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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

AMANZA SMITH, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; L'ORÉAL USA, INC., Real Party in Interest.	B176918 (Los Angeles County Super. Ct. No. BC284690)

ORIGINAL PROCEEDINGS; petition for writ of mandate. Frances Rothschild, Judge. Petition denied.

Glancy, Binkow & Goldberg, Lionel Z. Glancy, Kevin F. Ruf and Avi Wagner for Petitioner.

Morgenstein & Jubelirer, William J. Carroll, Bruce A. Wagman and Bita A. Karabian for Real Party in Interest.

No appearance on behalf of Respondent.

In this case, we conclude that an individual hired for one day at a flat fee to model in a hair show is not "discharged" by the hair show promoter, within the meaning of Labor Code section 201, when the hair show is finished and the model leaves. Accordingly, the hair show promoter is not required, under Labor Code section 201, to pay the model "immediately" upon completion of the hair show and the model is not entitled to a "waiting time penalty" pursuant to Labor Code section 203, if the model is not promptly paid. Therefore, we deny the model's petition for writ of mandate challenging respondent trial court's grant of summary adjudication of the causes of action based on a violation of the Labor Code.

FACTS AND PROCEDURAL BACKGROUND

Petitioner Amanza Smith is an aspiring actress and model. While waiting to be successful in her chosen career, Smith worked as a salesperson in a Beverly Hills boutique. A representative of real party in interest L'Oréal USA, Inc. approached Smith and asked if she would like to be a hair model at an upcoming hair show featuring L'Oréal products and a stylist from the Christophe hair salon. Smith was to be paid $500 for one day's work.

Smith completed her one-day assignment at the hair show in April 2001. However, L'Oréal took more than two months to pay her the $500. This is because L'Oréal treated Smith as an independent contractor and the payment came from L'Oréal's main accounting office in New York.

On behalf of herself and other similarly situated hair models, Smith filed a class action complaint in superior court. The class action portion of her complaint contained seven causes of action: (1) conversion; (2) fraud and deceit; (3) violation of Business and Professions Code section 17200 (seeking disgorgement of profits); (4) violation of

Labor Code sections 201 and 203; (5) breach of contract; and (6) negligent misrepresentation. The complaint also contained a separate cause of action on behalf of the public for violation of Business and Professions Code section 17200 and sought injunctive relief. Smith and the other class members sought their "wages" ($500 a day) for 30 days (a total of $15,000 per model) as the penalty for late payment provided for in Labor Code section 203.

L'Oréal filed a motion for summary adjudication of all causes of action except conversion and breach of contract. In its summary adjudication motion, L'Oréal argued that in order to be entitled to the benefits of Labor Code sections 201 and 203, one must first have been an employee who was "discharged." L'Oréal argued, and the respondent court ruled, that Smith "was [not] discharged from [her] employment . . . . [Smith] completed her employment by its terms."

Respondent court granted the motion for summary adjudication. Petitioner filed a timely petition for writ of mandate. We issued an order to show cause why the petition should not be granted.

DISCUSSION

This petition concerns only the causes of action based on a violation of Labor Code sections 201 and 203, which require the immediate payment of wages to an employee upon the employee's "discharge" and impose a penalty for the failure to timely pay. L'Oréal conceded for purposes of the summary adjudication that Smith was an employee. Therefore, we do not decide this issue. Smith does not argue that she "quit," within the meaning of Labor Code section 202, subdivision (a).[1] Thus, we need only decide whether Smith was "discharged" within the meaning of Labor Code section 201.

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[1] Labor Code section 202, subdivision (a) provides in general for payment of wages within 72 hours if an employee quits.

Statutory Scheme

Labor Code section 201 is part of Division 2 (Employment Regulation and Supervision), Part 1 (Compensation), Chapter 1 (Payment of Wages), Article 1 (General Occupations). The Article commences with Labor Code section 200, which defines certain terms. The term "wages" is defined to include "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." (Lab. Code, § 200, subd. (a).) The term "labor" is defined to include "labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment." (Lab. Code, § 200, subd. (b).)

