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The Talent Agencies Act: Does One Year Really Mean One Year?

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Introduction

The California Court of Appeal recently answered the question posed by other recent appellate court cases: "Does the one-year limitations period mandated by California's Talent Agencies Act[1] really mean one year?" California Labor Code section 1700.44(c) provides what the Labor Commissioner used to refer to as a "very strict" statute of limitations for all cases filed under the Act. Section 1700.44(c) provides that: "[n]o action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding."

In *Park v. The Deftones,*[2] the court, citing two Labor Commission cases (including one brought by The Deftones against Park[3]), held that the one year limitations period is revived when a manager (or other unlicensed individual) sues the artist. As discussed in *Park* the "Labor Commissioner's interpretation . . . assures that the party who has engaged in illegal activity may not avoid its consequences through the timing of his own collection action."[4]

I
Styne v. Stevens

In *Styne v. Stevens,*[5] the same District of the Court of Appeal held that although a lawsuit by a manager revives the one-year limitations period, it is only revived for one year. Thus an artist must commence a Labor Commission proceeding within one year of being put on notice that the manager made a claim against the artist *and* that he or she violated the Act.

In that case, Styne had been the personal manager and close friend of Connie Stevens for over 20 years. By December of 1988,

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1. Cal. Lab. Code § 1700 *et seq,* (2000). For a detailed discussion of the Act and many of the reported and unreported cases that have been decided by the Labor Commissioner and by California courts. *See* Edwin F. McPherson, *The Talent Agencies Act - A Personal Manager's Nightmare*, LOS ANGELES LAWYER, June 1994; Edwin F. McPherson, *The Talent Agencies Act: Time For A Change*, 19 HASTINGS COMM/ENT L.J. 899 (1997).

2. 71 Cal. App. 4th 1465 (1999).

3. *See* Moreno v. Park, Labor Commissioner Case No. TAC 9-97, p.4 (1998).

4. *Park*, 71 Cal. App. 4th at 1469.

5. 78 Cal. App. 4th 17 (Cal. Ct. App. 2000), *petition for review granted*, 1 P.3d 2 (2000), 2000 Cal. LEXIS 4546.

Stevens was in financial trouble and "needed to ensure a secure financial future for herself and her children."[6] At that time, Styne was introduced to a representative of the Home Shopping Network ("HSN"), which was the most successful company in the early stages of television direct sales.[7]

At the time Stevens was involved in a partnership with another friend, developing a beauty product line that was designed for use with a patented wrinkle-removing device. Styne introduced Stevens to HSN. She advised HSN that she was not interested in becoming a product spokesperson for the network, but wanted to sell her own line of beauty products on HSN.[8] Styne participated in numerous meetings and telephone conversations with HSN in order to "protect Stevens' interests *vis-a-vis* HSN," after which Stevens and her partner received HSN's first order for one million dollars in beauty products.[9]

Stevens offered Styne "10% of a company that's going to be formed," and Styne agreed.[10] Shortly after HSN placed its first order, Stevens formed a corporation in which her partner was a profit participant. They each agreed to give Styne 5% from their share of the profits from the venture.[11]

Over the next four years, Styne received regular checks from Stevens for his participation. Although the product was a "huge success", and Stevens was earning millions of dollars, Styne only received "a fraction of the 10% that was due to him pursuant to his agreement with Stevens." Stevens offered to "set aside the lion's share of Styne's profits from [the product] and held them in trust for Styne's benefit until he needed them."[12] Ultimately, however, Stevens denied that she had agreed to hold any monies in trust for Styne, and refused to pay him the balance of the 10%.[13]

In 1996, Styne commenced an action against Stevens for breach of contract, breach of fiduciary duty, accounting, breach of express trust, imposition of constructive trust, constructive fraud, and declaratory relief. In her Answer, Stevens did not allege that Styne had violated the Talent Agencies Act when he engaged in discussions

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6. *Id.*
7. Appellant's Opening Brief at 8, *Styne* (No. B121208).
8. *Id.* at 9.
9. *Id.*at 10.
10. *Id.*
11. *Id.* at 11.
12. *Id.* at 12.
13. *Id.* at 13.

with HSN. However, approximately 15 months after the Answer was filed, and 18 months after the action was initiated, Stevens moved for summary judgment on the ground that the alleged agreement violated the Act, and was therefore void.[14]

