

Case No. S23894I

IN THE SUPREME COURT OF CALIFORNIA

SHARMALEE GOONEWARDENE, AN INDIVIDUAL,
PLAINTIFF AND APPELLANT

v.

ADP, LLC et al;

DEFENDANTS AND RESPONDENTS

SUPREME COURT
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Los Angeles Superior Court Case No. TC 026406
Hon. William Barry, Presiding

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INTRODUCTION

Plaintiff's allegations against the Petitioner, payroll-service provider ADP, are aptly summarized in the Appellate Opinion, Page II (the entire page). In a careful and well-reasoned decision three court of appeals' justices unanimously held that Plaintiff employee can under the circumstances of the case maintain causes of action against the payroll-service provider ADP, for negligence, negligent misrepresentation, and on a third party beneficiary theory. ADP's allegation that lines of responsibility are somehow blurred by holding that ADP & other payroll service providers are not immune for their negligent conduct, stems from Defendants' failure to comprehend the interrelationships between the applicable legal principles.

Far from 'inventing new law', the court of appeal's decision does nothing to change the well-established rule that an employer may not delegate its responsibilities under the Labor Code to pay wages, or the Civil Code 1714(a) language, fundamental in this state since 1872, that "everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person...", nor does it constitute a departure from the tests of negligence set forth in *Biakanja v. Irving (1958) 49 Cal.2d 647*, discussed at length in the Appellate Opinion, pages 37-45.

ADP essentially argues that the Labor Code preempts the application of other California law, against employers and non-employers alike. Only the exclusivity provisions

of the Workers' Compensation Act restrict an employer's liability under the Labor Code, and even here the limits of exclusivity are often successfully challenged; see e.g., *Unruh v. Truck Insurance Exchange* (1972) 7 Cal. 3d 616, *Hart v. National Mortgage & Land Co.* (1987) 189 Cal. App. 3d 1420, *Murray v. Oceanside Unified School Dist.* (2000) 79 Cal.App.4th 1338, *Davaris v. Cubaleski* (1993) 12 Cal.App.4th 1583.

THE COURT'S ROLE IS NOT TO EDUCATE THE PETITIONERS

Defendants' misconceptions or willful misstatements include the following:

1. **"The decision below also marks the first time any court has held that a contract to assist an employer with payroll confers third-party beneficiary rights on the employer's workers"**, Petition, page 15 lines 21-23. In *Martinez v. Combs*, 49 Cal.4th 35 (2010), the Supreme Court considered a third party beneficiary theory and rejected it as lacking factual support, a clear sign that the theory has always been available on the right set of facts.
2. **"An employer's duties to comply with Labor Code wage preparation requirements may not be delegated by the employer. Consequently, a payroll service provider cannot "discharge" the employer's obligations"**, Petition, page 16 lines 6-8 and **"The employer cannot avoid that responsibility by pointing to the payroll service provider"** Id., lines 13-15.

No one is claiming the employer is not liable. The 'recognition of nondelegable duties tends to insure that there will be a financially responsible defendant available to compensate for the negligent harms caused by that defendant's activity, *Srithong v. Total Investment Co.* (1994) 23 Cal.App.4th 721, 727. Nondelegable duty, as a form of vicarious liability, does

not remove the liability of the direct tortfeasor. Instead it makes "the entire liability of those two defendants co-extensive", *Id. at 728*. ADP could perhaps sue the employer seeking equitable indemnity, though would presumably be met with a cross-complaint for breach of contract.

3. **"Tort recovery is precluded for alleged breaches of duty that merely restate contractual obligations and is unavailable for claims for economic loss"** Petition, page 23 lines 3-5

Defendants ignore the appellate court's discussion in the Order Modifying Opinion Page 3, lines 1-13: "Under the [economic loss] rule, a plaintiff is permitted to recover purely economic losses due to negligence in the performance of a contract if a 'special relationship' exists", [citing *Greystone Homes, Inc. v. Midtec, Inc., 168 Cal.App.4th 1194 (2008)*].

4. **"The court of appeal's newly-recognized causes of action are wholly redundant to the claims the Labor Code and the employment relationship make available to employees to ensure that employers properly pay the wages they promised to pay"**, Petition, page 2 lines 19-21.

The statement contradicts Defendants' earlier and more accurate acknowledgment that the decision "exposes payroll service providers, *because of the differences between tort and contract damage measures*, to potentially greater liability than the employers who promised the wages to their employees and benefitted from their work" Petition page 3 lines 2-5 (emphasis added). The causes of action are hardly 'newly-recognized' and, as the Appellate

Opinion recognizes, at Page 42, lines 3-10, "recognizing a duty of care encourages accurate payment of wages."

CONCLUSION

Plaintiff's "failure to received the compensation owed her was attributable to ADP's own alleged errors. That underpayment must be regarded as significant, as "it has long been recognized that . . . because of the economic position of the average worker . . . , it is essential to public welfare that he receive his pay when it is due." *Kerr's Catering Service v. Department of Industrial Relations* (1962) 57 Cal.2d 319, 326, quoting, *In re Trombley* (1948) 31 Cal.2d 801, 809-810.

The appellate decision carefully applies long-standing legal principles related to negligence, negligent misrepresentation, and third-party beneficiary claims to the facts of the case to find that Plaintiff can maintain these causes of action. There is no lack of uniformity of decision-making in the relevant area of law, or unresolved important question of law.

December 20, 2016



Attorney for Plaintiff Sharmalee Goonewardene

CERTIFICATION OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the attached brief is proportionately spaced, uses Microsoft Word 2016, has a typeface of 14 points, and contains 1135 words.

Dated: December 20, 2016

A handwritten signature in black ink that reads "Glen Broeman". The signature is written in a cursive style with a large initial "G".

Attorney for Plaintiff Sharmalee Goonewardene

PROOF OF SERVICE

SUPREME COURT OF THE STATE OF CALIFORNIA

RE: Sharmalee Goonewardene v. ADP, Inc. B267010

I declare that I am over the age of eighteen (18) years and not a party to this action. My address is 135 W. 225th St. Apt. F Bronx NY 10463

On the date specified below I served the documents listed below

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I declare under penalty of perjury that the foregoing is true and correct.



December 20, 2016 at Bronx, NY