

No. A10-2173

STATE OF MINNESOTA
IN SUPREME COURT

Oscar Caldas, et al.,

Appellants,

vs.

Affordable Granite & Stone, Inc.,

Respondent,

Dean Soltis,

Defendant.

AMICUS CURIAE BRIEF OF
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LEGAL ISSUES

- I. Does Minn. Stat. § 181.13 provide Appellants an independent right to recover from Respondent the wages they have earned?

The district court and court of appeals held that Appellants could not maintain an action under Section 181.13.

Most apposite authorities:

Minn. Stat. § 181.13 (2010)
Minn. Stat. § 181.171 (2010)

- II. Do Appellants have a third-party beneficiary right to the wage required by Respondent's contract with the City of Minneapolis?

The district court and court of appeals held that the employees were not third-party beneficiaries.

Most apposite authorities:

Cretex Cos. v. Construction Leaders, Inc., 342 N.W.2d 135 (Minn. 1984)
Duluth Lumber & Plywood Co. v. Delta Development, Inc., 281 N.W.2d 377 (Minn. 1979)
Restatement (Second) of Contracts § 302 (1979)

- III. Does laches, as a matter of law, preclude Appellants from seeking recovery of unpaid wages after their employment ended, even though the statute of limitations had not run?

The district court did not address this issue. The court of appeals sua sponte held that laches barred Appellants' unjust enrichment claim because they waited until after their employment ended to pursue their right to unpaid wages, but the court failed to address the fact that the statutes of limitations had not expired.

Most apposite authorities:

Minn. Stat. § 541.07(5) (2010)
Aronovitch v. Levy, 238 Minn. 237, 56 N.W.2d 570 (1953)

STATEMENT OF INTEREST

This case involves the ability of employees to recover unpaid wages due pursuant to a city ordinance and the employer's contract with the city. When an employer obtains a public contract agreeing to specific wage obligations, it should not be able to renege with impunity on its agreement to pay employees hired to perform the contracted-for work. The State of Minnesota, by its Attorney General, Lori Swanson, therefore has a strong public interest in the proper application of Minnesota Statutes Section 181.13 and in ensuring that employees have a remedy to recover wages due them.¹ *See, e.g.*, Minn. Const. art. 1, § 8 (stating “[e]very person is entitled to a certain remedy in the laws for all injuries or wrongs . . .”).

ARGUMENT

I. SECTION 181.13 PROVIDES AN INDEPENDENT RIGHT TO RECOVER EARNED AND UNPAID WAGES.

Section 181.13 allows employees to immediately recover the wages they are owed. Both the plain language of the law and the legislative intent underlying the statute support Appellants' position.

A. The Plain Language Of Section 181.13 Requires Respondent To Pay Appellants The Wages They Are Due.

Statutory interpretation is a question of law, which this Court reviews de novo. *Frieler v. Carlson Mktg. Grp.*, 751 N.W.2d 558, 566 (Minn. 2008). The goal of statutory interpretation is to ascertain the legislature's intent. Minn. Stat. § 645.16 (2010). When a

¹ No portion of this brief was prepared by counsel for a party, and the State received no monetary contributions for this brief. *See* Minn. R. Civ. App. P. 129.03 (requiring certification of authorship and contributors).

statute is unambiguous, the statutory language is applied according to its plain meaning. *W. Nat'l Ins. Co. v. Thompson*, 797 N.W.2d 201, 205 (Minn. 2011). A statute is unambiguous if it is not reasonably susceptible to more than one interpretation. *See City of St. Paul v. Eldredge*, 800 N.W.2d 643, 647 (Minn. 2011).

Section 181.13 requires that when an employer discharges an employee, the employee's wages that were "actually earned" are "immediately due and payable upon demand." Minn. Stat. § 181.13(a) (2010). If an employer fails to comply with Section 181.13, the employee can bring a civil action in district court to enforce the statute. *Id.* § 181.171, subs. 1-2 (2010).

