



March 14, 2007

TO: Superior Court of California, County of San Francisco
Small Claims Division
400 McAllister Street, Room 103
San Francisco, CA 94102

RE: Balsam v. Deniro Marketing, LLC, Case No. 820194

Hearing Date March 28, 2007, 8:30 AM

To the Court:

I am writing pursuant to Code of Civil Procedure Sec. 116.370(b), objecting to venue in the City and County of San Francisco. I am a resident of San Joaquin County, California, and sole member and manager of Deniro Marketing, LLC, the only offices of which are at 6777 Embarcadero Drive, Suite #3 Stockton, CA 95219.

The plaintiff is suing in small claims court, asserting claims under Civil Code Sec. 1770 et seq., Business and Professions Code Sec. 17529 et seq. (California's anti-spam law), and Business and Professions Code Sec. 17500 (California's false advertising law). The plaintiff is a San Francisco County resident, and the defendant is a resident, citizen and domicile of San Joaquin County.

Venue in small claims cases is "the same as in other civil actions." Code of Civil Procedure Sec. 116.370(a)

Civil Code Sec. 1780 specifies venue for actions brought under Civil Code Sec. 1770 et seq. and specifies that such actions, "may be commenced in the county in which the person against whom it is brought resides, has his or her principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred." Further, "[i]n any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county described in this section as a proper place for the trial of the action. If a plaintiff fails to file the affidavit required by this section, the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice." Civil Code Sec. 1780(c).

Thus, here, the plaintiff should have filed the complaint to the extent it arises under Civil Code Sec. 1770 et seq., in San Joaquin County.

While neither Civil Code Sec. 1770 et seq., Business and Professions Code Sec. 17529, et seq. or Business and Professions Code Sec. 17500 contain a specific venue provision, each statute provides for the imposition of statutory penalties, which plaintiff is seeking. Thus, the venue for such actions is governed by Code of Civil Procedure Sec. 393(a). That section states in relevant part that an action "[f]or the recovery of a penalty or forfeiture imposed by statute" shall be brought in "the county in which the cause, or some part of the cause, arose . . ."

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The plaintiff's causes of action under Business and Professions Code Sec. 17529 et seq. and Business and Professions Code Sec. 17500 "arose" where the alleged spam was sent, since the act complained of is the transmission of spam. There is no allegation that any spam was sent from San Francisco County. Thus venue should lie only in San Joaquin County, where the defendant is, and not San Francisco County.

Plaintiff filed a declaration "stating facts showing that the action has been commenced in a county described in this section as a proper place for the trial of the action" as mandated by Civil Code Sec. 1780(c). There, the plaintiff claims that Sec. 395.5 of the California Code of Civil Procedure applies because the alleged spam was received in San Francisco County. But that provision states:

"A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial as in other cases."

There is no contract alleged, so the only county available under that provision is "the county where the principal place of business of such corporation is situated," which is of San Joaquin County.

Accordingly, the defendant limited liability company can only be sued in this case in San Joaquin County, so the case must be dismissed and re-filed here in San Joaquin County.

Please advise me of your action on this request. I am sending a copy of this to the plaintiff today, at the address listed on the complaint, by UPS.

I declare under penalty of perjury under the laws of the State of California that I have, unless otherwise indicated, personal knowledge of the factual statements above and they are true and correct.

Executed this 14th day of March, 2007.

Allan Henning, Manager,
Deniro Marketing, LLC