
Lección 7: *Alternative Dispute Resolution*

Introducción (aspectos importantes) (1)

- *privacy*: intimidad (evitar “privacidad”)
- Diferencia *arbitration, mediation*:
 - * *mediation does not impose a resolution, but helps to find common ground and negotiate a win-win solution*
 - * *arbitrators usually have power to grant legally binding decision*

Introducción (aspectos importantes) (2)

- *Arbitration boards: if two, appoint an umpire*
- *Arbitration clauses*
- *Render an award, which can only be vacated due to specific reasons (see p. 215)*
- *Mini-trials: retired judges*

Defendant's Mediation summary (1)

This case concerns an alleged breach of fiduciary duty, tortious interference with business relationships and conversion. The plaintiff is Best Business Solutions (Best) whose principal is Mr. Watson. The defendant is Mr. Doe. Mr. Watson and Mr. Doe went into business together as co-founders of Best, a Professional Employer Organization (PEO). (from Alcaraz, Campos and Miguélez, *El inglés jurídico norteamericano*, Barcelona, Ariel)

- case: evitar TP

- tortious: derivado de *tort*, evidentemente.

- conversion: véase lo que dice “define: conversion” en Google:

The action of conversion is a common law legal proceeding for damages by an owner of property against a defendant who came across the property and who, rather than return the property, converted that property to his own use or retained possession of the property or otherwise interfered with the property. The innocence of the defendant who took the property is not an issue. It is the conversion that gives rise to the cause of action

- plaintiff: utilizar aquí “parte demandante...”, etc.

- Best: “en adelante...”

- Mr. Doe: nombre supuesto.

- Professional employer organization: ahora se utiliza “asesoría o “consultoría empresarial”. Sirven sobre todo para el *outsourcing* (“externalización”)

Defendant's Mediation summary (2)

Mr. Watson was to have 50% ownership by virtue of the initial capital investment he made in the business and Mr. Doe was to earn 50% ownership over a period of 4 years by successfully procuring clients for Best. Mr. Doe's compensation for the time he worked with Best consisted of a small stipend to cover basic living expenses, which varied but amounted to approximately \$2,000 per month.

- Mr Watson was to have...: se puede modular a “la idea / plan original era...”
- ownership: para evitar confusiones, mejor “titularidad”
- Investment: a pesar de que es una inversión, en estos contextos (constitución de empresas) se habla de “desembolso”.
- by successfully procuring: nótese la modulación a condicional de la nota a pie de página.
- compensation: no olvidar este uso norteamericano; véase, entre otros, el contrato de trabajo.
- worked with: evitar (aquí o en *work for*) la traducción espúrea “trabajar con/para”, mediante “prestar servicios”, etc. (si no es técnicamente “trabajar en”)

Defendant's Mediation summary (3)

The “partnership” rapidly declined as Mr. Watson increasingly acted unilaterally with respect to the business and its assets, and after a period of approximately 6 months it became apparent to Mr. Doe that he could no longer work with Mr. Watson and he terminated his employment with Best. Having invested that period of time in learning about the industry Mr. Doe decided to start his own PEO. All of the allegations flow from Mr. Doe's exit from Best.

- partnership: recursos para compensar comillas (supuesta...)
- business: mejor “empresa”
- terminated: mejor “puso fin”, o “resolvió su relación laboral”
- Having invested: matiz causal (“Puesto que...”). Evitar TP en *invest.*
- industry: evitar TP y con ello confusiones (la *airline industry* no fabrica nada)
- his own PEO: también “abrir una por su cuenta”

Defendant's Mediation summary (4)

The defendant hopes that the esteemed mediation panel will issue an opinion that the plaintiff has no cause. However, should these proceedings fail to resolve this case, the defendant intends to immediately move for summary disposition.

Facts

A prominent area law firm in which his father is a partner represents Mr. Watson. We point this out not to develop any sort of ad hominem attack, but because it is relevant.

- has no cause: similar al “have no case” (vid. *El inglés jurídico*)
- fail to: recuérdese que, aunque aquí podría hacerse, no debe traducirse por “no conseguir...” Es simplemente una negativa formal (*Students who fail to submit their essays will not be able to do the final exam*)
- move for summary disposition: si falla la mediación, a los tribunales.
- A prominent....: el cambio de orden es obligatorio (si no, anglicismo)
- We point this out....: tb “Al hacer este comentario, no es nuestra intención...”

Defendant's Mediation summary (5)

We suggest that the cost normally associated with litigation and the attendant pressure that cost puts on those who would pursue weak suits is seemingly absent in this case. It may also offer some indication as to why a settlement has not been reached to date, and explain our skepticism that Mr. Watson is even interested in reaching a reasonable settlement. Mr. Doe's good faith attempts to assuage Mr. Watson's fears that he intends to act in any way that would be detrimental to the future of Best have been rebuffed.

