

Daily Journal

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TOP VERDICTS OF 2011

TOP DEFENSE VERDICTS

Anyes Van Volkenburgh, an individual v. George K., an individual, Central Orange County Emergency Animal Clinic, aka Central Orange County Emergency Animal Hospital



Courtesy of Wesierski & Zurek LLP

Christopher P. Wesierski and Christian C. Counts

You never know what is likely to impress a jury. In this case of sexual harassment, it came down to such bizarre actions as “butt dialing” a cell phone, and producing a verbally abused waitress.

At issue, the plaintiff, a veterinarian, had purchased shares of an emergency clinic owned by the defendant. She claimed that she was fired after she refused to have sex with him. *Volkenburgh v. George K.*, 30-2010-00384217 (O.C. Super. Ct.).

The case is one of the only cases ever applying the Unruh Act and a particular civil code, 51.9, in the partnership context.

Legislative history showed that the Unruh Act and civil code were designed to protect consumers from harassment in their business

Sexual Harassment and Breach of Contract

Orange County Superior Court

Santa Ana

Judge Robert J. Moss

Defendant’s attorneys: Wesierski & Zurek LLP, Christopher P. Wesierski, Christian C. Counts

Plaintiff’s attorneys: Meserve, Mumper & Hughes LLP

dealings, but there were no reported cases applying either in the context of two professionals in a business partnership, said lead defense counsel Christopher P. Wesierski.

While he successfully knocked out Unruh as a cause of action, civil code 51.9 remained in play.

“We claimed there was no sexual harassment, but just joking and teasing each other,” Wesierski said. “She claimed that he had sent her tapes of him having sex. When you first listen, it sounds like somebody having sex. But what happened was that he had “butt dialed” while he was walking, and his thighs were rubbing together.”

Then, Wesierski added, “He gets in the car and sighs. It sounds like something else. There is a girl in the car, and he said that he was going to have to pull this out. There was a stone in his shoe.”

The case was so colorful, Wesierski said, that “bailiffs and clerks were coming to visit.”

A key to the defense was impugning the plaintiff’s credibility, including introducing evidence that she cussed our clients.

“We claimed that the reason she was terminated had nothing to do with sex,” Wesierski said, “but that she was rude to staff, clients and waitresses. He could no longer have her at his place of business.”

Wesierski managed to show this, in part, by tracking down a waitress, who testified in court that, “She treated me worse than I have been treated by any other person in my life.”

While the vet had demanded \$4.4 million, the jury instead returned a defense verdict.

— Pat Broderick