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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR**

**FILED**  
COURT OF APPEALS - FIRST APP. DIST.

**FEB - 6 1998**

**RON D. BARRON, CLERK**

A077454

By \_\_\_\_\_  
DEPUTY

**DOUG WINFREY et al.,**  
Plaintiffs and Appellants,  
v.  
**CHIEF AUTO PARTS, INC.,**  
Defendant and Respondent.

(San Francisco County  
Super. Ct. No. 974016)

Doug Winfrey, Kevin Gray and Brian Lowenberg (collectively, appellants) are current or former employees of Chief Auto Parts, Inc. (Chief or respondent). Appellants sued Chief as representatives of a large class of current and former nonexempt Chief employees. The gravamen of their claim was that Chief engaged in a systematic practice of denying them rest periods as required by California law. Their complaint sought damages in the form of restitution of lost wages for the portions of the rest periods they were required to work, as well as declaratory and injunctive relief. Appellants also sought relief under Business and Professions Code section 17200 et seq., based on a claim that Chief's rest period policies constituted an unfair business practice. Appellants appeal the trial court's denial of their motion for class certification. We reverse.

**I. PROCEEDINGS IN THE TRIAL COURT**

In their moving papers in support of the motion for class certification (motion), appellants first noted that California law requires employers to permit their employees to take a 10-minute "rest period" for each 4-hour work period. (Industrial Welfare Commission (IWC) Order No. 7-80.) They then asserted that Chief required all its California employees to sign a so-called "California Meal/Rest Period Agreement" which

provided: "For mutual consideration contained herein [Chief], in order to meet the requirements of the laws governing employees' meal/rest periods as set forth by [IWC] Order No. 7-80 [and each named employee] do hereby agree as follows: . . . [¶] (2) Chief will allow the employee, when his/her work period exceeds four (4) hours, to have a ten (10) minute rest period (the 'rest period') for each four (4) hours worked while on duty. [¶] (3) Chief will pay the employee for these meal rest periods which are taken on duty. 'On duty' is hereby defined as non-relieved work periods. [¶] (4) The employee agrees to serve customers and/or maintain control of the audit situation during the meal/rest periods and understands that he/she will not be relieved of work duties during these periods." Appellants contended that Chief's policies violated their statutory right to "off duty" rest breaks.

Appellants went on to note that their class was of such a size—11,600 current and former employees—and geographic distribution—all within California—that class certification was appropriate. They then asserted that Chief's "uniform" policy, as evidenced by Chief's requirement that each employee sign its rest period agreement, meant that common issues of law and fact predominated within the proposed class. They finally argued that their individual claims were typical of the class and that class certification constituted a "superior means" of achieving justice.

In its opposition to the motion, Chief did not take issue with many of appellants' factual and legal assertions. Instead, Chief asserted that it had a policy and a practice of providing rest periods in conformance with California law. Chief then asserted that common issues of law and fact did not predominate principally because Chief did not, in fact, have a uniform policy or practice of denying rest breaks, thus requiring each employee to prove liability on an individual basis. Chief also contended that a class action was inappropriate because the California Labor Commission provided a superior forum for resolving the employees' claims. Appellants' reply took issue with each of Chief's assertions.

The trial court issued a tentative decision, granting appellants' motion. At oral argument, Chief noted that appellants had the burden of proving that class treatment was appropriate because common issues of fact and law predominate and asserted that appellants had "utterly failed to show that there is any centralized control or administration over that unfortunately-worded meal rest period agreement . . . ." The court responded that there was certainly some centralized control because all employees were required to sign the agreement. Chief replied that what was at issue was the implementation of the policy. Chief went on to argue that appellants had presented no evidence that anyone in Chief management ever "hailed out" the agreement as a vehicle for denying an employee an off-duty break. Chief argued that permitting class certification based on the agreement would preclude its bringing in store managers to say that they had never denied their employees an uninterrupted, off-premises break. Chief further argued that the issues of individual liability and damages were so closely tied that class treatment was inappropriate. Appellants replied that the legality of Chief's policies and the propriety of Chief's requiring each employee to sign the agreement were certainly issues in common to all employees and that each individual's "response" to those policies would be resolved at the damages phase.

The court responded that that was the way the court had "conceptualized" matters when it issued its tentative ruling. The court then asked what would be gained by ruling that Chief's policies violated the law because it would still be necessary to have an "individual assessment" of damages. A discussion then ensued about the procedure which would be employed if a court ultimately found Chief liable, followed by a discussion of the measure of recovery under appellants' various theories. Appellants then reiterated their claim that the illegality of Chief's policies was a question common to all class members. The court replied: "That is a common question. The question still remains whether or not this is a superior method for resolution of these claims. . . ." Chief then noted that much of the relief sought by appellants—specifically injunctive and

declaratory relief—could be realized regardless of whether or not the court certified the class.

