



WEEKLY LAW RESUME™

Issue By: LAURA S. FLYNN

May 10, 2012

The Attorney, not the Employee Client, is Entitled to Attorney Fees Awarded Pursuant to Labor Code §§ 1194(a) and 226(e)

Henry M. Lee Law Corp. v. Superior Court (Chang) Court of Appeal, Second Appellate District (April 16, 2012)

Henry Lee (“Lee”) represented Ok Song Chang (“Chang”) in a claim against her former employer alleging various counts for wage and hour violations and wrongful termination. The jury trial resulted in a \$62,246.74 judgment in favor of Chang. The trial court also awarded Chang \$300,000 in attorney fees under Labor Code §§ 1194(a) and 226(e). Chang later substituted herself in propria persona for her former attorney. She signed the substitution form, but the signature line for Lee was left blank. Chang later retained new counsel. Lee moved to intervene in the action and to amend the postjudgment order awarding attorney fees to make the fee award payable to Lee. The trial court denied the motion concluding that the Labor Code sections provided for an award of fees payable to the employee rather than her attorney. Lee petitioned the court for extraordinary relief contending the attorney fee award should be made payable to him rather than Chang and that he was entitled to intervene in the action to seek such relief.

The Appellate Court held that a nonparty whose rights or interests are injuriously affected by a judgment or an appealable order may file a nonstatutory motion to vacate the judgment or order, and may appeal the denial of such a motion. The court construed Lee’s motion to intervene and amend the order awarding attorney fees as a nonstatutory motion to vacate the fee order and enter a new order. Lee was claiming a right to the fee award and that he was

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injuriously affected by the order awarding fees. As a result, he had standing to file the motion, and by doing so became a party to the litigation for purposes of Appellate review.

The question before the Appellate Court was whether a fee award under the relevant Labor Code provisions belonged to the client or the attorney. The Appellate Court relied on the California Supreme Court's decision in *Flannery v. Prentice* (2001) 26 Cal.4th 572, wherein the Court interpreted Government Code § 12965(b) (California Fair Employment and Housing Act aka FEHA) which authorizes an attorney fee award "to the prevailing party." Flannery concluded that the statute was ambiguous as to the meaning of "party" and therefore considered the legislative intent in light of federal and California precedents and public policy concerns. The Court concluded that construing Govt. Code § 12965(b) as vesting ownership of attorney fees in the litigant rather than in counsel, absent a contract providing for a contrary disposition of a fee award, would diminish the certainty that attorneys who undertake FEHA cases will be fully compensated and to that extent would be contrary to the legislative intent of encouraging counsel to undertake FEHA litigation. In addition, paying a fee award to the attorney who earned the fees rather than the litigant who has neither paid the fees nor is contractually obligated to pay that amount also ensures fairness to the opposing litigant who is paying the fees and avoids potentially violating the prohibition against sharing legal fees with nonlawyers.

The Appellate Court believed the same analysis should apply to fees awarded under Labor Code §§ 1194(a) and 226(e) which authorize a fee award to an "employee" rather than a "party." The court concluded that the term "employee" was similarly ambiguous. As with FEHA litigation, the Court held that privately initiated lawsuits are often essential to vindicate the right to payment of earned wages and to effectuate the fundamental public policy in favor of such payment, and that attorney fee provisions in the Labor Code encourage counsel to prosecute wage and hour litigation. Therefore, in accordance with *Flannery*, absent a contract determining a different disposition of an attorney fee award, attorney fees awarded under the relevant Labor Code sections, in excess of fees already paid to the attorney by the client, should be made payable directly to the attorney who provided the legal services. Upon remand, the trial court was ordered to conduct further proceedings to determine the terms of

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the contract between Lee and Chang and to reconsider its ruling on Lee's motion in light of the views expressed in the opinion.

COMMENT

This case highlights the fact that attorney fee awards for wage and hour violations often greatly exceed the alleged unpaid wages recovered by the employee. The decision will make it difficult for an employee plaintiff to "cut" his or her lawyer out of a fee award and provides yet more encouragement to the plaintiffs' bar to file wage and hour claims.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/B235305.PDF](http://www.courtinfo.ca.gov/opinions/documents/B235305.pdf)

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