

Watch What You Say: California Court of Appeal Rules That Trial Court Did Not Violate Personal Injury Plaintiff's Right to Due Process by Granting Motion for Summary Judgment Based on Issue Raised for First Time in Plaintiff's Opposition to Motion for Summary Judgment

By: Edward F. Morrison, Jr., Esq.  
Larry A. Schwartz, Esq.

For nearly 30 years, the California courts have ruled that Summary Judgment, an important tool for civil defendants, is no longer disfavored. It has also been long held that the Trial Court, in ruling on a Motion for Summary Judgment, may consider not only the evidence submitted by the moving party, but also evidence submitted, for the first time in the Plaintiff's Opposition briefing.

But what happens when a Defendant files for Summary Judgment and the Plaintiff raises a new issue in the Plaintiff's Opposition Brief. Can that new issue be the basis for summary judgment when the defendant did not move for Summary Judgment on that issue? That question was answered in the affirmative in the recently published California Court of Appeal opinion in Ramon Pereda v. Atos Jiu-Jitsu, LLC (2022) Westlaw 17174558 ("Pereda case").

The Pereda case was a personal injury lawsuit filed by a 49 year old jiu-jitsu student who was injured during a sparring match. The Plaintiff sued the studio where he was taking lessons, as well as the National Jiu-Jitsu Association, under whose auspices the studio's students could compete. The National Association, as well as the Association's founder, filed for Summary Judgment, and the Motion was granted on the grounds that the Association was not liable for the student's injury because it (the Association) had no actual control over his studio sparring practices, and the Association's conduct did not give rise to reasonable belief in the student that it had such control.

On Appeal, the Plaintiff raised two issues, one of which is pertinent to this article. In that regard, the Plaintiff argued that the Trial Court violated the student's right to due process by granting Summary Judgment to the Association on the issue of lack of control, when it was the student—not the Association—who first explicitly raised and briefed that issue in the Plaintiff's Opposition to the Summary Judgment Motion. In the Opposition Brief, the Plaintiff spent four pages of briefing explicitly arguing that two of the Defendants were liable under the Doctrine of Ostensible Authority. In their Reply, the Defendants briefly responded that the Doctrine of Ostensible Agency did not apply to them, in order to render them liable for the acts and/or omissions of the operators of the studio. The Trial Court granted Summary Judgment in part based on the issue raised by Plaintiff.

On Appeal, the Court of Appeal affirmed the grant of Summary Judgment. In ruling on the Appeal, the Court of Appeal held that the Trial Court may, and shall, if it so chooses, grant Summary Judgment based on an argument first raised in the Opposition briefing to the Motion for Summary Judgment. In its opinion, the Court of Appeal noted that, as a general matter, a Trial Court hearing a summary judgment motion is only obligated to consider the grounds for summary judgment that are, "identified in the moving papers," but stated that the trial court nevertheless has the discretion to consider other grounds for summary judgment if the evidentiary basis for those grounds otherwise appears in the record, and doing so does not deny the opposing party due process. In this case, the Court of Appeal ruled that the Trial Court had the discretion to consider the ostensible agency issue in the case, given that the evidence upon which the issue was resolved was included in the evidence accompanying the Defendant's Motion. The Court of Appeal also commented the Plaintiff was not denied notice or the opportunity to be heard on the issue of ostensible agency, because it was the Plaintiff that explicitly raised it, and affirmatively and extensively briefed the issue.

The Pereda case is important in that it provides that a Defendant, filing for Summary Judgment, may embrace new arguments raised, for the first time, in Opposition briefing and the Trial Court has the discretion to grant summary judgment on that new issue.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at [morrisonlawgroup.com](http://morrisonlawgroup.com).

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact Jim Van Dusen at The Morrison Law Group at 213 356-5504 .

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.