In the Motion, Stevens asserted that Styne's efforts in introducing her to HSN, promoting her interests to HSN, arranging a key meeting with HSN, and arranging for her to appear on the network to promote her product amounted to procurement within the meaning of the Act.[15]

Styne denied that his efforts violated the Act. He claimed that he did nothing more than facilitate the sale of Stevens' products, and never procured employment for Stevens.[16] He further claimed that the issue of the validity of the agreement under the Act was exclusively within the province of the California Labor Commissioner.[17] The trial court denied the motion.[18]

At trial, Stevens proposed a jury instruction that proposed the jury determine whether Styne had violated the Act.[19] The trial court refused the instruction.[20]

The evidence showed that "Styne was actively engaged in promoting Stevens's employment opportunities."[21] In recent years, when Stevens' services were "less in demand," and she was "facing financial hardship," Styne "took steps toward obtaining employment for Stevens as a spokesperson for products, recording albums, and appearing in concert engagements through HSN.[22]

The jury found in favor of Styne, and awarded him $4,330,370.[23] Stevens moved for judgment notwithstanding the verdict and for a new trial.[24] The trial court granted the new trial motion on the ground that it had prejudicially erred in failing to instruct the jury on the requirements of the Act.[25]

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14. *See Styne*, 78 Cal. App. 4th at 20-21.
15. *See id.* at 20-23.
16. *See id.* at 21-22.
17. *See id.*
18. *See id.*
19. *See id.*
20. *See id.*
21. *Id.*
22. *Id.*
23. *See id.* at 22.
24. *See id.*
25. *See id.*

II
Scope of the Act

The court first engages in a brief discussion of the general scope of the Act. The court cites both *Waisbren v. Peppercorn Productions, Inc.*[26] and *Wachs v. Curry*[27] as general authority for the scope of the Act and the type of activity that the Act prohibits.[28] Both cases, however, are completely contradictory and were both decided by the same District of the Court of Appeal.

The *Wachs* case holds unequivocally that procurement activities, in order to constitute a violation of the Act, "must be a significant part of the [manager's] business as a whole."[29] If the procurement activities are "incidental" to the manager's legitimate business of advising, counseling, directing, and coordinating an artist's career, then there is no violation of the Act.[30]

The *Waisbren* case, on the other hand, holds (again unequivocally) that "[e]ven incidental or occasional procurement of employment . . . subjects a party to the Act's licensing scheme."[31] Therefore, any procurement activity by a manager, no matter how small and no matter how "incidental" to any legitimate activities, is a violation of the Act.[32]

The *Styne* case discusses the two contrary holdings, acknowledging that they are mutually exclusive, but does not appear to take a stand as to which holding it is adopting as law.[33]

III
Jurisdiction of Courts

The court then discusses the jurisdiction of the court to decide Talent Agencies Act issues in the first instance. The court recognizes that although both parties have a right to seek *de novo* review (to the Superior Court) of a Labor Commission decision, "[t]he reference of disputes involving the act to the Commissioner is *mandatory*."[34]

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26. 41 Cal. App. 4th 246 (Cal. Ct. App. 1995).
27. 13 Cal. App. 4th 616 (Cal. Ct. App. 1993).
28. *See Styne*, 78 Cal. App. 4th at 23.
29. *See id.* (*quoting Waisbren*, 41 Cal. App. 4th at 261).
30. *See id.*
31. *Id.* (*quoting Waisbern*, 41 Cal. App. 4th at 261).
32. *See id.*
33. *Id.; see also* McPherson, *The Talent Agencies Act: Time For A Change, supra* note 1 (discussing and analyzing the *Waisbren* and *Wachs* cases).
34. *Styne*, 78 Cal. App. 4th at 24.

