

FLETHEZ v. SAN BERNARDINO COUNTY EMPLES. RETIREMENT ASS'N

S226779

Supreme Court of California

June 1, 2015

Reporter

2015 CA S. Ct. Briefs LEXIS 1974

FRANK FLETHEZ, Plaintiff and Respondent, v. SAN BERNARDINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION, Defendant and Appellant.

Type: Petition for Appeal

Prior History: After a Decision by the Court of Appeal, Fourth Appellate District, Division One. Case No. D066959.

Counsel

[*1] Mark Ellis Singer, SBN 62798, Edward L. Faunce, SBN. 43340, Larry J. Roberts, SBN 81414, Faunce, Singer & Oatman, Fallbrook, CA, Attorneys for Plaintiff and Respondent, FRANK FLETHEZ.

Title

Petition for Review

Text

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 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?

WHY REVIEW SHOULD BE GRANTED

This Court may order review of a decision by the Court of Appeal "[w]hen [*2] necessary to secure uniformity of decision or to settle important questions of law". Cal. R. Ct. 8.500(b)(1). In this case review is acutely necessary to secure both vertical and horizontal uniformity of decision, and in any event the issue presented is inherently important.

As to vertical uniformity, the decision of the Court of Appeal is at war with long established precedents of this Court. These precedents declare that for purposes of awarding statutory prejudgment interest on wrongfully withheld payments to an aggrieved party, the payments vest when they accrue.

That is, "[t]he 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". *Mass v. Bd. of Educ.*, 61 Cal. 2d 612, 625, 324 P.2d 579, 588, 39 Cal. Rptr. 739, 748 (1964). Thus, in this case each retirement payment accrued on a date certain.

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

Consequently, unless Plaintiff-Respondent Frank Flethez (Plaintiff Flethez) is not entitled to any disability retirement after all and Defendant-Appellant San Bernardino County Employees Retirement Association [*3] (SBCERA) therefore owes him neither principal nor interest, as a matter of law his retirement "payments became vested as of the dates they accrued". Id.

Through the last half century this Court has interpreted vesting in various contexts to mean precisely what Mass say that it does. See Currie v. WCAB (LA. 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 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.") (citing Mass) (salary and pension increases due to judges and judicial pensioners); Tripp v. Swoap, 17 Cal. 3d 671, 683, 552 P.2d 749, 757, 131 Cal. Rptr. 789, 797 (1976) ("For purposes of awarding interest, each payment of benefits . . . should be viewed as vesting on the date it becomes due.") (citing Mass) (welfare benefits), 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), [*4] 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); 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] obligations 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").

In contrast, the Court of Appeal declares that the right to prejudgment interest pursuant to section 3287(a) on retroactive payments of disability retirement benefits arises only on the date that a retiring employee proves his or her entitlement to those payments. (See Slip Op. at 14, Flethez v. San Bernardino Cnty. Empls. Ret. Ass'n, No. D066959 (Cal. App. Apr. 22, 2015) (Fourth District, Division One) (Designated for Publication) (Exhibit A hereto pursuant to Cal. R. Ct. 8.504(b)(4) [hereinafter Slip Op.].) Only then does the "right to such payments [*5] becomes vested". (Id.) "It is only on the date that a retiring [employee] proves entitlement to retroactive benefit payments that those payments become due and the right to recover those payments becomes vested within the meaning of section 3287(a)" of the Civil Code. (Slip Op. at 14.)

The opinion of the Court of Appeal, notwithstanding its veneer of merely applying existing law, misreads ² the cases decided by this Court articulating the meaning of vesting vis-a-vis section 3287(a). Review by this Court is therefore necessary in order to maintain vertical uniformity of decision, that is, consistency between the law declared by this Court and that declared by the Court of Appeal.

