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By Anthony J. Oncidi

California Employment Law Blog

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Company That Hired Competitor's Employee Was Not Entitled To Arbitrate Claims

Mattson Tech., Inc. v. Applied Materials, Inc., 2023 WL 7180167 (Cal. Ct. App. 2023)

Canfeng Lai worked for many years at Applied Materials before submitting his resignation to begin a new job at Mattson Technology (one of Applied's competitors). First, however, Lai allegedly emailed himself a number of files containing Applied's trade secrets. In response, Applied sued both Lai and Mattson for violating the Uniform Trade Secrets Act (the "UTSA"). Both Lai and Mattson moved to compel arbitration (based on an arbitration agreement between Applied and Lai). The trial court granted Lai's motion but denied Mattson's because it was not a party to the arbitration agreement and because the equitable estoppel exception was inapplicable. The trial court also denied Mattson's motion to stay the litigation pending the outcome of Lai's arbitration and issued a preliminary injunction to protect Applied's confidential information. The Court of Appeal affirmed the trial court's rulings except as to its order denying Mattson's motion to stay the litigation pending the outcome of the arbitration, which should have been granted pursuant to Cal. Code Civ. Proc. § 1281.4.

Disability Discrimination Claim Was Properly Dismissed On Summary Judgment

Martin v. Board of Trustees of the Cal. State Univ., 2023 WL 7537694 (Cal. Ct. App. 2023)

Following the termination of his employment as director of university communications at CSUN's Marketing and Communications Department, Jorge Martin sued the university for race, gender and sexual orientation harassment and discrimination because he is a "middle-aged, light-skinned Mexican-American, heterosexual and cisgender male." The trial court granted the university's motion for summary judgment after concluding that Martin could not demonstrate he was performing competently or that discriminatory animus could be inferred; further, the university submitted unrebutted evidence that Martin was terminated for a legitimate, nondiscriminatory reason. The Court of Appeal affirmed summary judgment based on the results of various investigations that were undertaken by the university prior to the termination of Martin's employment. The trial and appellate courts rejected Martin's argument that the university's reasons for terminating him were pretextual, rejecting Martin's assertion that the university's commitment to diversity was evidence of pretext against him or that the "cat's paw" theory applied (i.e., that a "significant participant" in the termination decision had exhibited discriminatory animus toward Martin).

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Employee's Attorney's "Pervasive Incivility" Justified $460,000 Reduction In Fees

Snoeck v. ExakTime Innovations, Inc., 2023 WL 7014096 (Cal. Ct. App. 2023)

Steve Snoeck prevailed at trial on one of his six claims against his former employer, ExakTime Innovations, and was awarded $1.14 million in attorney's fees – an amount that the trial court reduced by a "0.4 negative multiplier" to account for Snoeck's attorney's "lack of civility throughout the entire course of this litigation." The jury awarded Snoeck $130,088 in damages on his claim that ExakTime had breached the Fair Employment and Housing Act by failing to engage in the interactive process with him. The Court of Appeal affirmed the judgment, including the reduction in the attorney's fee award, noting that Snoeck's attorney had acted uncivilly when he accused ExackTime's attorneys of telling the court "lies," committing "fraud" and a "brazen con," making "misrepresentations" to the trial court and engaging in "sleazy" and "cringeworthy" conduct and "duping" the court of appeal.

Employees Were Properly Awarded $7.2 Million For Employer's Breach Of Contract

Park v. NMSI, Inc., 96 Cal. App. 5th 616 (2023)

Julie Park and Danny Chung sued their former employer (NMSI, Inc., a residential mortgage lender) for $7.2 million in profit sharing and related amounts associated with NMSI's alleged breach of contract, which the trial court granted in the form of prejudgment right to attach orders. NMSI argued that Park and Chung had failed to establish the probable validity of their claims because the agreements underlying their breach of contract causes of action had been modified through an exchange of emails as well as by the parties' subsequent conduct. The trial court applied the "probable validity standard" and concluded the agreements had not been modified by email or the parties' subsequent conduct. Further, the trial court found that the claims were for a fixed or readily ascertainable amount. The Court of Appeal affirmed the trial court's order in plaintiffs' favor.

Lawyer-Investigators Recover Attorneys' Fees Following Successful Anti-SLAPP Motion

Ross v. Seyfarth Shaw LLP, 96 Cal. App. 5th 722 (2023)

Plaintiff Natalie Operstein was a professor of linguistics at California State University, Fullerton, and plaintiff Craig Ross is her husband. In 2014, the university hired a law firm to investigate multiple accusations Operstein raised to her superiors about three of Operstein's colleagues. Defendant Colleen Regan, then a partner at the law firm, led the investigation. The investigation concluded that none of Operstein's allegations was well-founded.