Disputes *must* be heard by the Commissioner, and all remedies before the Commissioner *must* be exhausted before the parties can proceed to the superior court.[35]

Stevens, in her Respondent's Brief, argued that the exhaustion of remedies or original jurisdiction rule only applies when an artist is seeking affirmative relief from the manager, such as a disgorgement of fees, and not when an artist is simply using the Act "defensively."[36] "Styne's jurisdictional attack depends on the premise that 'Stevens sought relief under the Act.'[37] Stevens did not seek relief under the Act. She did not seek relief at all. Styne was the one who filed a complaint, and he sued on ordinary common law and equitable theories such as breach of oral contract, constructive fraud, and accounting, not on the Act.[38] Stevens' answer merely denies liability,[39] and she did not cross-complain. Stevens asserted the Act only as a *defense*. In that situation, the courts *do* have jurisdiction."[40]

Stevens cited *Waisbren* in support of her argument that the Labor Commissioner does not have exclusive original jurisdiction when the Act is being asserted defensively.[41] In *Waisbren*, a manager sued an artist for breach of contract and other causes of action.[42] The artist never commenced a Labor Commission proceeding, but instead moved for summary judgment on the ground that the manager had violated the Act.[43] The trial court granted the motion, and the Second District Court of Appeal affirmed, without any mention of the Labor Commissioner having "exclusive" (or any) jurisdiction.[44]

Styne argued in response that generally "the doctrine of exhaustion of administrative remedies applies equally to defenses and to actions for affirmative relief."[45] With respect to Stevens's reference

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35. *See id.* (*citing* REO Broad. Consultants v. Martin, 69 Cal. App. 4th 489, 494-95 (1999) (fn. omitted, original italics)); *see also* Buchwald v. Superior Court, 254 Cal. App. 2d 347 (1967); Garson v. Division of Labor Law Enforcement, 33 Cal. App. 2d 861 (1949); Humes v. MarGil Ventures, Inc., 174 Cal. App. 3d 486, 494-95 (1985); ABC Acceptance v. Delby, 150 Cal. App. 2d Supp. 826, 828 (1957).

36. Respondent's Brief at 10-12, *Styne* (No. B121208).

37. Appellant's Opening Brief at 18, *Styne* (No. B121208).

38. 1AA 1-21.

39. 1AA 69-74.

40. Respondent's Brief at 11, *Styne* (No. B121208).

41. *See id.*

42. *See* Waisbren, 41 Cal. App. 4th at 250.

43. *See id.*

44. *See id.* at 251-63.

45. Appellant's Reply Brief at 4, *Styne* (No. B121208), (*citing* South Coast Regional Com. v. Gordon, 18 Cal. 3d 832 (1977); People v. Coit Ranch, Inc., 204 Cal. App. 2d 52

to *Waisbren*, Styne argued that the case did not discuss the exhaustion issue, and there were not enough facts to determine whether or not the artist in that case actually did commence an action with the Labor Commissioner.[46]

The court agreed with Styne that the *Waisbren* court had not discussed whether or not the controversy was first referred to the Labor Commissioner.[47] The court held therefore, because *Waisbren* did not expressly discuss the failure of the artist to commence a Labor Commission proceeding, the case does not provide authority for the proposition that such a filing is not required.[48]

IV
Statute of Limitations

The parties then discussed the statute of limitations issue that was raised by Styne.[49] Styne correctly pointed out that recent Labor Commission cases had indicated that the filing of a suit by a manager against an artist is, in and of itself, a separate violation of the Act.[50] However, Styne also argued that, although the filing of the complaint may revive the statute of limitations, the artist, Stevens, either files a petition to determine controversy with the Labor Commissioner within one year, "or by asserting a claim in Superior Court – that could be characterized as bringing an 'action or proceeding . . . pursuant to [the Act].'"[51]

Stevens claimed that, like the exhaustion issue, the statute of limitations is "inapplicable when the Act is asserted only as a defense, citing the language from California Labor Code section 1700.44(c), which begins: "No action or proceeding shall be brought pursuant to

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(1962); Abelleira v. District Court of Appeal, 17 Cal. 2d 280, 293 (1941); Sampsell v. Superior Court, 32 Cal. 2d 763, 773 (1948); People v. West Publishing Co., 35 Cal. 2d 80 (1950); People v. Sonleitner, 185 Cal. App. 2d 350 (1960); People v. Keith Railway Equip. Co., 70 Cal. App. 2d 339 (1945).

46. Appellant's Reply Brief at 9, *Styne* (No. B121208)

47. *See Styne,* 78 Cal. App. 4th at 25 (noting that there was no such proceeding filed; nevertheless, the *Waisbren* court had no trouble adjudicating the Talent Agencies Act issues).

