

No. S226779

SUPREME COURT
FILED

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

AUG 31 2015

Frank A. McGuire Clerk
Deputy

FRANK FLETHEZ,
Plaintiff and Respondent,

v.

**SAN BERNARDINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION,**
Defendant and Appellant.

After a Decision by the Court of Appeal,
Fourth Appellate District, Division One
Case No. D066959
[San Bernardino Co. Super. Ct. (Hon. David Cohn, J.)
No. CIVDS 121542]

**BRIEF FOR PLAINTIFF AND RESPONDENT
FRANK FLETHEZ**

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No. S226779

SUPREME COURT OF THE STATE OF CALIFORNIA

FRANK FLETHEZ,)	No. S226779
)	
Plaintiff and Respondent,)	
)	
vs.)	
)	
SAN BERNARDINO COUNTY)	
EMPLOYEES RETIREMENT)	
ASSOCIATION,)	[San Bernardino Co.
)	Super. Ct. No. CIVDS
Defendant and Appellant.)	1212542; 4th Civil No.
)	D066959]

STATEMENT OF THE CASE

ISSUE PRESENTED

Do retroactive disability retirement payments made to a county employee become vested within the meaning of section 3287(a) of the California Civil Code¹ at the time that they accrue and therefore bear

¹ Cal. Civ. Code § 3287(a) (West Supp. 2015) [hereinafter section 3287(a) or § 3287(a)].

prejudgment interest from the dates they accrue, as this Court has long held, or do retroactive disability retirement payments not vest and not qualify the retiring county employee to prejudgment interest thereon until the employee proves his or her entitlement to them, as the schismatic opinion of the Court of Appeal declares?

INTRODUCTION

Plaintiff and Respondent Frank Flethez (Plaintiff Flethez) sought a disability retirement due to injuries he received while employed by the County of San Bernardino. (See Flethez v. San Bernardino Cnty. Emps. Ret. Ass'n, No. D066959, slip. op. at [1]-2 (Cal. App. Apr. 22 , 2015) (review granted) [hereinafter Flethez slip op.].) Plaintiff Flethez eventually succeeded in his quest, but Defendant and Appellant San Bernardino County Employees Retirement Association (SBCERA) put him through his paces by refusing to accept the date after the last day that he received regular compensation from his employment as the effective date of his pension and thus forcing him to resort to a mandamus action to establish that entitlement. (See id. at 3.) After SBCERA threw in the towel in this regard, Plaintiff Flethez was also awarded prejudgment interest pursuant to section 3287(a) on the retroactive pension benefits that he received. (See

Flethez slip op. at 3-4.) SBCERA, not the least bit embarrassed by the fact that had it but paid the eight years of retroactive benefits to which Plaintiff Flethez was legally entitled instead of forcing him to resort to the Superior Court in order to recover these sums, it would have incurred no liability for interest whatsoever, see Weber v. Bd. of Ret., 62 Cal. App. 4th 1440, 1450, 73 Cal. Rptr. 2d 769, 776 (1998), objects to the award of prejudgment interest and appeals from that portion of the judgment. (See Flethez slip op. at 4.) The issues raised by SBCERA in support of its appeal are analyzed herein, and its contentions are refuted.

**STATEMENT OF THE RELEVANT FACTS
AND PROCEDURAL HISTORY²**

In 1990 Plaintiff Flethez became an employee of the County of San Bernardino, working as an equipment operator from 1991 until 2000. In 1998 Plaintiff Flethez was injured while performing the duties of his job and consequently underwent spinal surgery. Plaintiff Flethez underwent

² Because the historical facts and events are undisputed, for the sake of convenience Plaintiff Flethez adopts the summary thereof generated by the Court of Appeal. (See Flethez slip op. at 2-4.) All statements of fact not otherwise attributed are taken from this source. And because the procedural course of the case largely constitutes the relevant historical facts, they are interwoven herein.

additional surgeries in 2001 and 2002, and he received physical therapy through 2004.

On 12 June 2008 Plaintiff Flethez filed an application with SBCERA for disability retirement benefits, but it was rejected because for personal reasons of great import to Plaintiff Flethez but not included in the record no signed medical records authorization was submitted. On 16 July 2009 after communication with SBCERA staff concerning the matter and rumblings of litigation Plaintiff Flethez filed a complete application including a signed medical records authorization and a supporting physician's report. On 5 August 2010 SBCERA granted Plaintiff Flethez's application for disability retirement benefits based on its staff recommendation, effective as of the date of his initial application on 12 June 2008.

Plaintiff Flethez requested a formal administrative hearing limited to the issue of the appropriate effective date of his retirement benefits. On 15 December 2011 the administrative hearing was held, and the hearing officer subsequently issued proposed findings of fact, conclusions of law, and a recommended decision. On 4 October 2012 SBCERA adopted the hearing officer's proposed decision and maintained the effective date of 12 June 2008 for the commencement of Plaintiff Flethez's disability retirement benefits.

Plaintiff Flethez then petitioned for a writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5³ seeking a writ ordering SBCERA to set aside its decision and grant him service connected disability retirement benefits effective as of 15 July 2000 with interest at the legal rate on all retroactive amounts. On 21 November 2013 the Superior Court entered a judgment granting Plaintiff Flethez's petition and stating that a peremptory writ of mandate had been issued by the court which commanded SBCERA to grant him service connected disability retirement benefits retroactive to 15 July 2000, the date after the last day he received regular compensation, pursuant to section 31724 of the Government Code.⁴ (See J. Granting Peremp. Writ of Mandate para. 1, at 2; Appellant's App. 127.) "The [Superior] Court order[ed] payment of interest at the legal rate on all retroactive amounts. Those interest payment total \$132,865.37." (Id. para. 2, at 2; Appellant's App. 127.)