This Court should grant review in order to maintain horizontal uniformity of [*6] decision as well. Heretofore, prejudgment interest on retroactive disability retirement payments was granted as a matter of course. See Austin v. Bd. of Ret., 209 Cal. App. 3d 1528, 1533-34, 258 Cal. Rptr. 106, 109 (1989); see also Goldfarb v. Civ. Serv. Comm'n, 225 Cal. App. 3d 633, 636, 275 Cal. Rptr. 284, 286 (1990) (holding that a wrongfully demoted clinical psychologist was "entitled to interest on each installment of back salary from the day it fell due"); Aguilar v. Cal. Unempl. Ins. Appeals Bd. (Empl. Dev. Dep't), 223 Cal. App. 3d 239, 245-46, 272 Cal. Rptr. 696, 701 (1990) ("For purposes of awarding interest, each payment of benefits should be viewed as vesting on the date it becomes due.") (internal quotation omitted). Following Mass faithfully, Austin unequivocally states that pension payments become vested "as of the dates they accrued". Id. at 1529, 258 Cal. Rptr. at 109. Herein, however, the Court of Appeal is adamant that "not until the retiring [employee] establishes his or her entitlement to retroactive benefit payments [does] the right to such payments become vested". (Slip Op. at 14.) The two cases [*7] ³ are at loggerheads on this issue, and the trial courts are therefore left adrift. See Auto Equity Sales v. Superior Court

² Of the primary cases cited herein, the Court of Appeal discusses AFL-CIO, Olsen, Tripp, Weber, Currie and Mass but misses the point of all of them. Plaintiff Flethez is at a loss to understand this failure of comprehension.

³ Another case, Weber v. Bd. of Ret., 52 Cal. App. 4th 1440, 73 Cal. Rptr. 2d 969 (1998), although technically decided on other grounds, is irreconcilable in principle with the opinion of the Court of Appeal. Compare Weber, 52 Cal. App. 4th at 1449, 73 Cal. Rptr. 2d at 774 ("once disability is demonstrated . . . the [employee's] right to receive benefits vests retroactively to the date the application was filed"), with Slip Op. at 14 ("It is only on the date that a retiring [employee] proves entitlement to retroactive benefit payments that those payments become due and the right to receive those payments becomes vested withing the meaning of section 3287(a).").

(*Heseflow*), 57 Cal. 2d 450, 457, 369 P.2d 937, 941, 20 Cal. Rptr. 321, 325 (1962) (stating that the trial courts must choose between conflicting decisions of the Court of Appeal).

[*8]

The conflict is palpable, (see Slip Op. at 17 (declining to follow *Austin*); see also *id.* n.3 (attempting to distinguish *Austin* without much success)), and this case squarely presents the issue of the meaning of vesting in the context of section 3287(a), if any ever does. The record is adequate, and the issue is one of law needing but sparse factual development anyway. Nothing would be gained by permitting this issue to percolate among the lower courts, who in the meantime would risk entering incorrect and unjust judgments every time they either do or do not include or uphold prejudgment interest on an award of retroactive disability retirement payments.

In any event, the issue of law presented is of great importance viewed from any perspective. The issue is narrow, but that narrowness belies its significance.

First, the issue is important because the analytic framework employed by the Court of Appeal could be and no doubt will be used to challenge awards of prejudgment interest in contexts far from the subject of disability retirement pensions. Thus, backpay awards to those who labor in our fields and factories (*Currie*), salaries that for one reason or another [*9] have not been paid to those who labor in our modern bureaucracies (*Olson*); welfare benefits in whatever future form they may take (*Tripp*), and backpay that becomes due as localities experiment with living wage schemes in various forms (*Sanders*) will all be at risk as defendants argue a *laFlethez* that the right to this multitude of benefits has not vested. Virtually any monetary obligation in the State could potentially be affected by the possible loss of prejudgment interest.

Further, even if the impact of *Flethez* is ultimately confined to the subject of retroactive pension benefit payments, the already overburdened panels of the Court of Appeal will be peppered with cases seeking to thrash out the issues opened up by this opinion. But this Court could close these doorways by granting review and definitely resolving the meaning of vesting.

