Inc.*, 709 F.3d 1234, 2013 U.S. App. Lexis 4972 (United States Court of Appeals for the Eighth Circuit, 2013)

4.3 Summary Judgment

Yes, Wal-Mart Stores, Inc. should be granted summary judgment. Summary judgment can be granted by a court where there is no dispute as to the material facts of the case. Here, the court of appeals held that there were no issues of material fact that needed to be heard by a jury and that the judge could therefore make a decision in this case. The court held that Wal-Mart did not provide a dangerous display and that the four corners of the display were clearing marked with "Watch Step" warning signs. The court stated that Walmart did not instruct the plaintiff to pick up her watermelon and take several steps around the display with it. The court noted that the safer option was for her to have pushed her shopping cart close to the display and then to have scooped the watermelon into her cart. This option would not have required her to take any steps, thus avoiding the unfortunate incident. The court rejected the contention that Walmart "created a trap" for the plaintiff. Based on the undisputed facts of the case, the court granted summary judgment to Walmart. *Primrose v. Wal-Mart Stores, Inc.*, 127 So.3d 13, 2013 La. App. Lexis 1985 (Court of Appeals of Louisiana, 2013)

4.4 Class Certification

Yes, the class should be certified. The homeowners who have installed the Pex home plumbing system manufactured by Zurn Pex, Inc. and Zurn Industries, Inc. (Zurn) allege that the system has a crucial defect in that the brass fitting and crimp that joins the Pex tubing together is defective because it corrodes over time. Many homeowners have experienced water damage because of the corrosion; other homeowners who have installed the Pex system have not yet experienced water leakage but are still covered by the 25-year warranty on the Pex plumbing system. Homeowners in Minnesota who have installed Zurn Pex plumbing, whether they have experienced water damage or not, seek class certification to bring a class action against Zurn to have Zurn repair or replace Pex plumbing systems according to the warranty. The U.S. district

court noted that the class is readily identifiable, the Pex product that is claimed to be defective is the same product that has been installed in all of the covered homes, the defendants are easily identifiable, and all of the homes are covered by a similar warranty. Therefore, the U.S. district court certified the following class: “All persons and entities that own a structure located within the State of Minnesota that contains a Zurn Pex plumbing system with Zurn brass crimp fittings.” The U.S. court of appeals affirmed the class certification. *In re Zurn Pex Plumbing Products Liability Litigation*, 644 F.3d 604, 2011 U.S. App. Lexis 13663 (United States Court of Appeals for the Eighth Circuit, 2011)

4.5 Arbitration

Yes, the contract dispute between the parties is subject to arbitration. The U.S. Supreme Court held that there was a valid arbitration agreement entered into between Nitro-Lift Technologies, L.L.C. and its former employees, Eddie Howard and Shane D. Schneider. When Howard and Schneider sued Nitro-Lift in Oklahoma state court to have the noncompetition agreement declared null and void, they ignored the arbitration clause contained in the same agreement. The U.S. Supreme Court held that the dispute was subject to the arbitration clause and must be submitted to arbitration. The U.S. Supreme Court held that the contract dispute in the case was to be heard by the arbitrator and not by the Oklahoma state court. The U.S. Supreme Court stated “The Oklahoma Supreme Court must abide by the Federal Arbitration Act (FAA), which is the Supreme Law of the Land.” *Nitro-Lift Technologies, L.L.C. v. Howard,* 133 S.Ct. 500, 2012 U.S. Lexis 8897 (Supreme Court of the United States, 2012)

Answers to Ethics Cases

4.6 Ethics Case

Yes, the issuance of a default judgment against the defendants is warranted in the case. BMW North America, LLC and Rolls-Royce Motor Cars NA, LLC and their parent and affiliate companies (plaintiffs) filed a lawsuit in U.S. district court for trademark infringement against the corporate defendants, DinoDirect Corporation, DinoDirect China Ltd., and B2CForce International Corporation, and the individual defendant Kevin Feng, for selling counterfeit goods

bearing the trademark names "BMW" and "Rolls-Royce." The plaintiffs properly served these defendants with the complaint against them. The defendants replied to the court with many emails but failed to appear in court or to file an answer to the complaint filed against them. After giving the defendants ample opportunities to appear and file an answer, the court issued a default judgment against the defendants holding them liable for trademark infringement. In the default judgment, the court permanently enjoined the defendants from engaging in similar trademark infringement in the future, issued an order for the destruction of any counterfeit goods in the possession of the defendants, and awarded the plaintiffs $1.5 million against the defendants for willful trademark infringement.

Selling counterfeit goods bearing valid trademarks of other companies is unethical behavior. Here, the brand names BMW and Rolls-Royce are well recognized in the United States and around the world as being those of companies producing luxury automobiles and other products. The defendants were trying to make illegal profits by selling counterfeit goods bearing these trademarks. Trademark owners lose hundreds of millions of dollars each year from counterfeiters illegally selling knock-off s bearing their trademarks. *BMW of North America v. Dinodirect Corporation*, 2012 U.S. Dist. Lexis 170667 (United States District Court for the Northern District of California, 2012)

4.7 Ethics Case

No, the federal court should not vacate the arbitrator's award. The agreement signed between Johnson Controls, Inc. and Edman Controls, Inc. gave Edman the exclusive rights to sell Johnson products in Panama. The agreement stipulated that any dispute arising from the parties' arrangement would be resolved through arbitration using Wisconsin law. The court upheld the arbitrator's finding that Johnson breached the agreement by attempting to sell its products directly to Panamanian developers, circumventing Edman. The U.S. district court upheld the arbitrator's decision, as did the U.S. court of appeals. The court of appeals held that the parties had entered into a binding arbitration agreement and that the dispute between the parties had been properly decided by the arbitrator. The court noted "Attempts to obtain judicial review of an arbitrator's decision undermine the integrity of the arbitral process." The district court and court of appeals affirmed the arbitrator's decision that Johnson had breached its contract with

Edman and upheld the arbitrator's award $733,341 in lost profits and damages, $252,127 in attorney's fees, $39,958 in costs, and $23,042 in prejudgment interest against Johnson.

Johnson acted unethically in two regards in this case. First, Johnson breached its agreement with Edman by directly competing with Edman in the Panama building market, violating the express terms of their agreement. Concerning this, the court of appeals stated, "Johnson breached the agreement, circumventing Edman. There was nothing subtle about this." The second way Johnson acted unethically was by trying to avoid the arbitrator's decision and award. In regards to Johnson's attempt to avoid the arbitrator's award by appealing to the courts, the court of appeals noted "Although arbitration is supposed to be a procedure through which a dispute can be resolved privately, losers sometimes cannot resist the urge to try for a second bite at the apple. That is what has happened here." *Johnson Controls, Inc. v. Edman Controls, Inc.*, 712 F.3d 1021, 2013 U.S. Dist. Lexis 5583 (United States Court of Appeals for the Seventh Circuit, 2013)

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