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The House Doesn't Always Win in Vegas: California FTB's Statutory Immunity Denied in Nevada Court

Stephen W. Long
Dallas
(214) 969-4542

The California Franchise Tax Board ("FTB") recently learned that statutory immunity doesn't always cross state borders when a Nevada jury awarded plaintiff Gilbert Hyatt a $388 million judgment against the California taxing authority for emotional distress and invasion of privacy. Before the suit was able to proceed to trial, the United States Supreme Court held that neither the Full Faith and Credit Clause of the United States Constitution nor principles of comity required Nevada courts to recognize the FTB's statutory immunity.

The dispute in the case centered around whether the plaintiff was a resident of California and thereby subject to California income tax. Hyatt, a wealthy inventor, argued that he moved from California to Nevada in 1991, shortly before receiving "substantial licensing fees for certain patented inventions related to computer technology."[1] The FTB contended instead that Hyatt remained a California resident until April 3, 1992 and imposed civil fraud penalties on Hyatt in addition to assessing him for income taxes allegedly owed.[2] The total tax bill had reached $51 million by the time the case was tried before a jury.

After being assessed, Hyatt filed a lawsuit in Nevada alleging that the FTB had committed numerous torts during its audit investigation of him in Nevada, including invasion of privacy, outrageous conduct, abuse of process, fraud, and negligent misrepresentation. Hyatt alleged that agents of the FTB, among other things, looked "through his mail and his trash," disclosed "his address and social security number to third parties . . . including California and Nevada newspapers," and "disclosed its investigation of [Hyatt] to [his] patent licensees in Japan."[3] The FTB filed a motion for summary judgment in Nevada district court asserting that California statute § 860.2 immunized California taxing authorities and their agents from suit and that this immunity

[1] *Franchise Tax Board v. Hyatt*, 538 U.S. 488, 491 (1993).

[2] *Franchise Tax Board v. Hyatt*, 538 U.S. at 491.

[3] Brief of Respondent Gilbert P. Hyatt, *Franchise Tax Board v. Hyatt*, 538 U.S. 488, 2003 WL 181170, at *3-4 (Jan. 21, 2003).

must be applied in Nevada courts by virtue of the Full Faith and Credit Clause of the United States Constitution. After the Nevada district court denied its motion, the FTB filed a petition with the Nevada Supreme Court.

After granting the FTB's petition, the Nevada Supreme Court granted Hyatt's motion for rehearing. The Nevada Supreme Court vacated its prior ruling on April 4, 2002 and granted Hyatt's petition in part and denied it in part. The court noted that the "doctrine of comity is an accommodation policy, under which the court of one state voluntarily gives effect to the laws and judicial decisions of another state out of deference and respect, to promote harmonious interstate relations."[4] Nonetheless, the court concluded that a Nevada court should not give effect to California's laws to the extent that they would contravene Nevada's policies or interests.[5] Thus, the Nevada Supreme Court held that since Nevada gives immunity to its state employees for negligent actions, the district court should have declined to hear Hyatt's negligence suit on comity grounds, but the FTB would not receive immunity in Nevada for intentional torts because Nevada did not extend immunity to its own taxing authority for such actions.

Relying on its previous decision in *Nevada v. Hall*, the United States Supreme Court affirmed the Nevada Supreme Court's ruling in 2003 and held that the court had "sensitively applied" principles of comity. The court ruled that Nevada was not obligated to extend immunity to the FTB beyond that which it afforded its own agents.[6]

Hyatt's claims were then heard in a Las Vegas trial court and after a 14 week trial, a Nevada jury returned a verdict for Hyatt on August 6, 2008. Hyatt was awarded $85 million for emotional distress, $52 million for invasion of privacy, $1.08 million in attorney's fees, and a staggering $250 million in punitive damages. While the FTB has not yet filed an appeal, it would be surprising if the suit was finished here. Nonetheless, the *Hyatt* case raises new concerns for state taxing authorities engaging in out-of-state audits as they will now have to consider the public policies of sister states or sovereign immunity.

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4 *Franchise Tax Board v. 8th Judicial Cir. Of the St. of Nev.*, Dkt. 35549, 2002 Nev Lexis 57 (Nev. 2002).

5 *Id.*

6 *Franchise Tax Board v. Hyatt*, 538 U.S. at 491.