

SUPREME COURT
FILED

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Jorge Navarrete Clerk

CASE NO. S238941

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

Deputy

SHARMALEE GOONEWARDENE, an individual,

Plaintiff and Appellant,

v.

ADP, LLC; ADP PAYROLL SERVICES, INC.; AD PROCESSING, LLC,

Defendants and Respondents.

On Review of a Decision of the California Court of Appeal,
Second Appellate District, Division Four, B267010

On Appeal from the Superior Court of California, County of Los Angeles
Court Case No. TC026406

The Hon. William Barry, Presiding

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND
AMICUS CURIAE BRIEF OF PAYROLL PEOPLE, INC., THE PAYROLL
GROUP, AND INDEPENDENT PAYROLL PROVIDERS ASSOCIATION IN
SUPPORT OF DEFENDANTS AND RESPONDENTS ADP, LLC; ADP
PAYROLL SERVICES INC.; AD PROCESSING, LLC

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I.
APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

TO: PRESIDING JUSTICE CANTIL-SAKAUYE OF THE CALIFORNIA SUPREME COURT.

PAYROLL PEOPLE, INC. (Payroll People), THE PAYROLL GROUP (TPG), and INDEPENDENT PAYROLL PROVIDERS ASSOCIATION (IPPA) seek leave to file the attached amicus brief pursuant to California Rule of Court 8.520(f).

Interest of Amici: IPPA and TPG are each payroll industry trade associations whose members include businesses in all 50 states, including 18 and 9 California businesses, respectively. IPPA and TPG member companies have hundreds of employers in California and manage payroll for hundreds of thousands of employees throughout the state.

Payroll People is a California corporation that provides payroll processing services to approximately 2,500 employers in California, who in turn employ approximately 90,000 employees. They process payroll in all 50 states and submit payments and employment-related filings to more than 7,000 state and federal agencies.

Accordingly, Payroll People, IPPA and TPG have a significant interest in any changes in California law which have an effect on the liability or potential liability of payroll processing companies.

Amici's Position: Payroll People, IPPA and TPG have reviewed the parties' briefs in this matter and are familiar with the arguments raised therein. The attached proposed amicus brief presents additional, but not repetitive, arguments related to the unintended consequences of the Court of Appeal's opinion on individual payroll service providers. Specifically, Payroll People, IPPA and TPG address the Court's incorrect conclusion that their clients'

employees are third-party beneficiaries to their payroll services agreements, and the severe impact that conclusion will have on the industry in general.

As previously stated, Payroll People and the California members of IPPA and TPG provide payroll services to hundreds of thousands of California employees. They have an obvious interest in how this Court analyzes and rules on their exposure to liability arising from third-party beneficiary claims by California employees. Accordingly, Payroll People, IPPA and TPG respectfully request this Court accept the attached brief and consider the arguments raised therein when deciding this matter.

Disclosure: No party or counsel for a party has authored this proposed amicus brief in whole or in part. No party or counsel for a party has made any monetary contribution to fund this proposed amicus brief. While Payroll People, IPPA and TPG present this proposed brief in support of Petitioner ADP, ADP is not affiliated with, nor a member of, Payroll People, IPPA or TPG.


For the foregoing reasons, Payroll People, IPPA and TPG respectfully request that this Court accept the accompanying amicus curiae brief.

Dated: July 20, 2017

Respectfully submitted,

DOWLING AARON INCORPORATED

By:


Stephanie Hamilton Borchers
Attorneys for Payroll People, Inc., The
Payroll Group, and Independent Payroll
Providers Association

**AMICUS BRIEF OF PAYROLL PEOPLE,
IPPA AND TPG**

**II.
INTRODUCTION**

Payroll People is a mid-sized payroll processor based in California, and a member of both IPPA and TPG. IPPA and TPG have, for more than 20 years, educated their members on changes in the payroll industry and advised members regarding best practices.