Appellants concluded their argument by asserting that class certification was not inappropriate even if each class member were required to establish his or her eligibility for recovery, as well as the amount of recovery to which he or she was entitled. The court then asked whether or not it could establish “guidelines” for referees who would then adjudicate each individual’s claim on both liability and damages questions. Chief suggested that such an “advisory” might be “efficient.” The court then took the motion under submission. When the court issued its written order, denying appellants’ motion, the order did not set forth any reasons for the court’s decision. Accordingly, appellants sought “reconsideration” for the sole purpose of learning the bases for the trial court’s decision. That motion was also denied without explication.

## II. ANALYTICAL FRAMEWORK AND STANDARD OF REVIEW

“Code of Civil Procedure section 382 authorizes class action suits in California ‘when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . .’ The party seeking certification as a class representative must establish the existence of an ascertainable class and a well-defined community of interest among the class members. [Citation.] The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. [Citation.]” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470 (*Richmond*)). In addition, a party seeking class certification must establish that proceeding in the form of a class action will provide substantial benefits to both the litigants and the court. (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 459.) In that context, one seeking certification must establish that a class action provides a

superior forum for resolution of the controversy. (*Caro v. Proctor & Gamble Co.* (1993) 18 Cal.App.4th 644, 657-660 (*Caro*.)

Trial courts are accorded great, but not unbridled, discretion with regard to class certification. "For example, in the absence of other error, this court will not disturb a trial court ruling on class certification which is supported by substantial evidence unless (1) improper criteria were used [citation]; or (2) erroneous legal assumptions were made [citation]." (*Richmond, supra*, 29 Cal.3d at p. 470.) "Appeal of an order denying class certification 'presents an exception to the general rule on review that we look only to the trial court's result, not its rationale.' [Citation.]" (*Caro, supra*, 18 Cal.App.4th at p. 655.)

Because the trial court gave no reasons for its decision in the case at bench, we face the initial problem of examining the court's rationale without knowing what that rationale was. Appellants suggest that we should undertake something akin to a *de novo* review of the proceedings below. However, Chief notes that the trial court was not required to state its reasons for denying certification in the absence of a request for a statement of decision, citing *Stephens v. Montgomery Ward* (1987) 193 Cal.App.3d 411, 417-418. Chief argues that, in the absence of a statement of decision, we should affirm if the trial court's decision is correct "on any ground." Chief goes on to reason that the trial court's failure to give reasons for its decision effectively makes it impossible for appellants to demonstrate, as required under the authorities cited above, that the court abused its discretion by employing improper criteria or making erroneous legal assumptions.

Our review of the trial court's decision is aided somewhat by examining which of appellants' claims were actually controverted by Chief in opposing the motion. Simply put, Chief only challenged two of appellants' claims—(1) that common issues of law or fact predominated and (2) that a class proceeding constituted a superior forum. In addition, oral argument focused exclusively on those two issues. Thus, we can presume,

for purposes of review, that the trial court agreed with Chief's views on one or both of those issues.

Accordingly, we will review the parties' arguments and the evidence and authorities presented on those two issues.<sup>1</sup> We reverse because we find that the court must have used improper criteria on the first issue and must have made an erroneous legal assumption on the second. (*Richmond, supra*, 29 Cal.3d at p. 470.)

### III. ANALYSIS

#### A. *The Trial Court Erred in its Implied Finding that Common Issues of Law or Fact Do Not Predominate*

Determining whether or not common issues of fact or law predominate in the case at bench depends on how one frames the issues to be resolved at trial. Appellants asserted below and contend here that the principal issue to be resolved for *all* class members is whether or not Chief's written policy violates California law. As appellants see it, requiring an employee to remain on duty during "breaks" constitutes a violation of IWC Order 7-80—period. Appellants buttressed that claim below by presenting deposition testimony from Chief's regional human resource manager, Howard Kelley, who opined that Chief's policy "does not conform" to California law. Appellants also presented declarations from Gray and Lowenberg to establish that Chief's illegal policy had been implemented. Both stated that they had been required to sign Chief's rest period agreement and that they and other employees had been denied off duty rest breaks.