SBCERA then appealed but limited the scope of its appeal to the issue of prejudgment interest. (See Notice of Appeal at 1; Appellant's App. 131.) In all other respects SBCERA complied with the judgment, including by payment of the retroactive pension benefits to which Plaintiff Flethez

³ Cal. Civ. Proc. Code § 1094.5 (West Supp. 2015).

⁴ Cal. Gov't Code § 31724 (West 2008) [hereinafter section 31724 or § 31724].

had been found by the Superior Court to be entitled. (See Return to Writ of Mandate at 2; Appellant’s App. 61.)

The Court of Appeal (Fourth District, Division One) reversed the judgment “to the extent that it awarded [Plaintiff] Flethez section 3287(a) prejudgment interest on all retroactive disability retirement benefits”. (Flethez slip op. at 18.) After reviewing the operation of the retirement system with regard to granting disability pensions and to determining their effective date, (see id. at 5-7), the opinion of the Court of Appeal then surveyed the case law regarding the application of section 3287(a), (see Flethez slip op. at 7-13), and concluded that retirement payments, albeit retroactive, do not become vested and therefore do not generate interest pursuant to that statute until the date that the retiring employee “establishes his or her entitlement to retroactive benefit payments”, (id. at 14). Applying this interpretation of section 3287(a) to the undisputed facts of the case, the Court of Appeal concluded that Plaintiff Flethez is not entitled to section 3287(a) prejudgment interest on his retroactive benefits attributable to the period from 15 July 2000 through the date that he proved his right to receive such payments. (See Flethez slip op. at 17.) The case was remanded to the Superior Court to determine just when the latter date might be and to then award Plaintiff Flethez prejudgment interest calculated

therefrom, but the judgment was otherwise affirmed. (See id. at 17-18.)

No petition for rehearing was filed. Plaintiff Flethez filed a Petition for Review which this Court unanimously granted. (See [Order] (July 15, 2015).)

RULE 8.204(a)(2)(A) COMPLIANCE⁵

This appeal arises from a petition for a writ of administrative mandamus (see Pet. for Writ of Mandamus at 1; Appellant's App. 1), praying (1) that SBCERA be commanded to find that Plaintiff Flethez's application for a disability retirement should be deemed to have been filed as of 15 July 2000, (2) and it be commanded to find that the effective date of his retirement should be 16 July 2000, (3) for pension payments retroactive to 16 July 2000, (4) for interest on all retroactive payments, (5) for attorney's fees, (6) for costs, (7) and for any other appropriate relief. (See id. at 3; Appellant' App. 3.) The judgment appealed from provides for interest on all retroactive pension payments, (see J. Granting Peremp. Writ of Mandate para. 2, at 2; Appellant's App. 127), and it is indisputably final inasmuch as it resolves the sole remaining issue between the parties, see Morehart v. Cnty. of Santa Barbara, 7 Cal. 4th 725, 740, 875 P.2d 143, 152,

⁵ Cal. R. Ct. 8.204(a)(2)(A) (2015).

29 Cal. Rptr. 2d 803, 813 (1994).

STANDARDS OF REVIEW

The issues presented herein are subject to de novo review. The interpretation of a statute is a question of law that an appellate court determines de novo, independently of the trial court's interpretation. See Regents of the Univ. of Cal. v. Superior Court (Molloy), 20 Cal. 4th 509, 531, 976 P.2d 808, 821, 85 Cal. Rptr. 2d 257, 270 (1999); Riehl v. Hauck, 224 Cal. App. 4th 695, 699, 168 Cal. Rptr. 2d 795, 798 (2014). The application of a statute to undisputed facts is also a question of law that is reviewed de novo. See Aryeh v. Canon Bus. Solutions, 55 Cal. 4th 1185, 1191, 292 P.3d 871, 874, 151 Cal. Rptr. 3d 827, 831 (2013); Cuiellette v. City of L.A., 194 Cal. App. 4th 757, 765, 123 Cal. Rptr. 3d 562, 568 (2011).

THE STATUTES IN QUESTION

Section 3287(a) of the California Civil Code reads in its entirety as follows:

A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt. This section is applicable to

recovery of damages and interest from any debtor, including the state or any county, city, city and county, municipal corporation, public district, public agency, or any subdivision of the state.

Section 31724 of the California Government Code⁶ reads in its entirety as follows:

If the proof received, including any medical examination, shows to the satisfaction of the board that the member is permanently incapacitated physically or mentally for the performance of his duties in the service, it shall retire him effective on the expiration date of any leave of absence with compensation to which he shall become entitled under the provisions of Division 4 (commencing with Section 3201) of the Labor Code or effective on the occasion of the member's consent to retirement prior to the expiration of such leave of absence with compensation. His disability retirement allowance shall be effective as of the date such application is filed with the board, but not earlier than the day following the last day for which he received regular compensation. Notwithstanding any other provision of this article, the retirement of a member who has been granted or is entitled to sick leave shall not become effective until the expiration of such sick leave with compensation unless the member consents to his retirement at an earlier date.

When it has been demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.

