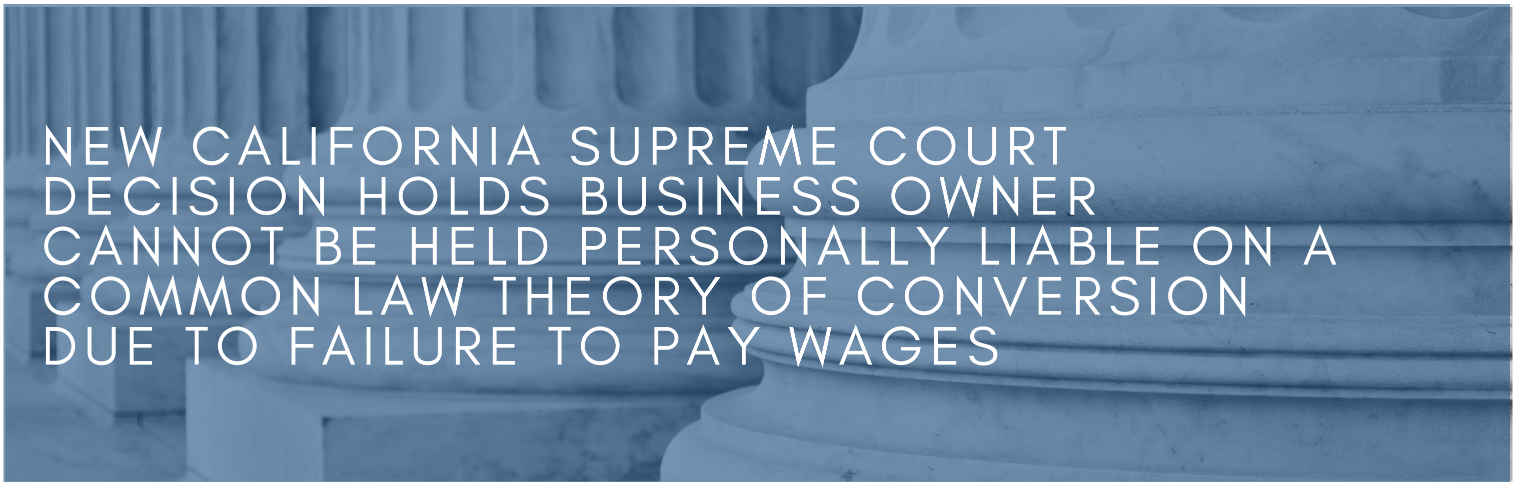

NEW CALIFORNIA SUPREME COURT DECISION HOLDS BUSINESS OWNER CANNOT BE HELD PERSONALLY LIABLE ON A COMMON LAW THEORY OF CONVERSION DUE TO FAILURE TO PAY WAGES

Last week the California Supreme Court issued its decision in *Voris v. Lampert* in which it affirmed a Court of Appeal ruling that the common law theory of conversion does not apply to unpaid wage claims.

The *Voris* decision involved a co-founder of a group of real estate investment startups who was fired after he raised financial improprieties involving his business partners. Voris was successful in his wage claims against the business entities. However, he was unable to collect because the start-ups were insolvent. Voris instead attempted to obtain a recovery from one of his former business partners who Voris alleged wrongfully converted his earnings by improperly draining the startups of the assets that should have been used to pay his wages.

In the simplest of terms, conversion is the wrongful exercise of dominion over another's personal property. Although there are a number of exceptions, money generally cannot be the subject of a conversion claim. Voris asserted that his claim for unpaid wages should fall under one of the exceptions. The Supreme Court rejected this argument based on somewhat academic legal principles involving the identifiability of the funds at issue and the distinction between tort and contract claims.

For employers the technicalities of a conversion claim are less important than the reminder in the decision's extensive discussion of California's public policy favoring full and timely payment of wages that even without a viable conversion claim, there are many alternate legal theories under which corporate business owners can be held personally liable for failure to pay wages or other Labor Code violations.

Important Notes for Business Owners:

- Labor Code section 558.1 was not in effect at the time Voris's suit was originally filed and was not at issue in the *Voris* opinion. It provides that individual owners, officers, directors or managing agents may be personally liable for non-payment of wages, failure to reimburse expenses or other Labor Code violations. In some circumstances, they may also be liable for civil penalties or subject to criminal prosecution under other statutes. Incorporation or organization into an LLC does not prevent this personal liability.

- Individual owners may also be personally liable for non-payment of wages under other legal theories not at issue in the *Voris* opinion, including as alter egos of the business.

- Depending on the circumstances, owners, shareholders, and partners may be able to assert wage or other claims as employees.

- An operating agreement that defines owners' respective responsibilities and contains contingency plans for how decisions will be made in the event of disputes or closure of the business is a critical planning tool that can help ensure that liabilities like wages are properly paid.

Interested in discussing an operating agreement, potential wage liabilities to an owner-worker, potential personal liability or other questions related to this article? Contact any member of Donahue Fitzgerald's Employment Law group.

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