

SUPREME COURT OF VERMONT

Stowell v. Action Moving & Storage, Inc.

182 Vt. 98 (2007) · Decided June 1, 2007

SUMMARY

The Vermont Supreme Court held that commission payments constitute wages under Vermont's wage-payment statutes. It further held that the employer violated the statute by withholding commissions owed after the employee's resignation, making the employee eligible for double damages, costs, and attorney's fees.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley, J.
JURISDICTION	Vermont
DECIDED	June 1, 2007
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed the Vermont Superior Court's denial of statutory penalties, costs, and attorney's fees under 21 V.S.A. § 347 after the court awarded him unpaid commission payments on a breach-of-contract theory.
STANDARD OF REVIEW	Questions of statutory construction are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Arthur Stowell v. Action Moving & Storage, Inc.

TOPICS

- wage and hour
- employment law
- statutory interpretation
- damages
- remedies

PRACTICE AREAS

- employment law
- wage and hour
- statutory interpretation
- remedies

QUESTIONS PRESENTED

1. Whether commission payments are wages under Vermont's wages-and-medium-of-payment statutes, 21 V.S.A. §§ 341-347.

2. Whether the employer violated 21 V.S.A. § 342 by failing to pay commissions owed after Stowell resigned.
3. Whether Stowell could maintain an action for statutory penalties under 21 V.S.A. § 347 while some commissions remained unpaid when suit was filed.
4. Whether § 347 provides double damages or treble damages in addition to actual unpaid wages.

HOLDINGS

1. Commission payments are wages for purposes of Vermont's wages-and-medium-of-payment law.
2. The employer violated 21 V.S.A. § 342 by failing to pay commissions due for Stowell's final long-haul job.
3. An employee may maintain an action under § 347 when some wages remain unpaid at the time suit is filed; the employee need not wait until all possible commission-related damages have accrued.
4. Section 347 provides double damages consisting of actual unpaid wages plus a penalty equal to the unpaid wages, not treble damages in addition to actual damages.

KEY QUOTATIONS

“Given the wording of our statute and the many decisions from other states construing the term “wages” in the context before us, we hold that commission payments are wages for purposes of our wages-and-medium-of-payment law.” (182 Vt. at 104)

“In our view, defendant violated § 342(c) under any reasonably possible construction of its terms.” (182 Vt. at 106)

“The plain language of § 347 covers any violation of § 342. Since we have held that defendant violated § 342, § 347 necessarily applies.” (182 Vt. at 109)

“In sum, we conclude that § 347 entitles an employee to double damages.” (182 Vt. at 112)

FACTUAL BACKGROUND

Action Moving employed Stowell as a truck driver in 2002, initially paying him hourly for local hauling and later paying him commissions for long-haul jobs. The employer provided weekly advances, later calculated commissions from Atlas Van Lines distribution records, and withheld amounts for expenses and a reserve against potential damage claims. After Stowell resigned, the employer made some payments, determined that it had overpaid him, and refused further payment even though the superior court found that additional commissions were owed.

PROCEDURAL HISTORY

After a two-day trial, the superior court found that Stowell was owed unpaid commissions and initially awarded \$280.24. The court later amended the judgment to \$2,740.72 but continued to deny penalties and attorney's fees under § 347. Stowell appealed, and the Vermont Supreme Court affirmed in part, reversed in part, and remanded.

DISPOSITION

REMAND INSTRUCTIONS

The superior court must determine the amount of costs and reasonable attorney's fees due under 21 V.S.A. § 347. The judgment for \$5,481.44 in double damages is otherwise established, consisting of \$2,740.72 in actual damages and an equal penalty.

CASES CITED

- State v. Carpenter, 138 Vt. 140, 412 A.2d 285 (1980)
- Zablow v. Dep't of Employment Sec., 137 Vt. 8, 398 A.2d 305 (1979) (per curiam)
- Carter v. Fred's Plumbing & Heating, Inc., 174 Vt. 572, 816 A.2d 490 (2002) (mem.)
- Wright v. Bradley, 2006 VT 100, 180 Vt. 383, 910 A.2d 893
- In re Estate of Cote, 2004 VT 17, 176 Vt. 293, 848 A.2d 264
- Quinn v. Pate, 124 Vt. 121, 197 A.2d 795 (1964)
- Licocci v. Cardinal Assocs., 492 N.E.2d 48 (Ind. Ct. App. 1986)
- Brown v. Navarre Chevrolet, Inc., 610 So. 2d 165 (La. Ct. App. 1992)
- Cmty. Telecomm. Corp. v. Loughran, 651 A.2d 373 (Me. 1994)
- J Squared, Inc. v. Herndon, 822 N.E.2d 633 (Ind. Ct. App. 2005)
- Swett v. Haig's, Inc., 164 Vt. 1, 663 A.2d 930 (1995)
- Kerr & Elliott v. Green Mountain Mut. Fire Ins. Co., 111 Vt. 502, 18 A.2d 164 (1941)
- Burke v. Port Result Realty Corp., 1999 ME 138, 737 A.2d 1055
- Houben v. Telular Corp., 231 F.3d 1066 (7th Cir. 2000)
- Lee v. Great Empire Broad., Inc., 794 P.2d 1032 (Colo. Ct. App. 1990)
- State v. O'Neill, 165 Vt. 270, 682 A.2d 943 (1996)
- Lanphear v. Tognelli, 157 Vt. 560, 601 A.2d 1384 (1991)
- Longariello v. Windham Sw. Supervisory Union, 165 Vt. 573, 679 A.2d 337 (1996) (mem.)
- In re Margaret Susan P., 169 Vt. 252, 733 A.2d 38 (1999)
- State v. Weller, 152 Vt. 8, 563 A.2d 1318 (1989)
- Butler v. Hartford Tech. Inst., 704 A.2d 222 (Conn. 1997)
- Schilling v. Radio Holdings, Inc., 961 P.2d 371 (Wash. 1998)
- Sanborn v. Brooker & Wake Prop. Mgmt., Inc., 874 P.2d 982 (Ariz. Ct. App. 1994)
- Polk v. Larrabee, 17 P.3d 247 (Idaho 2000)
- Stevenson v. Branch Banking & Trust Corp., 861 A.2d 735 (Md. Ct. Spec. App. 2004)