From a practical perspective, the issue is important as well. The purpose of the disability retirement system is "to make certain that . . . employees who after long and faithful service become incapacitated by age or physical disabilities . . . will be replaced by more capable employees for the betterment of the public [*10] service without undue hardship to the employees removed." *Pathe v. City of Bakersfield*, 255 Cal. App. 2d 409, 415, 63 Cal. Rptr. 220,223(1967). **Without undue hardship.** The retroactive implementation of disability retirements ensures that the employee will transition from that state to retiree without loss of the pension benefit he or she has earned. But to the extent that the employee is not granted prejudgment interest on his or her retroactive benefit that purpose is frustrated. See *Austin*, 209 Cal. App. 3d at 1534, 258 Cal. Rptr. at 109 (observing that, absent interest, the claimant loses "the natural growth and productivity" of the withheld payments). This Court therefore should intervene (grant review) in order to assess the propriety of the interest denial worked by the decision of the Court of Appeal.

Finally, the sheer number of employees potentially impacted by the decision of the Court of Appeal renders the decision important in its own right. There are more than a million public employees eligible for disability retirement, perhaps as many as a million and a half. Each of these employees could find himself or herself in the shoes [*11] of Plaintiff *Flethez*, owed a substantial sum of prejudgment interest. This Court consequently should grant review and determine who is entitled to these sums.

STATEMENT OF THE CASE

STATEMENT OF THE RELEVANT FACTS AND PROCEDURAL HISTORY ⁴

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 his job duties and consequently underwent spinal

⁴ Because the historical facts and events are undisputed, Plaintiff *Flethez* has adopted the summary thereof generated by the Court of Appeal. (See Slip Op. at 2-4.) All statements of fact not otherwise attributed are taken from this source.

surgery for that 1998 injury. Plaintiff Flethez underwent additional surgeries in 2001 and 2002 and 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 [*12] reasons not in the record no signed medical records authorization was submitted. On 16 July 2009 after communication with SBCERA staff concerning the matter 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 in 2008. Plaintiff Flethez requested a formal administrative hearing limited to the issue of the appropriate starting date for 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 filed a petition for a writ of mandamus pursuant to Code of Civil Procedure section 1094.5⁵ seeking a writ ordering SBCERA to set aside its decision [*13] 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 commanding 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 Government Code section 31724.⁶ (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 [*14] then appealed but limited the scope of its appeal to the issue of interest. (See Notice of Appeal at 1; Appellant's App. 131.) In all other respects SBCERA complied with the judgment, including payment of the retroactive pension benefits to which Plaintiff Flethez 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 reversed the judgment "to the extent that it awarded [Plaintiff] Flethez section 3287(a) prejudgment interest on all retroactive disability retirement benefits". (Slip Op, at 18.) After reviewing the operation of the retirement system with regard to granting disability pensions and determining their effective date, (see id. at 5-7), the opinion of the Court of Appeal then surveys the case law regarding the application of section 3287(a), (see Slip Op. at 7-13), and concludes 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) [*15] to the undisputed facts of the case, the Court of Appeal concludes 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 time that he proved his right to receive such payments. (See 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 from that date, but the judgment was otherwise affirmed. (See id. at 17-18.)

No petition for rehearing was filed. Plaintiff Flethez now petitions this Court to review and reverse.

STANDARDS OF REVIEW

Plaintiff Flethez agrees that the Court of Appeal applied the correct standards of 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. [*Regents of the Univ. of Cal. v. Superior Court \(Molloy\)*, 20 Cal. 4th 509, 531, 976 P.2d 808, 821,](#)

⁵ Cal. Civ. Proc. Code § 1094.5 (West).

⁶ Cal. Gov't Code § 31724 (West) [hereinafter section 31724 or § 31724].

[85 Cal. Rptr. 2d 257, 270 \(1999\)](#); [Riehl v. Hauck, 224 Cal. App. 4th 695, 699, 168 Cal. Rptr. 2d 795, 798 \(2014\)](#). Furthermore, the application [*16] of a statute to undisputed facts is also reviewed de novo. [Aryeh v. Canon Bus. Solutions, 55 Cal. 4*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 \(2011\)](#).

(Slip Op. at 4 (citations altered).)

THE STATUTE 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.