⁶ Section 31724 is part of the County Employees Retirement Act of 1937, Cal. Gov't Code §§ 31450-31898 (West 2008 & Supp. 2015).

ARGUMENT

I. PREFACE.

A purpose “of prejudgment interest in general is to provide just compensation to the injured party for loss of use of the [underlying] award during the prejudgment period—in other words to make the plaintiff whole as of the date of the injury”. Lakin v. Watkin Associated Indus., 6 Cal. 4th 644, 663, 863 P.2d 179, 191, 25 Cal. Rptr. 2d 109, 121 (1993); see Wisper Corp. v. Cal. Commerce Bank (Higgs, Fletcher & Mack), 49 Cal. App. 4th 948, 960, 57 Cal. Rptr. 2d 141, 148 (1996) (“The policy embodying authorization of an award of prejudgment interest is to compensate the injured party—to make that party whole for the accrual of wealth which could have been produced during the period of loss.”) (quoting Cassinovs v. Union Oil Co., 14 Cal. App. 4th 1770, 1790, 18 Cal. Rptr. 2d 574, 586 (1993)). That beneficent purpose is fully applicable to retroactive payments of disability retirement payments. See Weber v. Bd. of Ret., 62 Cal. App. 4th 1440, 1441, 73 Cal. Rptr. 2d 769, 772 (1998) (terming the right to recover prejudgment interest on such payments to be “settled law”).

But SBCERA would throw a spike into the wheel of this humane system. According to SBCERA, prejudgment interest does not begin to run when the underlying retroactive pension benefits are due, as is generally the

case, (see discussion infra Part II. B), but instead it begins to run only when the application for disability retirement has been filed and sufficient evidence has been presented to establish the applicant's entitlement to the retirement benefits. (See Answer to Pet. for Review at 18 (describing the opinion of the Court of Appeal) [hereinafter Answer].)

But this theory is unfounded and should be given short shrift. Instead, the half century of this Court's case law contradicting that theory must be followed. At the end of the day, SBCERA flogs a horse that will not run.

**II. PLAINTIFF FLETHEZ WAS ENTITLED TO PREJUDGMENT
INTEREST ON HIS RETROACTIVE DISABILITY
RETIREMENT PAYMENTS UNDER WELL
ESTABLISHED AND CONCEPTUALLY SOUND LAW.**

A. On The Subjects Of Prejudgment Interest And Pension Payments.

Civil Code Section 3287(a) provides for the recovery of prejudgment interest under certain circumstances. See, e.g., Martin v. Ede, 103 Cal. 152, 162, 37 P. 199, 201 (1894) ("Plaintiff's demand . . . was capable of being made certain by computation. It therefore drew interest under section 3287[(a)] of the Civil Code."). Under that statute a claimant must satisfy

three conditions for the recovery of prejudgment interest in a mandamus action against a public entity. See Tripp v. Swoap, 17 Cal. 3d 671, 682, 552 P.2d 749, 757, 131 Cal. Rptr. 789, 797 (1976), implicitly overruled on other grounds, AFL-CIO v. Unempl. Ins. Appeals Bd., 23 Cal. 4th 1017, 1042-43, 920 P.2d 1314, 1329, 56 Cal. Rptr. 2d 109, 124 (1996), and explicitly overruled on other grounds, Frink v. Prod., 31 Cal. 3d 166, 180, 643 P.2d 476, 484, 181 Cal. Rptr. 893, 901 (1982). “(1) There must be an underlying monetary obligation, (2) the recovery must be certain or capable of being made certain by calculation, and (3) the right to recover must vest on a particular day.” Id.

Because the payment of disability retirement pension benefits snugly satisfies these criteria, that the Superior Court has the duty to award prejudgment interest pursuant to section 3287(a) in a mandamus action brought to recover disability retirement benefits wrongfully denied by the board of retirement is “settled law”. Weber, 62 Cal. App. 4th at 1445, 73 Cal. Rptr. 2d at 772. As this Court has recognized, “prejudgment interest is payable on an award of wrongfully withheld disability retirement benefits”. AFL-CIO v. Unempl. Ins. Appeals Bd., 23 Cal. 3d 1017, 1031, 920 P.2d 1314, 1322, 56 Cal. Rptr. 2d 109, 117 (1996).

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B. Of Accrual, Vesting, And Due Dates.

However, the question of when prejudgment interest begins to run in this context remains. The answer is that section 3287(a) “authorizes prejudgment interest on . . . payments from the date of accrual to the entry of judgment”. Mass v. Bd. of Educ., 61 Cal. 2d 612, 624, 394 P.2d 579, 587, 39 Cal. Rptr. 739, 747 (1964). But the question then becomes when does an obligation accrue. The answer this time is that an obligation accrues when it becomes due. See Olson v. Cory, 35 Cal. 3d 390, 402, 873 P.2d 720, 728, 197 Cal. Rptr. 843, 851 (1983) (“Interest is recoverable on each . . . pension payment from the date it fell due.”); Mass, 61 Cal. 2d at 624, 394 P.2d at 587-88, 39 Cal. Rptr. at 747-48 (“Each . . . payment . . . accrued on a date certain [T]he . . . payments became vested as of the dates they accrued”).