48. *See id.*

49. Appellant's Opening Brief at 23-26, *Styne* (No. B121208); Respondent's Brief at 15-17, *Styne* (No. B121208).

50. Appellant's Opening Brief, at 23, *Styne* (No. B121208), (*citing* Jenner v. Wallach, Labor Commission Case No. TAC 44-95 (1996), at 2; Anita Baker Bridgeforth v. BNB Associates, Labor Commission Case No. TAC 12-96 (1996), at 7).

51. *Id.* at 24 (*citing* Cal. Lab. Code § 1700.44(c)).

this chapter. . . ."[52] Stevens argued that this language very clearly only applies "when the litigant files suit, or seeks affirmative relief, under the Act."[53]

Stevens went on to state that the Labor Commissioner has repeatedly held that section 1700.44(c) does not apply to the use of the Act as a defense, citing *Rooney v. Levy*[54] and *Church v. Brown*.[55] In *Church*, the Labor Commissioner stated that statutes of limitations, including subsection (c), were "designed to bar the untimely assertion of affirmative claims for damages, and not to prevent the invocation of legitimate defenses based on purely defensive matter."[56]

Stevens further argued that claims that are otherwise barred by the relevant statute of limitations may be asserted as a defense, "especially those questioning the legality of the disputed contract."[57] With respect to Styne's claim that Stevens should have plead the defense in her Answer, Stevens argued that she was not required to do so because an illegal contract is void as against public policy and therefore "need not be pleaded in the answer."[58] In fact, Stevens argued, "illegality" may be raised for the first time on appeal,[59] "or by the court *sua sponte* if no party ever raises it.[60]

Styne argued in response that Stevens was not just asserting the Act as a "defense." By claiming that Styne's alleged violations of the Act rendered void the agreement between the two parties, Stevens in effect was seeking, among other things, "absolution from her contractual obligation to *continue* to pay 10% of [the product's] future earnings to Styne."[61]

The court recognized that, in the only other appellate case that the *revival* issue was addressed, *Park v. Deftones*, it was not necessary to "consider the outer limit of the one-year limitations period."[62] The court then proceeded to hold that "the one-year period commences

52. Respondent's Brief, at 15.
53. *Id.*
54. Labor Commission Case No. TAC 66-92 (1995), at 5-7.
55. Labor Commission Case No. TAC 52-92 (1994), at 7.
56. *Id.*.
57. *Id.* at 16 (*citing* Estate of Cover, 188 Cal. 133, 140 (1922); 4 CAL. PROC., ACTIONS § 423 (Witkin 1997).
58. *Id.* (*citing* Kallen v. Delug, 157 Cal. App. 3d 940, 948 (1984)).
59. *Id.* (*citing* LaFortune v. Ebie, 26 Cal. App. 72, 75 (1972)).
60. *Id.* (*citing* Lewis & Queen v. N.M. Ball Sons, 48 Cal. 2d 141, 148 (1957)).
61. *Styne* Opening Brief at 26 (No. B121208).
62. *Styne*, 78 Cal. App. 4th at 26.

upon the artist's formal notice of the agent's claim."[63]

However, the court did not hold that an artist has to file a Labor Commission proceeding within one year of the filing of the Superior Court complaint; in fact, it did not even hold that the artist must file within one year of getting *served*. The court held that the artist must raise a defense under the Act and obtain a hearing under the Labor Code within one year from "when the artist was (or reasonably should have been) aware that the Act should be asserted as a defense." The court reasoned that "there may be unique factual situations where, at the time of service of process, the artist may not reasonably be aware that the plaintiff has engaged in activities within the Act." The court further held that the service date is therefore "the earliest starting point of the one-year period."[64]

The court held that, because Stevens was at all times aware of Styne's role in her relationship with HSN, the one-year limitations period commenced upon service of process upon her. Her failure to seek a stay of the Superior Court action and submit the matter to the Labor Commissioner within that year barred "a judicial determination that the agreement is void under the Act."[65]

The court therefore reversed the trial court's order of a new trial, and reinstated the $4,330,370 verdict against Stevens.

V
Scope and Ramifications of the Case

This case represents a first step in limiting the scope and effect of the Talent Agencies Act, which, over the years, has been more and more liberally construed and applied. However, given the marked disagreement even within the confines of the Second District, it is not clear that the case will signify a universal rule for defensive use of the Act.