The plain meaning of wages "actually earned" by an hourly employee is the hourly rate of pay the employee was entitled to multiplied by the number of hours that the employee worked. In this case, the employee "actually earned" the wages at the rate specified in the city's contract with the employer and as provided in the applicable ordinance. *See, e.g.*, Appellants' Add. 1, 4, 34, 38. The unambiguous language of Section 181.13 therefore, by itself, requires the employer to immediately pay the employees the wages due them. *See, e.g., Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 126 (Minn. 2007) (differentiating for purposes of Section 181.13 between "[p]aid time off" and "employees' hourly wages" and concluding that hourly wages "represent payment for hours that employees have already worked, and employers must pay these wages in a statutorily-defined time period").

The court of appeals summarily ruled in a footnote that Section 181.13 was inapplicable because the employees were not named parties to the city's contract with the

employer. *Caldas v. Affordable Granite & Stone, Inc.*, No. A10-2173, 2011 WL 1938307, *3 n.4 (Minn. Ct. App. May 23, 2011). However, the plain language of the statute contains no such limitation. The city's contract and ordinance required a particular wage and Section 181.13 independently compels the employer to pay it.

B. Even If Section 181.13 Is Ambiguous, A Proper Interpretation Of The Statute Provides Appellants With A Right To Recover Their Unpaid Wages.

Even if the Court determines that Section 181.13 is ambiguous, a proper interpretation of the statute supports Appellants' position. When a statute is ambiguous, the Court may consider other sources of legislative intent, including the object to be attained, the reason for the law, the mischief to be remedied, and administrative interpretations of the statute. Minn. Stat. § 645.16.

In this case, the obvious purpose of the law is to provide a mechanism for employees to obtain immediately all wages they have earned. Section 181.13 applies to the payment of wages when an employer ends an employment relationship. Minn. Stat. § 181.13. A similar statute applies when an employee voluntarily terminates employment. *Id.* § 181.14 (2010). And another statute applies when an employee seeks wages owed while the employee is still working for the employer. *Id.* § 181.101 (2010). The three statutes have similar language, mandating that employers timely pay employees and former employees for wages earned.

Section 181.13 was designed to encourage employers to settle up with their employees and to immediately pay them in full for wages owed whenever the employment relationship ends at the option of the employer. The legislature has

determined that employees who involuntarily lose their jobs, because the project they were working on ended or for any other reason, are entitled to immediately recover all wages they have not been paid by their employer.

As originally enacted in 1919, the predecessor statute to Section 181.13 provided that when an employee is discharged from employment, “the wages actually earned and unpaid at the time of such discharge shall become immediately due and payable” at the employee’s demand. 1919 Minn. Laws ch. 175, § 1, at 174. The language has remained virtually the same. *See* Minn. Stat. § 181.13(a). The legislature introduced the law in 1919 by describing it as “[a]n act to compensate workmen for time consumed while waiting for the payment of their wages after the same are due and owing.” 1919 Minn. Laws ch. 175, at 174. The 1919 act also provided that employees who were not timely paid their wages could bring an action for unpaid wages and costs. *Id.* § 5. This provision is now codified as Section 181.171. The 1919 act imposed no other requirements for the employee’s cause of action. *Id.*

For nearly 100 years, the legislature has clearly intended that employees have a simple remedy upon discharge to collect their earned, but unpaid, wages. That is why Sections 181.13 and 181.171, and their predecessor statutes, have provided employees with an independent cause of action to bring claims to recover unpaid wages. This is consistent with the remedies clause of the Minnesota Constitution. *See* Minn. Const. art. 1, § 8 (stating “[e]very person is entitled to a certain remedy in the laws for all injuries or wrongs . . .”).

Finally, the Minnesota Department of Labor and Industry (“DLI”) interprets Section 181.13 in the same manner as do Appellants, and accordingly, supports reversal of the court of appeals’ decision. Indeed, DLI interprets the statute as requiring employers to pay discharged workers for any unpaid wages, whether the wage rate is established by law or contract, including a local ordinance or a contract between a city and an employer. DLI has enforcement authority over Section 181.13. *See* Minn. Stat. § 177.27, subd. 4. Accordingly, its interpretation “is entitled to deference and should be upheld, absent a finding that it is in conflict with the express purpose of the Act and the intention of the legislature.” *Frieler*, 751 N.W.2d at 567 (quotation omitted).