ARGUMENT

PREFACE

The opinion of the Court of Appeal herein virtually bans awards of prejudgment interest to public employees who [*17] are forced to resort to the courts in order to establish their right to disability pension benefits. The decision bluntly declares that "no section 3287(a) prejudgment interest should accrue on any retroactive benefits ultimately awarded to [an employee] attributable to the time period before" the actual submission of his retirement application and proof of his entitlement. (Slip Op. at 16.) In so doing the decision plays havoc with the established practices and procedures of the system for the administration of the public employee disability retirement system, misconstrues opinions of this Court, contradicts opinions previously issued by other panels of the Court of Appeal, and ignores pertinent principles of statutory construction. This Court consequently should review and reverse this decision.

BECAUSE PLAINTIFF FLETHEZ WAS ENTITLED TO PREJUDGMENT INTEREST ON HIS RETROACTIVE DISABILITY RETIREMENT PAYMENTS UNDER WELL ESTABLISHED AND CONCEPTUALLY SOUND LAW, THIS COURT SHOULD REVIEW AND REVERSE THE OPINION OF THE COURT OF APPEAL.

Section 3287(a) provides in general for the recovery of prejudgment interest under certain circumstances. [See, e.g., Martin v. Ede, 103 Cal. 152, 162, 37 P. 199, 201 \(1894\)](#) [*18] ("Plaintiff's demand . . . was capable of being made certain by computation. It therefore drew interest under section 3287 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, 17 Cal. 3d at 682, 552 P.2d at 797, 131 Cal. Rptr. at 757](#). "(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.](#)

Until the decision of the Court of Appeal the power of the Superior Court 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 was beyond cavil, it was "settled law". [Weber, 62 Cal. App. 4th at 1445, 73 Cal. Rptr. 2d at 772](#). As this Court recognized, "prejudgment interest is payable on an award of wrongfully withheld disability retirement benefits". [AFL-CIO, 23 Cal. 3d at 1031, 920 P.2d at 1322, 56 Cal. Rptr. 2d at 117](#).

The question [*19] remains, however, when does prejudgment interest begin to run? The Court of Appeal concludes that the payments do not become vested and consequently do not bear prejudgment interest until the employee becomes entitled to retroactive pension benefit payments. (See Slip Op. at 14 ("It is only on the date that a retiring [employee] proves entitlement to retroactive benefit payments that those payments become due[,] and the right to recover these payments becomes vested within the meaning of section 3287(a)."). In other words, the employee is entitled to prejudgment interest only when he wins his case. Prejudgment interest thus is transformed into postjudgment interest.

But this Court has long since rejected this sort of sleight of hand. When confronted with a similar claim that interest accrued only from the date when a school board bore the legal duty to reinstate a suspended teacher because until that time the right to recover did not vest in him and that until then he was legally suspended, *see Austin, 209 Cal. App. 3d at 1533, 209 Cal. Rptr. 3d at 109*, this Court was not swayed by such facile reasoning. Section 3287(a) requires vesting “only in order to [*20] fix with sufficient certainty the time the obligation accrues so that interest should not be awarded before it is due”. *Austin, 209 Cal. App. 3d at 1533, 209 Cal. Rptr. 3d at 109* (quoting *Mass. 61 Cal. 2d at 626, 394 P.2d at 588, 39 Cal. Rptr. at 748*).

“Each salary payment in [Mass] accrued on a date certain. Unless the suspension itself [could] be sustained and the board thus relieved of any obligation whatsoever, the salary payments became vested as of the dates they accrued. If [the] plaintiff had not been wrongfully suspended, he would have obtained the benefits 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. (quoting *Mass, 61 Cal. 2d at 1533-34, 394 P.2d at 588, 39 Cal. Rptr. at 748*).

As in *Mass*, so here. The pension payments to which Plaintiff Flethez was entitled to each occurred on a date certain. Unless the denial of Plaintiff Flethez’ disability retirement application could be sustained and the Board of Retirement relieved of any obligation whatsoever, the pension payments became vested as of [*21] 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 the statute) pushed back the effective date of his retirement to the 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 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 denial of the earlier date) (thirteen month delay between the applicant’s last day of work and the filing of her application for disability retirement); *see also Pacioneri 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” ⁷) (twelve year delay between first and second applications). [*22]

The Court of Appeal treats this case as a simple one of statutory construction, (*see* Slip Op. at 4, 15-16), and so it is. But the Court of Appeal gravely misconstrued the statute. Simply stated, the right to retroactive payments vests when the payment accrues and the employee, but for its wrongful withholding, would have become entitled to receive it.