Ah, say SBCERA and the Court of Appeal, but a payment cannot vest or be wrongfully withheld until the obligation to pay is established. (See Answer at 19 (“where . . . the plaintiff’s entitlement to receive the payment . . . requires an application supported by evidence upon which an administrative agency is obligated to act, the payment has not been wrongfully denied unless and until the agency actually makes a decision that erroneously denies payment”); id. at 21 (stating that the decision

of the Court of Appeal rests upon the principle that prejudgment interest “runs only from and after the date that the applicant’s right to the benefit has been established”.) But this facile contention was rejected by this Court long ago.

C. Precedent Revisited.

In Mass, the defendant employer argued “that interest only accrues from the date when the board bore the legal duty to reinstate [the] plaintiff because until that time the ‘right to recover’ did not ‘vest’ in him . . . and [that] until then he was legally suspended”. Mass, 61 Cal. 2d at 625, 394 P.2d at 587, 39 Cal. Rptr. at 747 (quoting § 3287(a)). But this Court would have none of this argument.

The Civil Code requires vesting . . . only in order to fix with sufficient certainty the time when the obligation accrues so that interest should not be awarded on an amount before it is due. Each salary payment in the instant case accrued on a date certain. Unless the suspension itself can be sustained and the board thus relieved of any obligation whatsoever, the salary payments became vested as of the dates they accrued. If plaintiff had not been wrongfully suspended, he would have obtained the benefit of the moneys paid as of those dates; he has thus lost the natural growth and productivity of the withheld salary in the form of interest.

Id. at 825, 394 P.2d at 587-88, 39 Cal. Rptr. at 747-48.

For the last half century this Court has in various contexts interpreted the concepts of vesting and wrongful withholding to mean precisely what

Mass says that they mean. See Currie v. WCAB (L.A. Cnty. Metro. Transp. Auth.), 24 Cal. 4th 1109, 1114, 12 P.3d 749, 754, 204 Cal. Rptr. 2d 392, 398 (2001) (“Interest is recoverable on each salary or pension payment from the date it fell due.”) (citing Mass) (backpay awarded to a bus driver); Olson, 35 Cal. 3d at 402, 873 P.2d at 728, 197 Cal. Rptr. at 851 (“Interest is recoverable on each . . . pension payment from the date it fell due.”) (citing Mass) (salary and pension increases due to judges and judicial pensioners); Tripp, 17 Cal. 3d at 683, 552 P.2d at 757, 131 Cal. Rptr. at 797 (“For purposes of awarding interest, each payment of benefits . . . should be viewed as vesting on the date it becomes due.”) (citing Mass) (welfare benefits); Sanders v. City of L.A., 3 Cal. 3d 252, 262-63, 475 P.2d 201, 208, 90 Cal. Rptr. 169, 176 (1970) (“The wrongful withholding of past due pension payments . . . fall[s] within the definition of damages . . . and represent[s] [an] obligation[] on which interest will run.”) (upholding an award of prejudgment interest on retroactive payments of salaries and wages that “were capable of being made certain and were made certain”).

The Court of Appeal of course followed suit. See, e.g., Goldfarb v. Civ. Serv. Comm’n, 225 Cal. App. 3d 633, 636, 275 Cal. Rptr. 289, 286 (1990) (“[Plaintiff] is entitled to interest on each installment of back salary from the date it fell due.”) (citing Mass) (back salary payments of civil service

psychologist); Austin v. Bd. of Ret., 209 Cal. App. 3d 1528, 1533, 258 Cal. Rptr. 106, 108 (1989) (“there is nothing in the statutory scheme governing disability pension benefits suggesting a legislative intent to preclude recovery of interest and damages awarded as prejudgment benefits from the date such benefits became due”) (citing Mass) (retroactive disability retirement benefits).

D. Precedent Applied.

As in Mass and its progeny, so also are these principles applicable here. The pension payments to which Plaintiff Flethez was entitled each accrued on a date certain. Unless Plaintiff Flethez’ disability retirement application had been denied entirely and SBCERA consequently relieved of any obligation whatsoever, the pension payments became vested as of the dates they accrued. Plaintiff Flethez’ pension payments nominally began accruing on the date that his application for disability retirement was filed, but the so-called deemer clause, the final sentence of section 31724 of the Government Code⁷, pushed back the effective date of his retirement to the

⁷ That sentence provides that if the board of retirement finds that a retiring employee’s application “was delayed by administrative oversight or by inability to ascertain the permanency of [his or her] incapacity until after the date following the day for which the [employee] last received regular compensation, that date will be deemed the date the application was filed.

date following the day for which he last received regular compensation, which was “deemed to be the date the application was filed”, § 31724, inasmuch as it was delayed by his inability to ascertain the permanency of his incapacity until after that date. See Porter v. Bd. of Ret., 222 Cal. App. 4th 335, 338, 165 Cal. Rptr. 3d 510, 512 (2013) (reversing a denial of the earlier date) (thirteen month delay between the applicant’s last day of work and the filing date of her application for disability retirement); see also Piscieneri v. City of Ontario, 95 Cal. App. 4th 1037, 1044, 116 Cal. Rptr. 2d 38, 43 (2002) (concluding that if an employee can “prove that he has been continuously disabled from the date of discontinuance of . . . service to the time of [his or her] application for disability retirement, [the] application is timely”⁸) (twelve year delay between first and second applications). Simply stated, Plaintiff Flethez’s right to retroactive payments vested when the payments accrued and when he would have become entitled to receive them.