These best practices include the use of written services agreements, and IPPA and TPG both provide recommended services agreements to their customers.¹ These recommended agreements expressly create a contractual relationship between IPPA and TPG members and their clients, and not to their clients' employees. In fact, IPPA and TPG advise its members to deal directly with employers only, not with employees, and the services agreements specify that the payroll provider only processes the payroll information received from the employer, and that the employer is responsible for compliance with the pertinent wage and hour laws. In other words, members apply the relevant tax and other adjustments to the wage and hour information that is provided by the employer to determine the net pay in any given pay period due to the employee; they do not determine either an employee's wage or their hours.

After review of the parties' briefs on the merits, amici believe we can assist the Court in analyzing the third-party beneficiary argument raised by plaintiff and adopted by the Court of Appeal. The appellate court's conclusion that employees can be third-party beneficiaries to payroll service provider contracts not only led it

¹ Payroll People's services agreements are consistent with the recommendations made by IPPA and TPG.

to conclude that the plaintiff had adequately pled breach of contract claims, but also tort causes of action flowed from the duty inherent in that newly created contractual obligation. Thus, the erroneous third-party beneficiary analysis gave rise to a variety of new potential contract and tort causes of action against payroll service providers.

Accordingly, while amici concur generally with ADP's claims that the appellate court erred in numerous respects regarding the claims allowed against ADP, amici presents additional argument with respect to the third-party beneficiary analysis. Specifically, amici submit that a third party can never be the beneficiary of a contract entered into for the purposes of aiding a party to the contract in the performance of non-delegable statutory obligations.

III. ISSUE ACCEPTED FOR REVIEW

Does the aggrieved employee in a lawsuit based on unpaid overtime have viable claims against the outside vendor that performed payroll services under a contract with the employer?

IV. ARGUMENT

A. Employers Cannot Discharge Their Responsibilities Under The Labor Code and Therefore Contracts That Aid in the Performance of Those Obligations Can Never Create Third Party Rights

ADP's opening brief thoroughly sets forth the state of third-party beneficiary law in California, and amici will not repeat it here. Additionally, as noted in ADP's opening brief, the Labor Code violations alleged by plaintiff in

this case are duties statutorily imposed on “employers,”² and the appellate court below expressly acknowledged that a payroll processor is not an employer. (Labor Code §558.1(a)(b); *Goonewardene v. ADP, LLC* (2016) 5 Cal.App.4th 154, 169.)

Nevertheless, the appellate court determined that plaintiff could be a third-party beneficiary of a contract entered into by an employer for services relating to the payment of wages, with the following broad statement:

“Under the principles discussed above, when an employer enters into a contract with a service provider by which the provider is to take over the employer’s payroll tasks, including the preparation of the payrolls themselves, the employees constitute third party creditor beneficiaries of the contract between the employer and service provider.” (5 Cal.App.4th at 173.)

This was error. In fact, the appellate court’s statement that the employer could have “engaged [a service provider] *to discharge* [the employer’s] wage-related legal duties to its employees, that is, [the employer’s] obligations under the Labor Code and applicable wage orders to accurately calculate employees’ wages, fully distribute wages in a timely matter, and provide employees with accurate earnings statements,” is erroneous as a matter of law. (*Id.*)

The appellate court incorrectly assumed that obligations under the Labor Code *can* be discharged, when they cannot. “Discharge” does not mean to share a responsibility or obligation; discharge assumes the satisfaction of the obligation. (Black’s Law Dictionary, p.475 (7th ed. 1999).) An obligation that is, in fact, “discharged” relieves the discharging party of its responsibilities. The Labor Code makes patently clear that employers can under no circumstances avoid their

² The Labor Code also recognizes potential liability for employers through “natural persons” who are “an owner, director, officer or managing agent of the employer.” Payroll processors are none of these.

statutory wage obligations by contracting them away to someone else. (See generally ADP Opening Brief at 16-21.)