Subdivision (a) of Labor Code section 201 provides in pertinent part: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."[2] Labor Code section 203 provides in pertinent part: "If an employer willfully fails to pay . . . in accordance with Section[] 201 . . . , any wages of an employee who is discharged . . . , the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." This penalty is referred to as a "waiting time penalty."

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[2] Labor Code section 201, subdivision (a) provides in full as follows: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. An employer who lays off a group of employees by reason of the termination of seasonal employment in the curing, canning, or drying of any variety of perishable fruit, fish or vegetables, shall be deemed to have made immediate payment when the wages of said employees are paid within a reasonable time as necessary for computation and payment thereof; provided, however, that the reasonable time shall not exceed 72 hours, and further provided that payment shall be made by mail to any employee who so requests and designates a mailing address therefor."

Statutory Interpretation

"The interpretation of a statute presents a question of law which is subject to de novo review on appeal. [Citation.] [¶] Our function in analyzing [Labor Code sections 201 and] 203 is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. We determine this intent by first focusing on the words of the statute[s], giving them their ordinary meaning. [Citation.] 'Significance should be given, if possible, to every word of an act. [Citation.] Conversely, a construction that renders a word surplusage should be avoided.' [Citation.] 'Ordinarily, if the statutory language is clear and unambiguous, there is no need for judicial construction.'" (*Mamika v. Barca* (1998) 68 Cal.App.4th 487, 491.) The purpose of Labor Code sections 201 and 203 is to compel prompt payment of earned wages upon discharge of an employee. (*Oppenheimer v. Sunkist Growers* (1957) 153 Cal.App.2d Supp. 897, 898-899.) Such statutes are in the nature of penalty statutes and are to be strictly construed. (*Ibid*.)

Discharge

Smith urges this court to adopt an interpretation of the term "discharge" that is so broad as to encompass virtually every job termination, including a termination that results from completion of a project. L'Oréal urges this court to adopt a more narrow construction of the term "discharge" to mean to dismiss from or terminate ongoing employment. L'Oréal argues that such a narrow construction would not include the completion of employment by its terms.

The term "discharge" is not generally defined in the Labor Code or the regulations promulgated by the Department of Industrial Relations, Division of Labor Standards Enforcement; thus, it has no special meaning. It apparently includes a "layoff," because Labor Code section 201, subdivision (a) provides an exception to the immediate payment

of wages rule for the "layoff" of a group of certain seasonal employees.[3] "Discharge" does not include resignation or quitting by an employee, because a separate statute applies to the timely payment of wages to an employee who resigns or quits. (Lab. Code, § 202.) From the statutory language and context, it may be inferred that a "discharge" is an affirmative action of an employer that will be generally involuntary on the part of the employee.

The dictionary defines "discharge" as "to dismiss from employment." (Webster's Tenth New Collegiate Dict. (1995) p. 330.) Similarly, Black's Law Dictionary defines "discharge" in the employment context as "to dismiss from employment" or "to terminate the employment of a person." (Black's Law Dict. (6th ed. 1990) p. 463, col. 2.)[4] The California Supreme Court has defined "discharge" in the employment context in a similar fashion. (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 493.) "In the employment law context, the usual and ordinary meaning of the term 'discharge' is to terminate employment." (*Ibid*.) These definitions also imply an affirmative action by an employer. They are inconsistent with a construction of "discharge" that includes a passive expiration of a set term or completion of a set task.

California case authority is not particularly helpful on this issue. In one case, the Court of Appeal suggested in dicta that "discharge" in this context meant "'fired' during the course of employment" and did not include the termination of seasonal work of a group of employees. (*Argonaut Ins. Co. v. Industrial Acc. Com.* (1963) 221 Cal.App.2d 140, 145.) In another case, the Court of Appeal permitted a union to collect waiting time

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[3] "Layoff" is defined in another section to mean "the termination of employment of an employee where the employee retains eligibility for reemployment with the employer." (Lab. Code, § 201.5 [motion picture industry].) In that same section, "discharge" is contrasted with "layoff" to mean "the unconditional termination of employment of an employee." (*Ibid*.) Labor Code section 201.5 then applies different time periods for payment of wages to "discharges" and "layoffs."