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 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*. Not to put too fine a point on the subject, an obligation to pay prejudgment interest vests, not when the retiring [*23] employee establishes his or her entitlement to retroactive benefit payments, as the Court of Appeal asserts, (*see* Slip Op. at 14), but instead when the underlying obligation accrues, as the cases quoted and discussed herein teach.

As something of an afterthought, the Court of Appeal asserts that until the retiring employee proves his or her right to recover retroactive disability retirement payments, “there is no underlying monetary obligation (i.e. damages) on which to award section 3287(a) prejudgment interest”. (Slip Op. at 14 (emphasis omitted).) But this ipse dixit is merely a reprise of the argument concerning vesting in a different garb. For, contrary to the Court of Appeal, (*see* Slip Op. at 14), the operation of section 3287(a) is **not** dependent on the date that the retiring employee proves his or her right to recover retroactive disability payments.

To reiterate, monetary obligations vest when they accrue. *See* discussion *supra* p. 2. By statute, a disability retirement pension, once granted, is effective as of the date of the application therefor, *see* § 31724, and of necessity retroactive payments of the retiring employee’s pension benefits will [*24] be required as the Board of Retirement cannot possibly

⁷ *See* Cal. Gov’t Code § 21154(d) (West).

process and grant the retirement application on the very day that it is filed. The consequent delay of the payment of pension benefits is not wrongful because it is inherent in any system for the distribution of benefits-an administrative determination of eligibility takes time. ⁸See *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").

[*25]

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 benefits were wrongfully withheld by the Board of Retirement-all of them. By statutory command the employee's disability retirement payments become effective "as of the date that [his or her] application [was] filed with the [B]oard, but not earlier than the day following the last day for which he [or she] received regular compensation". § 31724. Once the pension became effective, each payment vested as it accrued. See discussion *supra* p. 2. And "once disability is demonstrated to the Board's satisfaction, the [employee's] right to receives benefits vests retroactively to the date that the application was 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 [*26] 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 the application was filed", *id.*, one of the two contingencies authorizing operation of the deemer clause having been satisfied. ⁹ 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).

[*27]

Simply stated, 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 his or her application for disability retirement was filed or as of the earlier date it may be deemed to have been filed. 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.

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) [*28] ("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).

⁸ "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.

⁹ The final sentence of section 31724 (the deemer clause) 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, such date will be deemed the date the application was filed.

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. [*29]

CONCLUSION

For the reasons explained herein, Plaintiff Flethez is fully entitled to the judgment entered herein awarding prejudgment interest on his retroactive disability retirement benefits. Accordingly, this Court should grant review and reverse the decision of the Court of Appeal ruling otherwise.

Dated: 30 May 2015

Respectfully submitted,

Mark Ellis Singer
Edward L. Faunce
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By: /s/ Larry J. Roberts
Larry J. Roberts

Attorneys for Plaintiff and Respondent, Frank Flethez

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 5,223 words.

Dated: 30 May 2015

Respectfully submitted,

Mark Ellis Singer
Edward L. Faunce
Larry J. Roberts
Faunce, Singer & Oatman

By: /s/ Larry J. Roberts
Larry J. Roberts

Attorneys for Plaintiff and Respondent, Frank Flethez

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am [*30] 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 May 30, 2015, I served the foregoing document described as: **PETITION FOR REVIEW** 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 May 30, 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.

/s/ [Signature]

Diane Castillo

SERVICE LIST

Court of Appeal
Fourth Appellate District, Division Two
3389 Twelfth Street
Riverside, CA 92501

Hon. David Cohn, Dept S35
San Bernardino County Superior Court - Civil Division
303 West Third Street
San Bernardino, CA 92415-0210

Christopher D. Lockwood, Esq.
ARIAS AND LOCKWOOD
225 W. Hospitality Lane, Suite 314
San Bernardino, CA 92408

[SEE EXHIBIT "A" IN ORIGINAL]

[SEE EXHIBIT "A" IN ORIGINAL]