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## California Court of Appeal Holds Owners and Managers Are Not Individually Liable for Unpaid Wages

In *Bradstreet v. Wong*, A113760 (April 16, 2008), the California Court of Appeal limited the liability of individual owners, officers, and managers for a company's failure to pay wages and related penalties. The Court also found that individual defendants in the case could not be held personally liable for restitution under the California Unfair Competition Law ("UCL") (Business and Professions Code §17200, et seq.), because they did not benefit personally from the employees' work nor did they misappropriate any funds that would have been used to pay wages owed to the employees.

### Case Overview

Individual defendants Toha Quan and Anna Wong were shareholders and served as officers and directors of three garment manufacturing companies, collectively known as the Wins Corporations ("Wins"). Defendant Jenny Wong was a bookkeeper for the three companies and a director for one of the companies. Wins had operated successfully for many years, until 2001, when the companies experienced a series of downturns, including slow and non-paying customers, resulting in a lack of cash to meet payroll obligations. The defendants told employees they would eventually be paid; encouraged them to continue working without pay; and issued non-negotiable payroll checks and pay stubs to some employees, telling the employees the checks and stubs could be used to verify the amounts owed when cash became available.

When employees began making complaints about the failure of Wins to pay wages, the California Division of Labor Standards Enforcement ("DLSE") and the United States Department of Labor ("DOL") took action. The DOL sought injunctive relief, eventually shutting down Wins and confiscating its assets and accounts receivable. Employees were paid out of the seized accounts receivable.

The California Labor Commissioner filed suit, on behalf of the employees, against the individual defendants, seeking to hold them personally liable for the unpaid wages. A public interest group, the Chinese Progressive Association, and two employees intervened in the suit, alleging similar claims, as well as a cause of action for restitution under the UCL.

The trial court ruled in favor of the defendants, finding the individual defendants could not be held personally liable for the employer's unpaid wages and related

penalties or for the UCL claim because the defendants did not personally acquire any money or property from the employees. The Labor Commissioner and one of the interveners appealed.

Affirming the trial court's decision, the Appellate Court relied on the California Supreme Court decision in *Reynolds v. Bement* (2005) 36 Cal.4<sup>th</sup> 1075, which held that agents, acting within the course and scope of their employment, are not generally "employers" under the common law definition of "employer," and not under the broader and stricter Industrial Welfare Commission ("IWC") definition. The Court concluded that because Labor Code §1193.6 does not define "employer," it should follow the reasoning laid out in *Reynolds*. Under the common law definition of "employer," owners, agents and managers of corporate employers are not ordinarily considered employers in their individual capacities, and thus are not generally liable for wages owed by the corporate employer.

The Court rejected the claim that the defendants were personally liable to the employees under the UCL. While the Court noted that it is possible to seek restitution for unpaid wages from corporate owners or officers, it was inappropriate under the facts of this case. The defendants were not the employer, Wins was. Wins received the benefit of the employees' labor, and there was no evidence that the individual defendants had underfunded Wins or misappropriated corporate assets for their own use.

## **What This Means for Employers**

While other provisions of the California Labor Code may extend liability to individuals acting on the employer's behalf, Bradstreet confirms that, in most instances, individuals who are responsible for the payment of wages may not be personally liable. Similarly, such individuals generally would not be personally liable under the UCL.

This decision demonstrates the importance of maintaining and observing corporate formalities in order for individual owners, directors, and managers to be protected from personal liability for wage disputes.

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If you have any questions on *Bradstreet v. Wong* or similar issues, please contact Michael Kun at (310) 557-9501 ([mkun@ebgklaw.com](mailto:mkun@ebgklaw.com)) or Kathryn McGuigan at (310) 557-9570 ([kmcGuigan@ebglaw.com](mailto:kmcGuigan@ebglaw.com)) at the Firm's Los Angeles office.

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