Vesting in this context means only that the obligation must be subject to ascertainment either on its face or by calculation. “[F]or purposes of ordering retroactive payments, the right to receive benefits vests in the recipient on the first day of his entitlement. For purposes of

⁸ See Cal. Gov’t Code § 21154(d) (West 2008).

awarding interest each payment of benefits similarly should be viewed as vesting on the date it becomes due.” Tripp, 17 Cal. 3d at 683, 552 P.2d at 757, 131 Cal. Rptr. at 797; see Olson, 35 Cal. 3d at 402, 873 P.2d at 728, 197 Cal. Rptr. at 851 (“Interest is recoverable on each . . . pension payment from the date it fell due.”) (citing Mass) (salary and pension increases due to judges and judicial pensioners). Not to put too fine a point on the subject, an obligation to pay prejudgment interest vests, not when the retiring employee establishes his or her entitlement to retroactive benefit payments, as the Court of Appeal asserts, (see Flethez slip op. at 14), but instead when the underlying obligation accrues, as the cases quoted and discussed herein teach. After all, a disability retirement pension “shall be effective” as of the filing date or the deemed filing date of the application for the pension, (see discussion infra Part II.G.), and to be effective it must vest.

E. Summing Up.

To reiterate, monetary obligations vest when they accrue. (See discussion supra Part II. B.) By statute, a disability retirement pension, once granted, is effective as of the date of the application therefor, see § 31724, and of necessity lump sum retroactive payments of the retiring employee’s pension benefits will be required as the board of retirement

cannot possibly process and grant a retirement application on the very day that it is filed. The inevitable delay of the payment of the pension benefits while the wheels of the administrative process languidly turn is not wrongful because it is inherent in any system for the distribution of benefits—an administrative determination of eligibility takes time.⁹ See AFL-CIO, 23 Cal. 4th at 1037, 920 P. 2d at 1326, 96 Cal. Rptr. 2d at 121 (stating that until the agency erroneously determines that an applicant is ineligible for benefits, thus requiring him or her to seek review by way of administrative mandamus in the Superior Court, “no wrongful withholding of benefits attributable to the administrative process occurs”); see also id. at 1034, 920 P.2d at 1324, 56 Cal. Rptr. 2d at 119 (stating that interest may not be awarded “merely because at some point in the administrative process someone made an error that the administrative agency . . . itself corrected”).

But if the employee is forced to resort to a writ of mandamus in the Superior Court in order to obtain his or her due and then prevails, ipso facto his or her benefits—all of them—were wrongfully withheld by the board of

⁹ “The requirement that the right to [pension benefits] commences retroactively to the date of the application assures that the employee receives the full amount of his or her benefit coverage.” Weber, 62 Cal. App. 4th at 1448, 73 Cal. Rptr. 2d at 774.

retirement. By statutory dictate the employee's disability retirement payments become effective "as of the date that [his or her] application [was] filed with the [b]oard". § 31724. Once the pension became effective, each payment vested as it accrued. (See discussion supra Part II. B.) And "once disability is demonstrated to the board's satisfaction, the [employee's] right to receive benefits vests retroactively to the date that the application was filed" or deemed filed. Weber, 62 Cal. App. 4th at 1449, 73 Cal. Rptr. 2d at 774. Thus, the employee is entitled to prejudgment interest "on all retroactive amounts", J. Granting Peremp. Writ of Mandate para. 2, at 2; Appellant's App. 127), inasmuch as SBCERA refused to pay those sums despite being obligated to do so, i.e., inasmuch as it wrongfully withheld them.

The right to prejudgment interest is equally clear when (as here) the benefits begin on the date following the day for which the employee last received regular compensation because this date is "deemed to be the date [that] the application was filed", § 31724, one of the two contingencies authorizing operation of the deemer clause having been satisfied. The bottom line may be greater, but the principle is exactly the same: a pension is granted effective as of the date following the employee's last day of work—the board of retirement refuses to pay (wrongfully withholds) the

resulting retroactive benefits—retroactive benefits continue to accrue and vest as payments come due—the employee obtains a writ in the Superior Court ordering payment of the benefits due—and that Court awards interest on all retroactive amounts pursuant to section 3287(a).

In a nutshell, the obligation to pay pension benefits arises when an employee’s application for disability retirement becomes effective, which it does either as of the actual date that his or her application for disability retirement was filed or as of the earlier deemed date. The right to receive these payments vests as they accrue, and they constitute damages within the meaning of section 3287(a). If these payments are wrongfully withheld by the board of retirement, therefore, prejudgment interest is entirely appropriate and necessary to make the employee whole.

F. A Rejoinder To SBCERA.

1. SBCERA’s Argument In Full.

SBCERA responds to this precedential phalanx by extracting from the cases a purported principle that would render them largely inapplicable to retroactive disability retirement payments and to who knows what else. Namely, according to SBCERA, “prejudgment interest begins to run when the money is unconditionally owed and should have been paid, and not before”. (Answer at 19.)

Thus, where an employer wrongfully fails to pay an employee the proper wages, interest will run from the date of each paycheck that the employee was denied, because the employee's entitlement existed without any need of an administrative decision, and that entitlement would have been fulfilled but for the employer's wrongful act. Where, in contrast, the plaintiff's entitlement to receive the payment does not exist independently, but requires an application supported by evidence upon which an administrative agency is obligated to act, the payment has not been wrongfully denied unless and until the agency actually makes a decision that erroneously denies payment, or unreasonably delays such a decision after sufficient evidence has been submitted.

(Id (citations omitted).)

