

[Court Decides Novel Issue Concerning Priority of a Contractual Lien for Legal Services](#)

Posted on April 1, 2010 by [David J. McMahon](#)

In [Pou Chen Corp. v. MTS Products](#), 2010 DJDAR 4577 (March 26, 2010), the [California Court of Appeal, 2nd District](#), decided a novel issue concerning the priority of a contractual lien for legal services.

Background

GBMI entered into a contract with MTS whereby GBMI would buy products that MTS intended to sell to Wal-Mart. Subsequently, the parties negotiated and entered into as a joint venture and formed a new entity named BHE. A third entity, Pou Chen Corp., contributed \$10 million for purchase of a 70 percent interest in the new entity, BHE. MTS began withholding payments from BHE due to a business dispute. BHE and GBMI sued MTS to recover the withheld funds. At trial, the jury awarded BHE and GBMI \$46,485,578 and awarded MTS \$11,476,877 against Pou Chen on its cross-complaint.

Subsequently, two law firms entered into a joint retainer agreement with MTS to collect MTS's judgment against Pou Chen.

The law firms negotiated a contractual lien on any recovery obtained against Pou Chen. Later, BHE and GBMI obtained a writ of execution and levied on MTS's bank accounts, resulting in payment to BHE and GBMI of \$24,813,458. Thus, approximately \$23,643,689 was unpaid on the BHE judgment. BHE and GBMI then assigned the unpaid judgment to Pou Chen for \$100,000 and Pou Chen moved to offset the judgments.

MTS briefed the issue, arguing that the lawyers had contractual liens that were senior to Pou Chen's right to offset the judgment. Nonetheless, the trial court granted Pou Chen's offset motion. The result was that Pou Chen had a remaining judgment against MTS of \$11,249,864.

MTS pursued an appeal of the trial court's ruling and the Court of Appeal affirmed, stating:

The offset of a judgment against judgment is a matter of right absent the existence of facts establishing competing equities.

The Court of Appeal stated that an attorney's lien is superior to any right to offset judgments obtained in independent actions.

The court noted, however, that the lien is subordinate to an adverse party's right to offset judgments in the **same action** or in an action based on the same transaction. In this case, the BHE and GBMI judgment obtained by Pou Chen related to the same transaction as the MTS judgment. The court entered the judgment at the same time and in the same action as the MTS judgment.

The law firms' contractual liens were thus subordinate to Pou Chen's right to offset the judgment.