

<http://www.laboremploymentlawblog.com/>

SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP

Labor & Employment Law BLOG
Up-to-date Information on Labor and Employment

07 | 29 | 2009 Posted By

Ninth Circuit Court of Appeals Finds That Individual Managers Of A Bankrupt Corporation Can Be Held Liable for Employees' Unpaid Wages

The Ninth Circuit Court of Appeals held on July 27, 2009 in Boucher v. Shaw that individual managers of a bankrupt corporation can be held liable to the corporation's former employees for unpaid wages under the federal Fair Labor Standards Act ("FLSA").

The plaintiffs in the Boucher case were three former employees of the Castaways Hotel, Casino and Bowling Center ("Castaways"). They were terminated shortly after Castaways filed for Chapter 11 bankruptcy protection. About one month after their terminations, Castaways' Chapter 11 petition was converted to a Chapter 7 liquidation, and Castaways ceased operations. The plaintiffs then brought a class action lawsuit against three Castaways managers under Nevada state law, alleging that they and other Castaways employees had not been paid accrued vacation and holiday pay, and had not received their final paychecks within the deadlines established by Nevada law. One of the plaintiffs, Ardith Ballard, also brought a claim under the FLSA, alleging that she was never paid for the last pay period that she worked at Castaways.

The three managers that the plaintiffs sued were Castaways' Chairman and Chief Executive Officer, who had a 70% ownership interest in the company, a Manager who was responsible for all labor and employment matters and had a 30% ownership interest in the company, and the Chief Financial Officer. These three defendants moved to dismiss the case on the grounds that they could not be held individually liable to the plaintiffs. The district court granted the defendants' motion to dismiss, and the plaintiffs appealed.

When it first received this case, the Ninth Circuit referred the question of whether the managers could be held individually liable under Nevada state law to the Nevada Supreme Court. The Nevada Supreme Court then reviewed this issue, and held that individual managers could not be held individually liable under Nevada state law the Nevada statutes do not include managers or "agents" of a corporation within its definition of "employers." The Ninth Circuit adopted the Nevada Supreme Court's reasoning, and upheld the dismissal of the plaintiffs' state law claims against the individual managers.

The Ninth Circuit then analyzed the issue under the FLSA, even though the individual defendants did not dispute that managers can be held individually liable under the FLSA. The Ninth Circuit noted that, under the FLSA, the term "employer" is given a broad interpretation, and covers "any person acting directly or indirectly in the interest of an employer in relation to an employee." Under this standard, courts look to the "economic reality" of the relationship to determine whether an individual is an "employer" for the purposes of the FLSA. Here, the

individual defendants were each alleged to have high-ranking management positions, and two were alleged to be part owners of the company. Consequently, the Ninth Circuit held that they could be found to have "control and custody" of the employees, and could therefore be held liable for unpaid wages as "employers" under the FLSA.

The Ninth Circuit explained that while the individual managers could not be held liable for any debts that Castaways had not paid due to the bankruptcy, the individual managers could be held "independently liable under the FLSA." Consequently, the claims against them were separate and distinct from any claims against Castaways, and Castaways' bankruptcy did not extinguish those claims. Accordingly, the Court of Appeals determined that Ballard had properly stated an FLSA claim against the individual managers of Castaways, and that the defendants' motion to dismiss was improperly granted with respect to that cause of action.