2. SBCERA Is Defeated By The Case Law.

a. Precedent One: Mass.

While beguiling, the argument cannot be squared with this Court's cases. Consider the well spring of this Court's jurisprudence on this score, Mass. There, the defendant employer argued that interest accrued only from the date that it became dutibound to reinstate the plaintiff, i.e., that interest would not run until his suspension had been found to be unlawful and his back salary owed and awaiting payment, arguing that prejudgment interest "only accrues from the date when the [employer] bore the legal duty to reinstate [the] plaintiff because until that time . . . he was legally suspended". See 61 Cal. 2d at 625, 394 P.2d at 587, 3 Cal. Rptr. at 747. But this Court summarily said otherwise, declaring the plaintiff to be

entitled to “the payment of salary that [he] would have earned if he had been employed from the date of his dismissal to the date of his reinstatement [and to] . . . interest on each such payment **from the time it would have been paid**”. *Id.* at 630, 394 P.2d at 591, 39 Cal. Rptr. at 751 (emphasis added). The notion that prejudgment interest would not run until the underlying obligation became unconditionally owed, that is, that it did not run until this Court unceremoniously ordered the plaintiff to be reinstated forthwith, *see id.*, was rejected out of hand. Instead, interest ran “from the date of accrual to the date of judgment”. *Id.* at 624, 394 P.2d at 587-88, 39 Cal. Rptr. at 7. From the date of accrual to the date of judgment, and that is all there is to that.

b. Precedent Two: Olson.

Or consider Olson. There also the defendant argued, and the Superior Court agreed, that no interest was payable prior to the resolution of the predecessor case on the merits. *See* 36 Cal. 3d at 396, 693 P.2d at 724, 197 Cal. Rptr. at 724. Uncertainty as to the identities of the plaintiff and the amounts of the payments due prior to that time did not prevent this Court from declaring that prejudgment interest attached, despite the fact that the underlying salary payments were anything but unconditionally owed. *See id.* at 401-02, 673 P.2d at 727-28, 197 Cal. Rptr. at 851-52.

c. Precedent Three: Currie.

Or consider Currie. There, this Court observed that “once the obligation to pay retroactive wages is established, interest under Civil Code section 3287[a] properly accompanies reinstatement and a backpay award in order to make the employee whole”.¹⁰ 24 Cal. 4th at 1115, 17 P.3d at 754, 104 Cal. Rptr. 2d at 398. Indeed, this Court noted that a “county retirement board was properly ordered to award retroactive retirement benefits with interest from the last day of service”. Id. at 1116, 171 P.3d at 754, 104 Cal. Rptr. 2d at 398 (footnote omitted) (citing with approval Austin, 209 Cal. App. 3d at 1531-34, 258 Cal. Rptr. at 107-09.).¹¹ And Currie expressly held that prejudgment interest on an award of backpay is “permitted and indeed required”. 24 Cal. 4th at 1111, 17 P.3d at 751, 104 Cal. Rptr. 2d at 395.

d. Precedent Four: Sanders.

Or consider Sanders. There, this Court observed that “wrongful withholding of past due pension payments . . . represent[s] [an] obligation on which interest will run”. 3 Cal. 3d at 262-63, 475 P.2d at 208, 90 Cal.

¹⁰ Substitute **pension payments for wages and a disability retirement for reinstatement**, and this case is decided.

¹¹ The favorable citation of Austin is virtually dispositive. See 209 Cal. App. 3d at 1533, 258 Cal. Rptr. at 108-09 (rejecting an argument that “the Board was prevented by law from awarding benefits until the administrative appeal process was completed”).

Rptr. at 176. And there, as here, interest was awarded on an obligation made “effective” on a date years earlier. 3 Cal. 3d at 263, 475 P.2d at 208, 90 Cal. Rptr. at 176.

e. The Case Law Synthesized.

More cases could be cited, but there is no need to gild the lily. This Court has ruled time and again that when a decision maker decides that a defendant acted wrongfully and consequently withheld monies due to a plaintiff, the ruling is retroactive and entitles the plaintiff to a complete recovery of the funds. And a full recovery, as Mass and Currie in particular both illustrate and declare, includes interest on the funds from the time when they first became due. These principles simply cannot be gainsaid.

3. SBCERA Is Defeated By The Nature Of Things.

The distinction asserted by SBCERA between administrative adjudications on the one hand and general acts of wrongdoing on the other for present purposes just does not exist. In every case someone, be it a judge or an administrative agency, this August Court or a mere board of retirement, must decide rights and wrongs and entitlements. That decision in the nature of things will usually be retrospective, and it will determine the obligation due the plaintiff as a result of the defendant’s actions or the scope of the plaintiff’s entitlement to benefits. But to make the plaintiff

fully whole, prejudgment interest must be awarded. (See discussion supra Part I.)

Otherwise put, nothing is wrongful until someone says it is. But when someone declares an act to be wrongful or declares an entitlement to exist, the ruling is normally retroactive in effect. Thus, the suspended plaintiff in Mass could recover his back salary payments with interest upon each one as it became due, and likewise Plaintiff Flethez can recover his retroactive pension payments with interest upon each as it became due.

SBCERA draws a distinction between an obligation such as wage payments which “exist independently” and an obligation which comes into being only by virtue of an administrative decision, asserting that in the latter case nothing is withheld until the entitlement decision is made. (See Answer at 19.) Mass suggests otherwise since in that case the plaintiff’s entitlement was not established until after his payments accrued. The offspring of Mass do so as well in that they uphold interest on payments that accrued before the sums became “unconditionally owed”.