II. APPELLANTS ALSO HAVE A THIRD-PARTY BENEFICIARY RIGHT TO THE WAGE REQUIRED BY RESPONDENT’S CONTRACT WITH THE CITY.

In determining whether a person is a third-party beneficiary of a contract, Minnesota follows the *Restatement (Second) of Contracts*. *Cretex Cos. v. Constr. Leaders, Inc.*, 342 N.W.2d 135, 139 (Minn. 1984). A person is a beneficiary of a contract if the parties’ intent would be effectuated and either (a) performance of the contract will satisfy a promisee’s obligation to pay the beneficiary; or (b) the circumstances of the contract reflect that the promisee intended to benefit the beneficiary with the promised performance. *Restatement (Second) of Contracts* § 302(1) (1979). These tests are generally referred to as the duty-owed test and the intent-to-benefit test. *Cretex*, 342 N.W.2d at 138-39. The intent-to-benefit test is satisfied in this case.

Respondent agreed to comply with the city ordinance. *See* Appellants’ Add. 1, 4. The contract between Respondent and the city undisputedly required Respondent to pay

its employees the wage mandated by the ordinance. *Id.* at 1, 34, 38. Accordingly, Respondent's agreement to pay its employees the designated wage rate reflects a clear intent to benefit Respondent's employees who performed the work on the contract. *See Duluth Lumber & Plywood Co. v. Delta Dev., Inc.*, 281 N.W.2d 377, 385-86 (Minn. 1979) (holding that unpaid materialman was third-party beneficiary of government construction contract); *see also Favel v. Am. Renovation & Constr. Co.*, 59 P.3d 412, 426 (Mont. 2002) (recognizing that workers were third-party beneficiaries of contract requiring payment of specific wages); *Rd. Sprinkler Fitters Local Union No. 669 v. G&G Fire Sprinklers, Inc.*, 125 Cal. Rptr. 2d 804, 812 (Cal. Ct. App. 2002) (same).

Enforcing Respondent's obligation to pay Appellants the wage mandated by the contract and the city ordinance is also consistent with public policy. It would be absurd to preclude clearly intended and benefited third parties from obtaining the wages to which they are entitled. Absent enforcement of the contract, an employer could make promises and obtain contracts when the employer has no intention of satisfying the wage requirements in the contract. The contractual commitment would become nothing more than an illusory promise. *See Black's Law Dictionary* 1332 (9th ed. 2009) (defining illusory promise as "an expression cloaked in promissory terms but actually containing no commitment by the promisor"); *see also Glarner v. Time Ins. Co.*, 465 N.W.2d 591, 595-96 (Minn. Ct. App. 1991) (rejecting insurance company's interpretation of insurance contract because it would create illusory promise).

This outcome would also undermine the integrity of the contracting process by permitting employers to underbid competitors based on promises the employer does not intend to fulfill. This result is particularly inappropriate when a government contract and municipal ordinance mandate the applicable wage. Denying the employees a cause of action in these circumstances would allow employers to obtain a windfall by ignoring their contractual obligations. Under Minnesota law, these employees have a third-party beneficiary right to the wage specified in the employer's contract with the city.

The court of appeals concluded that Appellants had no third-party-beneficiary right to the contractually mandated wage because the contract did not specifically mention Appellants and reflected only an intent to comply with the ordinance. *Caldas*, 2011 WL 1938307, at *2-3. This analysis is incorrect for at least three reasons.

First, a contract need not mention a specific person to create third-party-beneficiary rights. *See, e.g., Hickman v. Safeco Ins. Co. of Am.*, 695 N.W.2d 365, 370-71 (Minn. 2005) (holding that insurance contract's general reference to "borrowers" sufficiently contemplated specific borrower); *Duluth Lumber*, 281 N.W.2d at 379, 385-86 (finding that generically referenced "materialmen" were third-party beneficiaries to public construction contract). Second, the city's contract with Respondent specifically referred to payments to "employees," and Appellants are undeniably part of this class. Appellants' Add. 1. Finally, the court did not address the practical effect of Respondent's compliance with the ordinance. As discussed above, by agreeing to pay its employees the wage mandated by the ordinance, Respondent necessarily committed to

pay Appellants a specific wage. Appellants were therefore intended beneficiaries of the wage requirements of the contract.