In 2015, the university recommended termination of Operstein's employment purportedly due to her lack of progress towards tenure. Operstein filed a discrimination charge with the EEOC against the university and filed a separate lawsuit in federal court. All of her claims were dismissed on summary judgment. In April 2020, Operstein and Ross filed yet another lawsuit, this time against the law firm and Regan, alleging they conducted a biased investigation and that their findings were defamatory against Operstein. In response, the firm and Regan filed an anti-SLAPP motion to strike the complaint. The trial court issued a tentative ruling which would have struck multiple causes of action from the complaint, and the plaintiffs immediately voluntarily requested dismissal of their lawsuit. Subsequently, the lawyer investigators filed a motion to recover their attorney's fees, which the court granted in part. Both parties appealed the order.

The appellate court rejected the plaintiffs' attempt to challenge the earlier judgment, and instead held that the investigators were prevailing parties (even though the plaintiffs voluntarily withdrew their complaint), and thus entitled under the anti-SLAPP statute to all (not just a portion) of the attorney's fees they requested.

Employer Improperly Delayed Pay To Employees Terminated After Onset Of COVID-19

Hartstein v. Hyatt Corp., 82 F.4th 825 (9th Cir. 2023)

Karen Hartstein represents a certified class of former Hyatt employees who were laid off after the onset of the COVID-19 pandemic in March 2020. The class alleged that Hyatt violated California law by failing to pay them immediately for their accrued vacation time and by failing to compensate them for the value of the free hotel rooms employees received each year. Hyatt, however, argued that it was not required to pay its employees their accrued vacation pay until June 2020, when the employees' employment was terminated. The Ninth Circuit reversed the district court's earlier summary judgment ruling in favor of Hyatt on the issue of prompt payments. The panel held that the prompt payment provisions of the California Labor Code required Hyatt to pay plaintiffs their accrued vacation pay in March 2020, because a temporary layoff with no specific return date within the normal pay period is a "discharge" for purposes of the statute.

However, the panel affirmed the district court's ruling that the complimentary hotel rooms Hyatt provided to employees were excludable from the calculation of employees' regular rate of pay under the federal Fair Labor Standards Act ("FLSA").

The FLSA excludes "other similar payments" not made as compensation for an employee's hours of employment from the regular rate of pay calculation, and the free hotel rooms fell into this exception.

Employee's Meal and Rest Break PAGA Claims Survive Summary Judgment

Arce v. Ensign Grp., Inc., 96 Cal. App. 5th 622 (2023)

Cecilia Arce worked as a certified nursing assistant at a skilled nursing facility. After her employer terminated her, she brought claims under the Private Attorneys General Act ("PAGA") that she worked through meal and rest periods and was not paid premiums she was owed for meal and rest breaks after her termination. The employer moved for summary judgment, arguing that Arce did not suffer any violation during the limitations period. The trial court granted summary judgment to the employer, but on the basis that Arce did not offer any "competent proof" that a Labor Code violation related to meal or rest break violations occurred during her employment. The Court of Appeal reversed the judgment. Arce provided evidence that her employer's understaffing and workload policies made it effectively impossible for her to take the required breaks. According to the Court, the employer did not furnish evidence that negated Arce's allegations that its actual practices conflicted with its written break policies, and thus did not meet the initial burden of production. It was not enough that the employer's policies and handbooks all required Arce to take meal and rest breaks if the employer pressured its employees not to take breaks. The summary judgment against Arce was reversed and remanded to the trial court.

Once Again, Employer Loses Right To Arbitrate By Failing To Timely Pay Arbitration Fees

Doe v. Superior Court, 95 Cal. App. 5th 346 (2023)

An anonymous employee sued her former employer and former manager, alleging multiple instances of sexual harassment and assault. The former employer successfully compelled the case to arbitration. The deadline for the employer to pay the arbitration fees pursuant to Cal. Code Civ. Proc. § 1281.98(a)(1) was October 3, 2022, but the arbitrator did not receive the payment until October 5, 2022, two days after the 30-day statutory grace period had expired. Accordingly, the employee moved to vacate the order compelling arbitration because of the late payment, but the trial court denied this motion.

In this opinion, the Court of Appeal strictly enforced the statutory deadline and held that the employee could proceed with her sexual harassment and assault claims in state court and avoid arbitration. The relevant provision in the California Arbitration Act states that arbitrator fees must be "paid within 30 days after the due date." Here, the court held that "paid" means when a payment is actually received, rather than when a payment is sent. The employer submitted a check for fees that it owed one business day before the fees were due, but the check was not received until two days after payment was due. Because the fees were received late, the Court of Appeal granted the employee's petition for writ of mandate and ordered the trial court to grant the employee's motion to vacate the order granting the employer's motion to compel arbitration. Said the Court: "We do not find that the proverbial check in the mail constitutes payment."