4. And Distinguished.

But whatever the validity of the SBCERA theory as a general matter, it has no bearing in this action because section 31724 mandates that a disability retirement is effective as of a date preceding the date that the

board of retirement found Plaintiff Flethez to be entitled to the pension.

The pension payments must be paid retroactively, and interest on these payments follows inexorably in order for Plaintiff Flethez to receive the full value of his pension payments.

SBCERA responds by assessing comparative fault for the delays, and not surprisingly it lays most of the blame on Plaintiff Flethez. (See Answer at 3-5.) But fault is of no moment as far as the system created by section 31724 is concerned. If an application for disability retirement is timely, it is timely, notwithstanding any delays that may have occurred or time that may have passed. (See cases cited and explained *supra* p. 17.) And if the application is both timely and meritorious, there will be retroactive payment of benefits either to the date of application or to the last day of work. That retroactive payment will include interest on the payments because at the time they retroactively vested, they had been withheld from the date of the retroactive effective date of the retirement to the date of payment.¹² The system awards interest for delays whether they are fair or

¹² This summary assumes of course that the board of retirement failed to correct its own mistakes and pushed the controversy from the administrative arena, where no authority to award interest exists, to the judicial arena, where it does. See Weber, 62 Cal. App. 4th at 1450, 73 Cal. Rptr. at 776. The dichotomy is unfair and should be remedied, see id. at 1452, 73 Cal. Rptr. 2d at 796 (recommending Legislative change), but that the law must be applied as it exists is elementary.

unfair to retirement boards. That result is inherent in a system which back dates the effective date of a benefit to a point in time prior to the date of the determination of entitlement. If SBCERA finds this system unfair or unworkable, its remedy lies with the Legislature, not this Court.

Nor does this system create “huge windfalls”, as SBCERA claims. (Answer at 6.) When Plaintiff Flethez was ruled to be entitled to retroactive payments, those payments retroactively became **his**. Payment of the interest earned on these payments to Plaintiff Flethez thus is not only fair to Plaintiff Flethez but also necessary to prevent the other members of SBCERA from being unjustly enriched by the use of his pension payments prior to the date that his pension was retroactively granted.

Thus, SBCERA fails to establish that retroactive payments do not carry retroactive interest. And, indeed, the governing statute requires just such attachment.

G. Of Effective Pension Benefits.

1. Effectiveness On Its Face.

Turning then to section 31724, its language mandates that prejudgment interest be awarded on the lump sum retroactive payments received by a retiring county employee. The contention by SBCERA that disability retirement benefits cannot lawfully be paid prior to the time that

the employee establishes his or her entitlement to them, (see Answer at 14-18), may well have merit. But once the employee persuades the board of retirement that he or she is indeed entitled to a disability retirement, the pension payments are “effective” retroactively either as of the date of his or her application for the pension¹³ or as of the date following the last day that he received regular compensation while on job.¹⁴ The employee’s pension payments will commence retroactively in either case. That is, the payments will retroactively begin on a date earlier than the date that the employee prevailed before the board of retirement or before the Superior Court.

Absent interest, this retroactive portion of the pension self evidently will only be partly effective. Only by reading the statutory scheme to mandate that retroactive payment of benefits carries with it interest can the disability retirement be fully effective. The hooves go with the hide.

When the entitlement of an employee to a disability retirement is established, the “right to the benefits vests automatically, retroactive to the date the [employee] applied for benefits”. Weber, 62 Cal. App. 4th at 1451, 73 Cal. Rptr. 2d at 776. Thus, the payments are retroactively deemed to

¹³ (“His [or her] disability retirement allowance shall be effective as of the date [his or her] application is filed with the board”) § 31724.

¹⁴ “[S]uch date will be deemed to be the date the application was filed.” § 31724.

have been owed on the date when they were due and when they therefore accrued, notwithstanding that these dates preceded the date on which the applications was approved. How else could these retroactive payments be fully effective?

In sum, beyond all cavil the Legislative command is that the retirement be “effective” at a retroactive date. And the retroactive portion of the pension payments can only be partially effective unless prejudgment interest is awarded. After all, as Mass observed, the employee otherwise “los[es] the natural growth and productivity of the [retroactive pension benefits] in the form of interest”. 61 Cal. 2d at 625, 394 P.2d at 588, 39 Cal. Rptr. at 746.

2. Effectiveness Subjected To Statutory Construction.

Further, close scrutiny confirms this common sense reading of section 31724. When discerning the meaning of a statute, this Court endeavors to “ascertain the Legislative intent so as to effectuate the purpose of the law”. People v. Canty, 32 Cal. 4th 1266, 1276, 90 Cal. 3d 1168, 1172, 14 Cal. Rptr. 3d 1, 6 (2004) (quoting Hunt v Superior Court (Guimbellot), 24 Cal. 4th 984, 1000, 987 P.2d 705, 717, 90 Cal. Rptr. 2d 236, 249 (1999)). To that end, this Court “must look first to the words of the statute, giving the language its usual, ordinary meaning”, Curle v. Superior Court

