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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

RENE AYALA,

Plaintiff and Respondent,

v.

ALDERSGATE INVESTMENT, LLC.,

Defendant and Appellant.

2d Civil No. B244513
(Super. Ct. No. 56-2011-00395400-CU-
BC-VTA)
(Ventura County)

Rene Ayala (respondent) sued Aldersgate Investment LLC (appellant), for unpaid wages. The trial court granted summary judgment in favor of Aldersgate, denying Ayala any recovery of wages or other damages. It denied, however, appellant's request for an award of attorneys fees under Labor Code section 218.5.¹ Appellant contends this was error. We agree and therefore reverse that portion of the judgment.

Facts

Respondent has not filed a brief in this matter. We decide the appeal based on the record and the opening brief and will reverse only where prejudicial error is shown. (Cal. Rules of Court, rule 8.220(a); *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334 .)

¹ All statutory references are to the Labor Code unless otherwise stated.

Respondent's complaint alleged that he was employed by appellant "and has not been paid for 12 days (96 hours) work, at \$275 per day. The total wages owed, before calculation of interest, statutory penalties and attorney's fees amounts to \$3,330.00. (See *California Labor Code* § 218.5, § 512, § 1194)." In addition to recovery of the unpaid wages and interest, respondent sought an award of "reasonable attorney's fees pursuant to *Labor Code* sections 1194 and 218.5[.]"

The trial court granted appellant's motion for summary judgment. Although it awarded appellant its costs of suit, the trial court denied any award of reasonable attorney fees under section 218.5. It later declined to reconsider the denial of attorney's fees.

Discussion

Section 218.5 provides, "In any action brought for nonpayment of wages . . . , the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action [¶] This section does not apply to any action for which attorney's fees are recoverable under [Labor Code] Section 1194." Section 1194 subdivision (a) provides that "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit."

As our Supreme Court recently explained, "[S]ection 1194 is a one-way fee-shifting statute, authorizing an award of attorney's fees only to employees who prevail on their minimum wage or overtime claims. Section 218.5 is a two-way fee-shifting statute, permitting an award of fees to either employees or employers who, as relevant here, prevail on an 'action brought for the nonpayment of wages.' Prevailing employers cannot obtain attorney's fees under section 218.5, however, if the employees could have obtained such fees under section 1194 had they prevailed. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1429 (*Earley*))." (*Kirby v. Immoos Fire Protection*,

Inc. (2012) 53 Cal.4th 1244, 1251; see also *Aleman v. Air Touch Cellular* (2012) 209 Cal.App.4th 556, 580.)

The plain language of section 218.5 requires an award of reasonable attorney's fees to the prevailing party in an action for nonpayment of wages, where an award of fees is requested "upon the initiation of the action." (§ 218.5.) This rule does not apply where the action is one to recover the minimum wage under section 1194. Here, respondent sued for alleged nonpayment of wages, but not for an alleged failure to pay the minimum wage. His complaint alleged that appellant failed to pay him for 12 days' work at \$275 per day, or \$34.37 per hour. This action was not one to recover a minimum wage under section 1194. Respondent also requested, in his complaint, an award of attorney's fees. As a matter of law, then, the prevailing party in this action was entitled to an award of attorneys fees under section 218.5. Because judgment was entered in its favor, appellant was the prevailing party and, as such, was entitled to an award of attorney's fees. No exception to section 218.5 is disclosed by the record. The trial court erred as a matter of law when it denied appellant's request for an attorney's fee award.

Disposition

That portion of the judgment denying an award of reasonable attorney's fees to appellant pursuant to Labor Code section 218.5 is reversed. In all respects, the judgment is affirmed. Appellant shall recover its costs on appeal.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Frederick Bysshe, Judge
Superior Court County of Ventura

Nelson, Comis, Kahn & Sepulveda; Anson M. Whitfield, for Appellant.

No appearance for Respondent.