III. LACHES DOES NOT APPLY IN THIS CASE.

The court of appeals *sua sponte* concluded that, as a matter of law, Appellants' unjust enrichment claim is barred by laches. *Caldas*, 2011 WL 1938307, at *4. The court erred as a matter of law in reaching this conclusion.

Unjust enrichment permits a plaintiff to recover when a defendant knowingly received something of value “for which the defendant in equity and good conscience should pay.” *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996) (quotation omitted). Laches is an equitable defense that bars a plaintiff's claim when the plaintiff was not diligent in asserting a known right and the defendant has been prejudiced by the delay. *Clark v. Reddick*, 791 N.W.2d 292, 294 (Minn. 2010). Unless a delay results in a substantial injury to an innocent party, however, laches does not apply when a cause of action is governed by a statute of limitations. *Aronovitch v. Levy*, 238 Minn. 237, 241, 56 N.W.2d 570, 574 (1953).

The statute of limitations to bring a claim to recover unpaid wages is two years, or three years if the nonpayment is willful. Minn. Stat. § 541.07(5) (2010). This statute applies to an unjust-enrichment claim when the claim is for the recovery of unpaid wages. *See Roaderick v. Lull Eng'g Co.*, 296 Minn. 385, 387-88, 208 N.W.2d 761, 763 (1973) (holding that Section 541.07(5) applied to claim for wages based on quantum meruit or unjust enrichment).

In this case, Appellants demanded payment of unpaid wages and, within a few months after their employment ended, filed suit against Respondent. Because Appellants filed their claim within the applicable statute of limitations, and no innocent party incurred a substantial injury by any delay, laches does not bar Appellants' claim.

Unjust enrichment and laches are both equitable concepts. *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002) (laches); *Lundstrom Constr. Co. v. Dygert*, 254 Minn. 224, 231, 94 N.W.2d 527, 533 (1959) (unjust enrichment). Equity supports Appellants' unjust-enrichment claim and, even without an applicable statute of limitations, equity does not support the court of appeal's laches analysis.²

Respondent obtained a public contract based on its commitment to pay its employees the wages mandated by the city's ordinance. The contract price presumably accounted for this commitment and Respondent received money from the city to, in part, pay Respondent's employees the contractually required wages. Appellants earned the wages by working for Respondent and Respondent benefited from their labor, but Respondent has refused to pay Appellants the full amount of wages to which they are entitled. Allowing Respondent to retain the wages that Appellants earned results in

² The court of appeals concluded that Appellants unreasonably delayed bringing their claims and that Respondent was prejudiced. *Caldas*, 2011 WL 1938307, at *4. But Appellants filed their claim within a few months of ending their employment, and the court did not cite any evidence of, or otherwise explain, how Respondent was prejudiced. See *Elsen v. State Farmers Mut. Ins. Co.*, 219 Minn. 315, 321, 17 N.W.2d 652, 656 (1945) (recognizing that mere delay does not constitute laches). Requiring Respondent to pay wages that it wrongfully retained cannot constitute the prejudice necessary for laches. See *Aronovitch*, 238 Minn. at 243, 56 N.W.2d at 574 (identifying circumstances that would implicate laches, such as death of a material witness, or change in circumstances or passage of time so significant that evidence has been lost or time has impeded ability to ascertain essential facts).

unjust enrichment. See *Anderson v. DeLisle*, 352 N.W.2d 794, 796 (Minn. Ct. App. 1984) (reversing dismissal of unjust-enrichment claim when land seller “stood silent and watched [the intended land buyer] make extensive improvements to [the seller’s] property” even though the seller knew the buyer would likely be unable to ultimately purchase property).

Because the employees in this case pursued their claims for unpaid wages within a reasonable time and the applicable statute of limitations does not preclude their claims, the court of appeals erred by holding that laches barred the claims. Moreover, the equities clearly support Appellants’ recovery of the wages they are owed.

CONCLUSION

For the above reasons, the Court should reverse the decision of the Minnesota Court of Appeals.

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