(Gleason), 24 Cal. 4th 1057, 1063, 16 P.3d 166, 170, 103 Cal. Rptr. 2d 751, 755 (2000) (quoting Hunt, 24 Cal. 4th at 1000, 987 P.2d at 717, 90 Cal. Rptr. 2d at 249), or “a plain and commonsense meaning”, Coal. of Concerned Cmty. v. City of L.A. (Catellus Residential Group), 34 Cal. 4th 733, 737, 101 P.3d 563, 565, 21 Cal. Rptr. 3d 676, 679 (2004), for the simple reason that “the words themselves are the best indicators of . . . the Legislature’s intent”, Freedom Newspapers v. Orange Cnty. Ret. Sys. Bd. of Dirs., 6 Cal. 4th 821, 826, 863 P.2d 218, 221, 25 Cal Rptr. 2d 148, 151 (1993). Thus, if the language of a statute “is clear, then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs”. Kizer v. Hanna, 48 Cal. 3d 1, 8, 767 P.2d 679, 683, 255 Cal. Rptr. 412, 416 (1989).

Here, the question is the meaning of the word **effective**. That word simply means “capable of bringing about an effect” or “productive of results”. Webster’s Third New International Dictionary 724 (1962) (Definition 1(a)). Other relevant meanings are “having an effect; producing a result” or “producing a definite or desired result; efficient” or “operative; active; in effect”. Webster’s New Twentieth Century Dictionary 577 (2d ed. 1968) (Unabridged) (Definitions (1) - (3)).

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Of these closely related meanings, the latter (operative; active; in effect) seems most apropos. Thus, the Legislature in the plainest of language stated that a disability retirement will be operative as of its filing or deemed filing date.

And if the pension is operative on those dates, payments are retroactively due and therefore accrue and vest on dates certain **before** the pension was granted. Given that section 3287(a) was on the books when section 31724 was enacted, the Legislature must have known that the retroactive aspect of section 31724 would result in prejudgment interest. See People v. Scott, 58 Cal. 4th 1415, 1424, 324 P.3d 827, 832, 171 Cal. Rptr. 3d 638, 644 (2014) (“It is a settled principle of statutory construction that the Legislature ‘is deemed to be aware of statutes . . . already in existence, and to have enacted or amended a statute in light thereof.’”) (quoting People v. Yartz, 37 Cal. 4th 529, 538, 123 P.3d 604, 609, 36 Cal. Rptr. 3d 328, 334 (2005)). The Legislature wanted these pensions to be effective at the earliest possible date, and prejudgment interest is necessary in order to render them fully effective. Period, paragraph, end of story.

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III. A POSTSCRIPT ON LIBERAL CONSTRUCTION.

This Court must view section 3287(a) through the lens of liberal construction. When the law governing a pension plan reasonably can be construed to so permit, this Court is, “of course, required to construe the provisions liberally in favor of the applicant so as to carry out [its] beneficent policy”. Bellus v. City of Eureka, 69 Cal. 2d 336, 351, 444 P.2d 711, 720, 71 Cal. Rptr. 135, 144 (1968) (internal quotation omitted); see Pearl v. WCAB (Bd. of Trustees of the Cal. State Univ.), 26 Cal. 4th 189, 197, 26 P.2d 1044, 1050, 109 Cal. Rptr. 2d 308, 314 (2001) (“provisions of [a pension law] must be liberally construed in favor of pensioners if they are ambiguous or uncertain”) (internal quotation omitted). “[A]ny doubt as to the proper interpretation of the [statute]” must be resolved in favor of the employee. Wendland v. City of Alameda, 46 Cal. 2d 786, 791, 298 P.2d 863, 866 (1956).

Granted, section 3287(a) is not itself a pension statute, but liberal construction is appropriate with regard to ascertainment of its meaning and application when (as here) the subject to which it is applied is one that itself merits liberal construction. See Tripp, 17 Cal. 3d at 685, 552 P.2d at 759, 131 Cal. Rptr. at 799 (finding that an award of prejudgment interest to be “in conformity with the mandate that the law relating to welfare programs

be liberally construed). And liberal construction mandates that Plaintiff Flethez's workaday reading of that statute, which permits it to operate so as to make county employee retirees whole, be adopted in preference to the crabbed reading of the statute advanced by SBCERA, which would leave them deprived of the earnings on their retroactive payments of the pension benefits.

IV. CONCLUSION.

For the foregoing reasons, the decision of the Court of Appeal denying Plaintiff Flethez interest on the retroactive portion of his disability retirement payment is illegally erroneous. Accordingly, the case should be remanded to the Court of Appeal with instructions to affirm the judgment in its entirety.

Dated: 28 August 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

WITH APPELLATE RULES 8.204(b)(2)(3)(4)

Plaintiff-Respondent Frank Flethez certifies that his brief is in a proportionately spaced type face (Times New Roman) of 13 point, that it is double spaced, and that it contains 7,571 words.

Dated: 28 August 2015

Respectfully submitted,

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 404 Enclave Circle #208, Costa Mesa, CA 92626

That on August 28, 2015, I served the foregoing document described as: **BRIEF FOR PLAINTIFF AND RESPONDENT FRANK FLETHEZ** on all interested parties as follows:

(X) by placing () the original (X) a true copy thereof enclosed in sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE

(X) **(BY MAIL)** I deposited such envelope(s) in the mail at 3101 W. Sunflower Ave., Santa Ana, CA 92799.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. The envelope was mailed with postage thereon fully prepaid. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing as stated in the Declaration.

Executed on August 28, 2015 at Costa Mesa, California.

I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.



Diane Castillo

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