

# Alert!

MINTZ LEVIN  
Mintz Levin Cohn Ferris Glovsky and Popeo PC

Litigation | Employment, Labor & Benefits

SEPTEMBER 5, 2012

## Wrongful Termination Claim Too Desperate for Ex-*Desperate Housewives* Star

BY HARVEY SAFERSTEIN, MITCH DANZIG, NADA I. SHAMONKI, AND BENJAMIN L. WAGNER

A California appellate court recently rejected an attempt by *Desperate Housewives* star, Nicollette Sheridan, to sue for wrongful termination in violation of public policy when Touchstone failed to renew her contract past Season 5. The appellate court found that Sheridan's claim stated a legally impossible theory, but recognized that a more limited statutory claim under the Labor Code for unlawful retaliation might still be available.

Like most television series, Sheridan's contract for *Desperate Housewives* was only for the first season, with Touchstone having an exclusive option to renew Sheridan's contract on an annual basis for six additional seasons. With Sheridan playing the character of Edie Britt, Touchstone did renew the contract for Seasons 2, 3, 4 and 5. However, during the filming of a Season 5 episode, Sheridan reported to Touchstone an alleged battery by *Desperate Housewives*' creator Marc Cherry. Subsequently, while Season 5 was ongoing, Touchstone notified Sheridan that her character would be killed in a car accident that season, and that Touchstone would not be exercising its option to renew her contract for an additional year. Touchstone and Sheridan both fulfilled their remaining contractual obligations for Season 5.

Sheridan filed suit, alleging wrongful termination in violation of public policy, and seeking \$20 million in compensatory damages as well as punitive damages. The jury deadlocked on the claim for wrongful termination, and a mistrial was declared. On review, the appellate court agreed with the finding of a 1997 decision, *Daly v. Exxon Corp.* (1997) 55 Cal. App. 4th 39, which held that a decision not to exercise an option to renew a fixed-term contract did not equate to a tort claim for wrongful termination in violation of public policy. Quite simply, expiration of a fixed-term contract did not constitute a "termination." *Id.* However, the appellate court did not leave Sheridan without a possible remedy. The appellate court remanded the case to the lower court with instructions to allow Sheridan to amend her complaint to state a statutory claim under Labor Code section 6310(b). Under *Daly*, Sheridan could allege an action for damages (in the form of lost wages and work benefits) under Labor Code section 6310(b).<sup>[1]</sup> A Section 6310(b) claim would require Sheridan to allege that Touchstone discriminated or retaliated against her by not renewing her contract as a result of her complaints about an unsafe work condition (e.g., Cherry's purported battery). The appellate court was careful not to express an opinion on the strength of such a claim.

In reaching its decision, the appellate court rejected various arguments by Sheridan, including her attempt to convince the appellate court that Touchstone's decision not to renew her option for another season during Season 5 was analogous to an employer terminating an at-will employee in violation of public policy. The appellate court reasoned that unlike an at-will employee whose contract could remain in force indefinitely, Sheridan's contract was for a set term that had expired. Touchstone did not terminate Sheridan, but rather simply chose not to rehire her for another fixed-term contract.

As the law now stands under *Daly* and this most recent employment decision, where an at-will employee is terminated for reporting unsafe working conditions and a fixed-term employee suffers non-renewal for the very same report, only the at-will employee may pursue a wrongful termination claim in violation of public policy (and

the emotional and punitive damages that are recoverable for that claim). Both types of employees, however, may still pursue Section 6310 claims against the employer, with the employer's exposure limited under such claims to statutory damages of lost wages and benefits, as well as possible reinstatement. This case law should be considered when deciding whether a fixed-term contract or at-will contract makes sense for a given situation.

Mintz Levin has a number of attorneys who can advise on the ramifications of this decision to employers in California and guide clients on how best to structure employment contracts.

\* \* \*

---

View Mintz Levin's Litigation attorneys.

View Mintz Levin's Employment, Labor & Benefits attorneys.

---

#### Endnotes

<sup>1</sup> Labor Code section 6310(b) states:

"Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of unsafe working conditions, or work practices, in his or her employment or place of employment, or has participated in an employer-employee occupational health and safety committee, shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor."

Boston · London · Los Angeles · New York · San Diego · San Francisco · Stamford · Washington

[www.mintz.com](http://www.mintz.com)

Follow Us



Copyright © 2012 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

This communication may be considered attorney advertising under the rules of some states. The information and materials contained herein have been provided as a service by the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; however, the information and materials do not, and are not intended to, constitute legal advice. Neither transmission nor receipt of such information and materials will create an attorney-client relationship between the sender and receiver. The hiring of an attorney is an important decision that should not be based solely upon advertisements or solicitations. Users are advised not to take, or refrain from taking, any action based upon the information and materials contained herein without consulting legal counsel engaged for a particular matter. Furthermore, prior results do not guarantee a similar outcome.

2210-0812-NAT-LIT-ELB