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<sup>1</sup> Chief also contended before the trial court that, because Winfrey, Gray and Lowenberg sought injunctive relief and restitution of unpaid wages on behalf of all those similarly situated under Business and Professions Code section 17200 et seq., class certification of their other claims was unnecessary. However, before this court, Chief does not reiterate that contention but, instead, argues that class certification of appellants' Business and Professions Code claims should be denied for the same reasons as their other claims. Because, as reflected in part III, *post*, we find that the trial court erred in its implied conclusions about class certification, generally, we do not separately discuss appellants' Business and Professions Code claims.

Chief countered by arguing, factually, that it did and does give its employees rest breaks, as contemplated by IWC Order No. 7-80. Chief noted that Winfrey, Gray and Lowenberg had testified at their depositions that they were, in fact, allowed breaks in which they could buy snacks, make calls and use the rest room, subject to interruption if the stores in which they worked became busy. Chief also noted appellants had introduced no evidence indicating that employees had not been paid for those breaks. Here, Chief also argues that no evidence was introduced below to indicate that employees did not receive a "net" 10 minutes of break time for each 4-hour work period. Thus, Chief reasons that appellants could not and cannot establish a violation of Wage Order 7-80.

Chief also argued that, even if its written policy constituted a violation of California law, class treatment was still inappropriate. Chief noted that each member of the class would still be required to demonstrate "that he or she failed to receive rest periods." Chief also noted that it would then have the right to introduce testimony of managers and other employees to refute each individual's claim that he or she was denied uninterrupted breaks and that each individual employee would have to prove an individual damages case, based on his or her salary and the number of breaks denied. Accordingly, Chief asserted that individual issues predominate over common issues.

Based on the arguments and evidence presented below, the trial court could have concluded that common issues of fact or law did not predominate on one of two theories: either appellants' claim that Chief has a break policy which violates California law is without merit, or the predominance of unique issues for each individual class member vitiates the vehicle of a class action. We will consider both possibilities.

If the trial court denied appellants' motion based on its conclusion that Chief's break policy does not violate California law, the trial court erred in doing so, and such error may properly be cast as application of improper criteria. Appellants had the burden of proof on the motion, but that burden did not extend to establishing that their claim was necessarily meritorious. "A motion to certify a class is not a trial on the merits, nor does

it function as a motion for summary judgment. "The court may consider the merits of the claim only to determine whether there is a *realistic chance* for recovery." [Citation.] (*Carabini v. Superior Court* (1994) 26 Cal.App.4th 239, 245.) Appellants made that point below, and Chief conceded it, noting that the "question of whether the terms of the Agreement violate California law exceeds the scope of [appellants'] motion; resolution of that question is unnecessary to determine whether a class should be certified. . . ." As such, the criterion the court should have applied was whether or not appellants had a "realistic chance" of recovery. Here, the declarations of Gray and Lowenberg unequivocally established a *prima facie* case that Chief had *implemented* a policy of denying employees uninterrupted breaks—a sufficient showing for purposes of the motion. If the trial court went beyond that showing to reach the merits of the case (and, presumably, to find that appellants' case was unmeritorious), it would have applied an improper criterion in doing so.

A decision based on the conclusion that common issues of fact or law do not predominate would likewise have been based on improper criteria. The court may have been influenced by Chief's argument that, even if appellants succeeded in establishing that Chief's break policy is illegal, each individual employee would still be required to demonstrate that he or she was denied uninterrupted breaks and to prove the damages associated with such lost breaks and that the necessity of proving each individual's entitlement to recovery and the amount of such recovery rendered use of a class action inappropriate. However, such an argument should not have prevailed. "[A] class action is not inappropriate simply because each member of the class may at some point be required to make an individual showing as to his or her eligibility for recovery or as to the amount of his or her damages." (*Employment Development Dept. v. Superior Court* (1981) 30 Cal.3d 256, 266.) The cases cited by Chief in which class determination was purportedly denied based on the necessity of making individual damages assessments are inapposite.

Chief first cites *Kennedy v. Baxter Healthcare Corp.* (1996) 43 Cal.App.4th 799, 811 (*Kennedy*). In *Kennedy*, the plaintiffs sought recovery from numerous manufacturers of latex surgical gloves on behalf of all persons who had sustained allergic reactions, stemming from use of those gloves. The Court of Appeal upheld the trial court's sustaining of a demurrer to the complaint without leave to amend. The court found that numerous individual issues predominated on liability, causation and damages. The court noted that there would be dramatic differences in the nature of the injuries claimed, as well as questions relating to comparative negligence, assumption of the risk, and mitigation of damages. However, the court particularly noted that each individual would be required to establish causation—that is, that the gloves caused whatever problems they encountered. The court concluded that the sum total of individual issues certainly predominated over the common issues. (*Kennedy, supra*, 43 Cal.App.4th at pp. 810-811.) *Kennedy* stands in stark contrast to the case at bench where—assuming that Chief's policy is found illegal—each claimant would only be required to prove (a) that he or she was denied uninterrupted breaks, (b) the number of such "breaks," and (c) the value of such lost breaks, based on his or her rate of pay.