[4] The 8th edition of Black's Law Dictionary defines "discharge" as "[t]he firing of an employee." (Black's Law Dict. (8th ed. 2004) p. 495, col. 2.)

penalties to be collected for construction workers hired to complete a specific job, however, the issue of "discharge" was not raised. (*Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 779-780.) In a case very similar to the facts of this case, the appellate department of the superior court held that a model, who had been employed for a two-hour assignment by a photographer, was the employee of the photographer and then concluded without discussion of the issue of "discharge" that the model was entitled to a waiting time penalty. (*Zaremba v. Miller* (1980) 113 Cal.App.3d Supp. 1.)

Some persuasive out-of-state authority specifically addresses the issue. Arkansas and Louisiana have statutes very similar to Labor Code sections 201 and 203. (Pope's Dig., § 9111; La. Rev. Stat. Ann., tit. 23, §§ 631, 632 (1998); see *Oppenheimer v. Sunkist Growers, supra,* 153 Cal.App.2d Supp. at p. 899.) Appellate courts in those states have concluded that the termination of employment by expiration of the time of employment does not constitute a "discharge" within the meaning of their statutes. (*Missouri P. R. Co. v. Clement* (1944) 207 Ark. 389 [181 S.W.2d 240]; *Chicago, R. I. & P. R. Co. v. Russell* (1927) 173 Ark. 398 [292 S.W. 375]; *Smith v. Dishman & Bennett Specialty Co., Inc.* (La.App. 2d Cir. 2002) 805 So.2d 1220; *Franklin v. Ram, Inc.* (La.App. 2d Cir. 1991) 576 So.2d 546; *Collins v. Joseph* (La.App. 4th Cir. 1971) 250 So.2d 796.) Oregon, on the other hand, has a similar statute, except its statutory language requires immediate payment of wages upon both "discharge" and "termination by mutual agreement." (O.C.L.A., § 102-604.) The Oregon Supreme Court has held that an employee whose work ceased due to its completion had been terminated by mutual agreement and thus came within the provisions of its statute. (*McGinnis v. Keen* (Or. 1950) 221 P.2d 907, 911.) In this regard, the Oregon Supreme Court expressly distinguished the Arkansas court's holding based on the Arkansas statutes in *Missouri P. R. Co. v. Clement, supra,* 181 S.W.2d 240. (*McGinnis v. Keen, supra,* 221 P.2d at p. 911.)

Based on the plain meaning of the word, the statutory context, and the persuasive out-of-state authority, we conclude that "discharge" means the affirmative dismissal of an employee by an employer from ongoing employment and does not include the completion of a set period of employment or a specific task.[5]

Smith Was Not Discharged

The facts in this case are undisputed. Smith was hired by L'Oréal to work in a one-day hair show as a hair model for $500. She completed her modeling work on the agreed upon day. When the work she had agreed to perform was finished, she left. The completion of her modeling work does not constitute a "discharge" for purposes of Labor Code sections 201 and 203. Thus, she is not entitled to a waiting time penalty for L'Oréal's failure to pay her immediately upon completion of her work. This is not to state that Smith was not otherwise entitled to be paid at an agreed time or a reasonable time. We conclude only that she was not "discharged," within the meaning of Labor Code section 201, and is not entitled to a waiting time penalty, under Labor Code section 203. Accordingly, respondent court properly granted the motion for summary adjudication as to the causes of action based on an alleged violation of Labor Code sections 201 and 203.

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[5] Smith points to statutory provisions relating to the "layoff" of groups of seasonal food preparation employees (Lab. Code, § 201, subd. (a)), the "layoff" or "discharge" of certain motion picture industry employees (Lab. Code, § 201.5), and the "layoff" of certain oil drilling business employees (Lab. Code, § 201.7), and argues that these provisions indicate a legislative intent to include all cessations of employment within the word "discharge." We find nothing in these statutes to suggest a legislative intent to include within the meaning of "discharge" a mere cessation of a set period of employment.

DISPOSITION

The petition for writ of mandate is denied. In light of the prior uncertainty in the law, the parties are to bear their own costs in this writ proceeding.

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GRIGNON, J.

We concur:

TURNER, P. J.

MOSK. J.