

(1) S170758 *Pineda v. Bank of America, N.A. (Chin, J., not participating; Richli, J., assigned justice pro tempore)*

Plaintiff Jorge Pineda was employed by defendant Bank of America. He gave two weeks' notice of his resignation, which occurred on May 11, 2006. Defendant paid Pineda his final wages on May 15, four days after Pineda had resigned.

Under the Labor Code, when an employee is terminated or resigns from his or her employment, wages are generally due and payable on the last day of employment. If an employer fails to timely pay final wages, Labor Code section 203 provides that "the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days." Section 203 further provides that an employee can sue for "these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise."

The Code of Civil Procedure contains statutes of limitation governing the amount of time a plaintiff has to file a suit. Under Code of Civil Procedure section 340, subdivision (a), a one-year statute of limitation typically governs actions to recover *penalties*. Under Code of Civil Procedure section 338, subdivision (a), a three-year statute of limitation governs actions for *wages*. Statutes of limitation generally begin to run on the date of a plaintiff's injury and, once the time has run, actions are typically barred.

Pineda filed suit against Bank of America, alleging a violation of Labor Code section 203, on October 22, 2007 — more than a year after his injury. The Supreme Court is asked to decide whether his suit was timely filed. Pineda argues that a three-year statute of limitations applies to actions under section 203, relying on the following language: "Suit may be filed for these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise." Defendant Bank of America disagrees, interpreting the same language to apply only when a plaintiff sues for both unpaid wages *and* section 203 penalties. Because Bank of America paid Pineda his final wages, albeit late, and Pineda now seeks only section 203 penalties, Bank of America reasons that a one-year statute of limitations applies and Pineda's suit is barred as untimely.

In addition to the statutory language, the parties also rely on the legislative history of the provision and the public policy implications of their interpretations.

Finally, the case raises an additional issue that may be addressed at oral argument — whether Labor Code section 203 penalties may be recovered as restitution under California's Unfair Competition Law.