Chief also cites *Osborne v. Subaru of America, Inc.* (1988) 198 Cal.App.3d 646, 657 (*Osborne*); *D'Amico v. Sitmar Cruises, Inc.* (1980) 109 Cal.App.3d 323, 326; *Altman v. Manhattan Savings Bank* (1978) 83 Cal.App.3d 761, 768-769; and *Stilson v. Readers Digest Assn., Inc.* (1972) 28 Cal.App.3d 270, 274. In *Osborne*, the Court of Appeal upheld the trial court's choice not to certify a nationwide class of car owners seeking recovery for manufacturing defects in Subarus sold over a three-year period, based on the predominance of numerous individual issues, including variances in law from state to state relating to theories of liability and the nature and measure of the damages which could be claimed by class members. (*Osborne, supra*, 198 Cal.App.3d at pp. 654-662.) No such individual liability or damages issues present themselves in the case at bench. *D'Amico, Altman and Stilson* involved claims for emotional distress which each court

determined were too individualized to justify class treatment. Obviously, no such claims have been advanced by appellants.

Finally, the question of whether or not Chief has adopted a rest period policy which violates California law is the predominant issue in the case. If the trial court determines that Chief's policy does not violate the law, that will end the case. If the court determines that the policy does violate the law, the issue of entitlement to recovery will be simply resolved by determining whether or not each class member was denied legal breaks. Once it is determined that an individual has been denied legal breaks, the *measure* of recovery will not vary from individual to individual (although individual calculations will be required).

Common issues of law and fact predominate in the case at bench. If the trial court's decision to deny class certification were based on a conclusion that common issues do not predominate, the court could only have used improper criteria in reaching that conclusion.

***B. The Trial Court Erred in Its Implied Finding that a Class Action is Not a Superior Method of Resolving the Controversy Between Chief and Its Employees***

As noted, Chief also argued that the trial court should not grant class certification because another, superior forum—the California Labor Commission—existed (exists) in which the controversy between Chief and its employees could be resolved. Chief argued that the Labor Code mandates resolution of each individual's claim within a very short period of time.<sup>2</sup> Chief also asserted that the Labor Commission employs hearing officers who are "experts" in applying California labor law and that the Labor Commission system is more efficient in almost every respect than a class action lawsuit.

As a general rule, trial courts are "... to carefully weigh respective benefits and burdens and to allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts. [Citations.]" (*Caro. supra.* 18 Cal.App.4th at p.

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<sup>2</sup> Chief suggested that each claim must be resolved within five months.

658.) The idea that courts should consider the availability of other procedures which could resolve the controversies between the litigants arises from that admonition. (*Id.* at pp. 660-661.)

Here, the Labor Commission is certainly an available forum for individual Chief employees to seek redress for Chief's rest period policies; however, it is not a superior one for a number of reasons. First, requiring individuals to file separate claims with the Labor Commission would greatly tax the commission, and it would not guarantee that the courts would not be burdened by thousands of individual lawsuits because decisions of the commission are subject to de novo review in the courts. (Lab. Code, § 98.2, subd. (a).) Second, the initial question to be resolved on all claims is whether or not Chief's rest period policy violates California law. Thus, there is a possibility that different commissioners and different courts—if the decisions are appealed—may reach different conclusions regarding that threshold question. Resolution of that question on one occasion in one forum is of benefit to the courts, the Labor Commission and the litigants.

In sum, the issue to be resolved by the trial court was not whether or not *another* forum was available in which the controversy between Chief and its employees *could* be resolved. The issue was whether or not a class action constituted a *superior* forum for doing so. As analyzed above, a class action is plainly a superior forum to the Labor Commission. If the trial court concluded that the benefits of a class action did not outweigh the burdens associated with its maintenance, it must have assumed—erroneously—that the Labor Commission's availability and/or ability to resolve many individual claims was sufficient to deny class certification.

#### IV. CONCLUSION

The order of the trial court, denying class certification is reversed. Chief to bear costs of appeal.

McGuiness, J.

We concur:

Poché, Acting P.J.

Reardon, J.

*A077454, Winfrey v. Chief Auto Parts, Inc.*