Stated differently, because an employer's duties under the Labor Code are nondelegable, they can never be "discharged" as would be necessary to confer third-party beneficiary status on an employee. (*Martinez v. Socoma Companies, Inc.* (1974) 11 Cal.3d 394, 400; see also *Ochs v. PacifiCare of California* (2004) 115 Cal.App.4th 782, 789 ["[W]hen the thing to be delegated is a legal duty of one party to another, the characterization of that duty as nondelegable is a shorthand way of saying that a party could not escape liability altogether by delegating this duty to someone else." (Citation omitted)].)

Thus, while ADP notes that this Court could take the opportunity to clarify third-party beneficiary law in California, it is not necessary to do so in order to reach the conclusion that employees are not third-party beneficiaries of payroll services contracts. Because an employer's statutory duties remain with the employer no matter what contracts they may enter into to help fulfill those duties, by definition the employer's legal duty to follow the Labor Code has not been discharged to a payroll processor. Thus, because the rights and remedies conferred on employees by the Labor Code *will always* remain the employer's responsibility, the appellate court's reasoning has inexplicably conferred *more* remedies upon employees than they would otherwise have against their employers simply because the employer used a payroll processing company, an anomalous result that amici urges this Court to reject.

B. The Second District's Decision Allows For Duplicative And Wasteful Litigation That Will Be Cost Prohibitive For Many Small to Mid-Sized Payroll Processors

Finally, Payroll People, IPPA and TPG feel compelled to note the extreme, and possibly cost-prohibitive, effect the erroneous decision will have on the

payroll processing industry, especially smaller to mid-sized companies. The appellate court's decision effectively doubles the remedies afforded an employee when an employer uses a payroll processor and, as a practical matter, simply implicates a second defendant in wage and hour litigation who ultimately would seek indemnification from the employer for any judgment against it.

In the meantime, however, those payroll processors have to defend themselves in what is well known to be profoundly expensive litigation. Accordingly, the appellate court's decision is not only legally flawed, but it is also profoundly wasteful and duplicative and amici urges this Court to recognize not only the flawed legal theories in the appellate decision, but also its consequences: redundant litigation that does nothing more than result in additional indemnification cross-complaints or subsequent indemnification litigation in every wage and hour suit.

V.
CONCLUSION

For the reasons set forth herein, Payroll People, IPPA and TPG respectfully urge this Court to reverse the Second District Court of Appeal's decision in this case.

Dated: July 20, 2017

DOWLING AARON INCORPORATED

By:




Stephanie Hamilton Borchers
Attorneys for Payroll People, Inc., The
Payroll Group, and Independent Payroll
Providers Association

CERTIFICATE OF WORD COUNT

The text in this Amicus Curiae Brief is proportionally spaced. The typeface is Times New Roman, 13 point. The word count generated by the Microsoft Word© word processing program used to prepare this Amicus Curiae Brief, for the portions subject to the restrictions of California Rules of Court, Rule 8.204(c), is 1,671.

Dated: July 20, 2017

DOWLING AARON INCORPORATED

By: 
Stephanie Hamilton Borchers
Attorneys for Attorneys for Payroll
People, Inc., The Payroll Group,
and Independent Payroll Providers
Association

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 and not a party to the within action; my business address is Dowling Aaron Incorporated, 8080 N. Palm Avenue, Third Floor, Fresno, California 93711.

On July 20, 2017, I served the foregoing document(s) described as APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF OF PAYROLL PEOPLE, INC., THE PAYROLL GROUP, AND INDEPENDENT PAYROLL PROVIDERS ASSOCIATION IN SUPPORT OF DEFENDANTS AND RESPONDENTS ADP, LLC; ADP PAYROLL SERVICES INC.; AD PROCESSING, LLC on the interested parties in this action addressed as follows:

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Said service was made by placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above AND placing the envelope for collection and mailing on the date and at our business address following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Executed on July 20, 2017 at Fresno, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Helen L. Walton