Exiting the Fields Into Unchartered Judicial Territory

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Mark Talamantes serves as the BASF representative on the Board of Directors of California Rural Legal Assistance (CRLA). Based in San Francisco, CRLA is the state's largest legal aid program with twenty-two offices and sixty-five attorneys across California.

The question of who is an employer under California law has long evaded judicial scrutiny. For ninety-seven years no California appellate court ever tackled the important issue of who qualifies as an "employer" under the wage orders of the Industrial Welfare Commission (IWC). That changed when the California Supreme Court rendered a decision in *Martinez v. Combs,* 49 Cal.4th 35 (2010), a case brought by 180 farmworkers from the strawberry fields of Santa Barbara County.

The workers had been hired by a labor contractor to pick strawberries for three berry processing firms. They worked in fields that were owned by the berry processors and rented to the labor contractor. They tended plants and used tools and equipment that had been purchased and leased with capital lent by the berry processors. When the contractor failed to pay the workers at the end of the season, they sued both the contractor and the berry processors who ultimately profited from their labor.

Unfortunately, after a ten-year battle in the courts, the farmworkers walked away empty handed. But because the decision announced a major victory for other California workers, it was worth the fight.

A Unique Audience before the Supreme Court

In the early morning hours of March 4, 2010, more than a hundred farmworkers loaded into a bus in Santa Maria headed for San Francisco to watch their lawyers argue their case before the California Supreme Court. The court offered to accommodate the workers with a separate viewing room with an interpreter, but the workers preferred to sit in the courtroom before the

impressive panel of judges and watch lead counsel Bill Hoerger with California Rural Legal Assistance, Inc., argue their case.

Take a moment to picture the workers in their humble garments and sun-worn faces presenting themselves before the Supreme Court for argument. These men and women with calloused hands who labor in the fields under the blistering heat waited patiently for six years while the case was pending before the Supreme Court. They were finally heard that day. No matter the result, their case created law that will help other low-wage California workers recover unpaid wages in the future.

Working the Fields

The facts are complicated. Toward the end of the 2000 strawberry season, an independent contractor named Isidro Munoz hired the farmworkers to pick strawberries. The independent contractor's role was to hire labor and grow strawberries for the berry processors. The berry processors also told him how and where to grow the berries and how and when to pack the berries for market. The berry processors also lent the contractor more than $240,000 to pay for rent, labor, water, equipment, and the other things needed for the crop.

The contractor also received weekly payments for deliveries to the berry processors. In April and May 2000, the berry price dropped due to poor market conditions. As a result, the contractor received less from the berry processors than he had hoped, resulting in an inability to pay the field crews. Each worker was owed from $4,000 to $8,000, which is tantamount to a loss of almost one third of a farmworker's annual income. The financial loss was devastating.

The contractor was severely undercapitalized. He relied on the land, loans, and marketing from the berry processors to sell the crop. When the money ran out, the workers were left without wage payments and sought payment from both the independent contractor and the berry processors as joint employers. Plaintiffs alleged the contractor was merely an intermediary, hired in an effort to insulate the berry processors from their legal obligations to the workers.

Who Is an Employer in California?

The question of who must pay minimum wage or overtime under California Labor Code section 1194 has been addressed only once since 1913, when California passed its minimum wage law. That one decision was *Reynolds v. Bement* (2005) 36 Cal.4th 1075, in which the court "looked to the common law rather than the applicable wage order to define employment in an action under section 1194 seeking to hold a corporation's directors and officers personally liable for its employees' unpaid overtime compensation." *Id.* at 1086–88. The concept of "joint employment" avoided judicial scrutiny in the context of wage claims brought under state law until *Martinez. Martinez,* 49 Cal.4th 35 at 50.

The Employment Relationship Is Defined by the Industrial Welfare Commission

In *Martinez*, defendants argued that the decision in *Reynolds v. Bement* controlled, in that the wage order definition of *employer* should adopt the federal economic reality test to determine employer liability as it was developed in common law from cases arising under the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. § 201, et seq. Developed from federal law, the economic reality test considers a number of factors to determine who is an employer or joint employer under FLSA. *Bureerong v. Uvawas* (1996 C.D. Cal) 922 F. Supp 1450.

Plaintiffs argued in *Martinez* that the statutory history of Labor Code section 1194 indicates that the legislature intended the Industrial Welfare Commission wage orders to define the employment relationship and that it had done so more broadly than the FLSA. *Martinez* plaintiffs believed the multifactor complex economic reality test would make it impossible for low-wage workers to bring an indirect employer to a hearing before the labor commissioner. The labor commissioner hearings are intended to allow pro per plaintiffs to submit claims for unpaid wages in an out-of-court venue.

The wage orders define an employer as "any person . . . who directly or indirectly, or through an agent or any

other person, *employs* . . . any person." Wage Order 14, Cal. Code Regs., tit. 8, § 11140 subd. 2(F). The order further defines *employ* as "to engage, suffer, or permit to work." *Id.*, subd. 2(D). Plaintiffs argued in *Martinez* that because the berry processors knew the contractor needed to hire farmworkers to pick the berries, they suffered and permitted them work. Moreover, because the berry processors controlled the weekly payment to the independent contractor, which they knew he used to pay wages, they exercised control over wages as an employer of the workers.

