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Primary Legal Topic: CIVIL PROCEDURE

1. Was venue properly laid in the Eastern District of California? Discuss.

Issue: Is venue proper in the Eastern District of CA?

Rule: Venue is proper (1) where the defendant is domiciled, (2) in the state/district in which the property (res) at issues sits or the claim arose, and (3) any federal district court that sits in the state in which the claim arose.

Analysis:

>Proper Venue as Domicile of the Defendant: Determining Domicile

When dealing with a natural person (rather than a business), domicile is determined by the location where the natural person (NP) **physically** and **mentally** is "at home." To determine if a party is physically at home, the court should look to whether the person has their primary residence in the state (primary home ownership, leasehold, job, etc.). To determine if a party is mentally at home, the court should look to whether the person psychologically considers themselves at home in the forum state. This a more subjective component that is considered alongside physical residency. To be mentally at home in the forum state, the party should consider it their permanent residence--where they plan to live indefinitely (i.e., no future plans to leave/relocate elsewhere). Because both Jiff and Shearer are natural persons, there is no need to consider the alternative domicile analysis that applies to businesses/non-natural persons.

Here, Jiff, the defendant (D), is domiciled in CA. He can be considered to be domiciled there because that is where he physically resides and keeps his job. There is no indication of Jiff's mental connection to Truckee and whether or not he considers it his permanent residence. But, assuming he does, then he would be properly domiciled there. Shearer, the plaintiff (P), is domiciled in Nevada. This is where he resides and has a job. Like Jiff, there is no indication if Jiff considers Reno, NV has permanent residence, but given that he appears to keep his permanent home there and his job, it is probably a same assumption that he is properly domiciled there. There is also no indication that either Jiff or Shearer have second homes or

jobs in other states that might undermine their domicile.

Venue is based on the **defendant's** domicile, not the plaintiff's. So here, venue will be proper in a district court that sits over Truckee, CA. The domicile of the plaintiff is not a factor in determining proper venue. Because the US District Court for the Eastern District of CA includes Truckee, CA, **then venue in the US District Court for the Eastern District of CA is proper.**

>Proper Venue as District Court Overseeing Location of Property or Location of Issue:

Venue It is worth noting that venue is also proper in any district court where the property (res) of the claim sits or the claim/issue arose, or in any federal district court that sits in the forum state where the claim arose. Here, because the contract between Jiff and Shearer was signed in Reno, NV, that is the location where the claim arose, and a federal district court overseeing Reno, NV would also be properly venued.

2. Did the court err in denying Shearer's motion to compel evidence?

Issue: Was Shearer within or outside his rights to compel evidence?

Rule: Right to Discovery: Pursuant to the FRCP, any party to a dispute has the right to discovery of evidence that **reasonably relates** to the issue/claim. Discoverable evidence includes anything (documents, physical evidence, electronic evidence, names and addresses of involved parties and their lawyers, publicly available materials, etc.) that is not privileged under (1) attorney-client privilege or (2) the work-product doctrine. Discovery does not protect facts.

(i) Attorney-Client Privilege:

Conversations between a client and his attorney are protected by attorney-client privilege (a doctrine that crosses both civil procedure and professional responsibility) and are not discoverable. Attorney-client privilege applies to all confidential conversations between a client and his attorney that are (1) intended to be confidential and (2) concern the legal matter at issue.

Here, Shearer is compelling documentary evidence that was created before the claim arose, directly pertains to the dispute (product evaluations can speak to whether or not Jiff has been similarly negligent in other comparable situations), and was not a product of

conversations between the client and his attorney or created by the attorney in furtherance of his legal representation of Jiff. Therefore, the evaluations by Jiff's customers are not protected from discovery by attorney-client privilege.

(ii) Work-Product Doctrine.

Work-product doctrine (also a cross-over between civil procedure and professional responsibility) protects work done by an attorney in furtherance of his representation of the client. The work-product doctrine protects the mental observations, thoughts, and plans of an attorney and these are **never** discoverable.

Here, Shearer is compelling the written customer evaluations. These customer evaluations are **not** subject to privilege under the work-product doctrine because they were not created by the attorney in furtherance of his representation of the client and do not concern any privileged mental observations, considerations, or plans.

(iii) Evidence That Reasonably Relates to the Claim/Issue & Is Not Overly Burdensome to Produce

Because the customer reviews are not protected evidence under attorney-client privilege or the work-product doctrine, then they *may* be discoverable under a motion to compel *if* they reasonably relate to the dispute **and** are not overly burdensome for the other side to produce. Here, Jiff's written customer reviews from the last year reasonably relate to Shearer's negligence claim: whether Jiff has had similar issues with customer's in the past may impact the level of damages that Shearer can seek or serve to benefit the fact-finders who consider all of the circumstances. Also, providing one year's worth of customer reviews should be a reasonable ask/not overly burdensome. Shearer is not asking for the customer reviews Jiff has ever received, but just for those from the past year.

Because the customer reviews should be discoverable, Shearer's motion to compel should have been granted and the court most likely erred in its denial.

3. May Jiff take advantage of the judgement in the first suit in defending against the second suit?

Issue: Is there claim and/or issue preclusion?

Rule: Claim Preclusion (res judicata): Precludes re-litigation of claims arising from the (1)

same parties, (2) same issue, (3) proper jurisdiction, (4) finality on the merits. Claim preclusion prevents the re-litigation of claims arising between the same parties (or those in privity with those parties), from the same issue, that received a judgement on the merits in court that exercised proper jurisdiction.

(1) Same Parties: See rule statement above. Here, the parties are the same: Shearer is suing Jiff.

(2) Same Issue: See rule statement above. Here, the issue--breach of contract--is a new claim that is arising from the same original issue. If Shearer had wanted to bring suit against Jiff for breach of contract, he needed to do so under supplemental jurisdiction during the original suit.

(3) Proper Jurisdiction: Here, the jurisdiction in the original claim was proper. There was complete diversity between the defendants (Jiff from CA and Shearer from NV) and the amount in controversy requirement (claim in excess of \$75K) was met because Shearer claimed the broken antique vase was worth \$100K.

(4) Finality on the Merits: The original case was decided on the merits and returned a final verdict in favor of Jiff.

Here, Jiff can defend against the second suit through claim preclusion--any claim that Shearer wanted to raise against Jiff arising from the original issue should have been brought in the original suit. Failing to do so precludes Shearer from bringing future claims.

Rule: Issue Preclusion (collateral estoppel): Precludes litigation of claims that arise from the same issue as the original claim? Has this claim already received a final judgment?

Here, the original claim already received a final judgment and Shearer failed to raise breach-of-contract at that that time, which would have been allowed under supplemental.

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