- normally: evitar TP (*normally* no es *usually*)
- would: aquí no es condicional, sino que indica costumbre
- seemingly: con estas fórmulas se evita ser muy categórico (el famoso *understatement*). Evitar TP (“al parecer”)

Defendant's Mediation summary (6)

Mr. Doe agreed to refrain from using or disseminating any of Best's proprietary and confidential documents (because he never intended to and doesn't have any with which to do so) and, despite the fact that case law clearly allows someone in Mr. Doe's position to solicit Best's client base, he voluntarily agreed not to. Once the employment has come to an end, the employee is at liberty to solicit his former employer's business and employees. It is our contention that Mr. Watson is simply harassing and bullying Mr. Doe, using the law as a sword and not a shield.

- agreed to: evitar TP
- refrain from: en general "abstenerse", pero aquí innecesario
- solicit: en otros casos, un delito
- as a sword and not as a shield: ¿tratamiento metáforas en textos jurídicos?

Defendant's Mediation summary (7)

This entire suit was born of an unhappy coincidence and the assumptions Mr. Watson made based upon it, or the business plan fiasco. As our esteemed mediators may already know, a business plan is akin to a corporate resume, stating a business' intentions, goals, economic projections and the like. Mr. Doe co-authored the Best business plan, which was drafted on Mr. Doe's personal computer. Upon deciding to leave Best Mr. Doe did tinker with the business plan, changing portions of it, plugging in the name "HRMI" in the place of "Best", and sketching out the idea for Human Resource Management International, his current business.

- was born of: tb "el origen de..."
- Corporate: evitar TP (mejor "empresarial")
- resume: en inglés británico, *curriculum vitae*
- did tinker: es cierto que...

Defendant's Mediation summary (8)

He never considered this as any form of theft as the plan was something he already possessed and had created. It was used as a template and he did not intend to deny Mr. Watson possession of the original. After leaving Best and prior to the inception of this suit, Mr. Doe purchased business plan software and started fresh. It was this software that provided the framework for the plan that was finally developed for HRMI. While perusing Mr. Doe's personal files Mr. Watson came upon the modified plan. Here is where the unhappy coincidence makes its appearance.

Defendant's Mediation summary (9)

Mr. Doe drew his inspiration for the name *Human Resource Management International* from a popular Tom Cruise movie, “Jerry Maguire”. As viewers may recall, the movie’s title character, a sports agent, works for *Sports Management International*. Sadly, Mr. Watson was involved in a suit with his former employer at this time, another PEO, which had a subsidiary named *Human Resource Management Incorporated* – different name, same initials, unhappy coincidence. Ironically, Mr. Watson’s former employer’s suit against him alleged many of the same things Mr. Watson now alleges in this suit.

Defendant's Mediation summary (10)

Knowing that Mr. Doe had ample knowledge to corroborate their claims that Mr. Watson had taken company documents, including client lists, and that Mr. Watson had successfully solicited their client base for Best while still employed by them, and noting the unfortunate “HRMI” coincidence, Mr. Watson developed the theory that Mr. Doe was colluding with his former employer. Believing that Mr. Doe had provided his former employer with Best's proprietary information and was possibly corroborating their claims against Mr. Watson in exchange for start-up capital for his own venture, Mr. Watson filed suit. His theory is of course entirely false and unsupported by any facts.

Argument

Count I: Mr. Watson alleges that Mr. Doe breached a fiduciary duty owed to Best. This breach of duty flows from allegedly duplicating and converting the Best business plan. As explained above, Mr. Doe was a co-author of the plan, which was drafted on his personal computer and he admits to tinkering with it before purchasing business plan software and developing the plan which HRMI eventually adopted. The only copies of this modified plan now in existence derive from the copies Mr. Watson made upon finding the modified plan on Mr. Doe's computer. Mr. Doe admits to having previously shown another copy to a small business adviser at Wayne State University, and at the plaintiff's request, this copy was retrieved and destroyed. .

Defendant's Mediation summary (12)

As to the allegations that Mr. Doe has other sensitive, proprietary or confidential information of Best, he maintains the denial he originally and consistently has asserted throughout these proceedings. The plaintiff has yet to provide Mr. Doe with the grounds for this allegation. As to the allegations that Mr. Doe is or has ever divulged this information to any of Best's competitors or used any such information to compete with Best, Mr. Doe likewise maintains that this is untrue and groundless.

Defendant's Mediation summary (13)

As a side note, Mr. Watson casts a very wide net when listing the possible proprietary and confidential information he would like protected and it is entirely unclear how items such as “software”, products that can be found in abundance in today's marketplace and simply purchase off the shelf, could reasonably be viewed as proprietary or confidential. Additionally, while he has no knowledge of a “client list” per se, Mr. Doe admits to knowledge of the identity and locations of many of Best's clients but has not solicited them, a fact which can be easily ascertained by Mr. Watson.