First, it was not at all clear from the facts discussed in this case that the use by Stevens of the Act was exclusively a defensive one. Moreover, it is certainly not clear that Styne did, in fact, violate the Act in the first place. By reversing the trial court, essentially on

63. *Id.*

64. *Id.*

65. *Id.* Notwithstanding this ruling and the overwhelming authority indicating that the Labor Commission has exclusive original jurisdiction over such matters, the trend in the Los Angeles Superior Court is to deny motions to stay the Superior Court action. Once the request for stay is denied by the Superior Court, the Labor Commissioner generally refuses to proceed.

jurisdictional grounds, the court did not have to make the very difficult decision as to whether or not there was actually a violation.

The decision itself is troublesome from many standpoints. Certainly, on the one hand, it is reasonable to impose a limitation on the amount of time allowed for a defendant to use the Act as a defense. However, most, if not all, claims that are otherwise barred by the statute of limitations may be used as affirmative defenses and offsets. The *Styne* case seems to conflict with longstanding law on this issue in other contexts.

Moreover, imposing a one-year period within which to commence a Labor Commission proceeding has other ramifications that were no doubt not intended by the court. For instance, consider the following scenario: Manager claims to have a management agreement with Artist. Manager claims that Defendant (new manager) tortiously interfered with Manager's agreement with Artist.[66]

One of Defendant's defenses may be that the underlying agreement between Manager and Artist is void and/or unenforceable. Under California law, and the law of most states, the agreement with which a defendant allegedly interfered must be valid and enforceable at the time of the interference in order to sustain a cause of action for tortious interference with contract.[67]

Defendant is therefore entitled to prove, as part of his or her defense, that the agreement between Manager and Artist is void because Manager violated the Talent Agencies Act. One could argue, in accordance with *Styne*, that, if *Artist* did not file a Petition to Determine Controversy with the Labor Commission within one year of *Artist's* becoming aware of the suit and the propriety of this defense, then *Manager* would be precluded from asserting the violation of the Act as a defense.

Such a result would not make any sense. First, Defendant presumably cannot compel Artist to commence a Labor Commission proceeding. In fact, Defendant may have no control whatsoever over Artist's actions, particularly if Defendant is no longer doing business with Artist. Second, Defendant does not have standing to assert a

66. *See also* Edwin F. McPherson, *Offensive Interference - Recent Developments in Tortious Interference Law*, Los Angeles Lawyer, Feb. 2000, at 24 (discussing the state of the law of tortious interference in California).

67. *See* Knott v. McDonald's Corp., 147 F.3d 1065, 1068 (9th Cir. 1998); PMC, Inc. v. Saban Entertainment, Inc., 45 Cal. App. 4th 579, 597 (1996).

Talent Agencies Act violation with the Labor Commissioner.[68]

If Defendant has no standing to assert the violation with the Labor Commissioner, and he cannot compel Artist to commence such a proceeding on his own, he is effectively deprived of a very important defense if *Styne* is not limited on its facts. Clearly, if Defendant has no standing to utilize the Labor Commissioner to seek redress for a violation of the Act by Manager, and *Styne* says that the defense is lost unless *Artist* files such an action within one year of becoming aware of the suit against Defendant, Defendant's defense is meaningless.

If management agreements are void and unenforceable when a manager violates the Act,[69] and a tortious interference defendant can prove that the manager did violate the Act, the agreement with which the defendant allegedly interfered is, in fact, void and unenforceable. In this situation, the courts should not allow the defendant to be held liable for interfering with a contract that essentially does not exist. It would therefore not be a great surprise if *Styne* is overruled or otherwise limited on its facts. The California Supreme Court's recent grant of review[70] of the case will no doubt provide guidance on this issue.

68. The Labor Commissioner has indicated that he would dismiss any petitions brought by anyone other than the artist or a licensed agent, on the ground that no other party, including a defendant in a tortious interference case, has standing to assert a violation of the Act with the Labor Commission.

69. *See, e.g.*, Wood v. Krepps, 168 Cal. 382, 386 (1914) ("a contract made by an unlicensed person in violation of the statute . . . is void.") *See also*, Buchwald v. Superior Court, 254 Cal. App. 2d 347, 351 (1967) ("a contract between an unlicensed [agent] and an artist is void.")

70. *See* 1 P.3d 2 (2000), 2000 Cal. LEXIS 4546.

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