The court found that the California legislature intended the IWC, not federal law, to identify who is an employer in California. "In actions under section 1194 to recover unpaid minimum wages, the IWC's wage orders do generally define the employment relationship, and thus who may be liable. An examination of the wage orders' language, history and place in the context of California wage law, moreover, makes clear that those orders do not incorporate the federal definition of employment." *Martinez*, at 52. "In no sense is the IWC's definition of the term 'employ' based on federal law." *Id.* at 66.

The court, while embracing plaintiffs' arguments and adopting an extremely broad definition of the term *employer* under state wage and hour laws, nevertheless affirmed the Court of Appeal's decision in granting summary judgment on the facts presented. Specifically, the court determined that the berry processors did not exercise control over the workers because they did not set the hours, set the wages, or control the working conditions. *Id.* at 77.

The California Legislature Defines the Employment Relationship

The California Supreme Court established in *Martinez* that the Labor Code enforces the IWC wage orders. "An examination of *section 1194* in its statutory and historical context shows unmistakably that the Legislature intended the IWC's Wage Orders to define the employment relationship in actions under the statute." *Id.* at 52. "[A]n employee who sues to recover unpaid minimum wages actually and necessarily sues to enforce the *wage order*." (Emphasis added.) *Id.* at 57. The California Spreme Court also narrowed the *Reynolds* decision, determining that common law plays no role in the IWC's definition of the employment relationship.

In *Reynolds*, the court looked to federal common law to define an employment relationship under Labor Code section 1194 regarding the liability of the directors and officers of a corporation. In a footnote, the court commented that there was insufficient legislative history before it for the court to determine whether state legislation or common law should define the employment relationship. *Reynolds*, at 1087, fn. 8. Plaintiffs in *Martinez* provided that historical background. "As we have now shown, an examination of *section 1194* in its full historical and statutory context shows unmistakably that the Legislature intended to defer to the IWC's definition of the employment relationship in actions under the statute." *Martinez* at 53.

"The opinion in *Reynolds* . . . properly holds that the IWC's definition of 'employer' does not impose liability on individual corporate agents acting within the scope of their agency. *Reynolds*, at p. 1086. The opinion should not be read more broadly than that." *Martinez* at 66.

The court in *Martinez* used a multiprong definition of employer in California. "To employ, then, under the IWC's definition, has three alternative definitions. It means: (a) to exercise control over the wages, hours or working conditions, or (b) to suffer or permit to work, or (c) to engage, thereby creating a common law employment relationship." *Martinez* at 65.

The Relevance of *Martinez* for Low-Wage Workers and Joint Employers

Today in California, companies more commonly use intermediary subcontractors for insulation from direct employer liability to the workers. Supermarkets use janitorial contractors to clean stores; production companies hire staffing agencies to provide temporary workers for labor; and growers use farm labor contractors to provide labor for the fields. Unfortunately, these

contractors aggressively underbid contracts, which results in undercapitalization leading to an inability to pay these low-wage workers minimum wages, overtime, and other benefits. That is precisely the problem *Martinez* sought to address.

With respect to the first prong of the test, an employer is one who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. *Martinez* at 60. In *Martinez*, however, the court determined that the berry processors did not exercise control because they did not set the hours, set the wages, or control the working conditions. *Id.* at 77. However, the result could be different if, for example, a janitor is hired by a janitorial subcontractor but the store manager sometimes provides direct supervision by telling the worker where and how to clean, or asking the janitor to work longer hours to complete a project. Under *Martinez*, this supervision by the supermarket managers may be seen as sufficient control over working conditions, or control over hours worked, to give rise to liability as an employer.

With respect to the second prong—suffer and permit—the court determined that the berry processors did not suffer or permit the farm workers because they did not have the power to prevent them from working. However, what would happen in the case where a company specifically requested a staffing agency to provide a temporary worker by name because they liked his or her work? And what if the company operates overnight but locks the facility while it is closed to customers? In this example, the company involved itself in the hiring process and controlled the hours worked by effectively locking the workers in the building. Arguably if the temporary agency goes under and is unable to pay the temporary worker, the company may be liable as a joint employer under the second prong because it suffered and permitted his or her employment.

Finally, with respect to the third prong, "to engage," the court affirmed that the workers could not pursue a claim against an agent of one of the berry processors who plaintiffs also claimed was a joint employer, citing *Reynolds*. *Martinez*, at p. 75.

The Next Strawberry Season Is around the Corner

After ten years of litigation, we asked our clients whether fighting their case was worth it. Would they do it again? Uniformly the answer was yes. *Martinez* advances the rights of California workers by embracing almost every legal argument asserted by the workers. It acknowledges the importance of the IWC and its continued application in irregular working relationships. It rejects the notion that a narrower federal or common law definition of employment is controlling in California. While they did not win for themselves, they won a major victory for other workers and are proud of what they accomplished.

Autumn is the time of the year when the berry processors hire contractors to prepare their fields for the next strawberry crop. Our clients headed back to the fields for a new season of more backbreaking work. Their lawyers will never forget their courage. It was an honor to represent them.

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