

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

AMALGAMATED TRANSIT UNION,
LOCAL 1756, AFL-CIO, et al.,

Petitioners,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

FIRST TRANSIT, INC., et al.,

Real Parties in Interest.

B191879

(Los Angeles County
Super. Ct. No. KC 043962)

**ORDER MODIFYING OPINION
and
DENYING PETITION FOR
REHEARING**

[no change in judgment]

IT IS ORDERED that the opinion filed in the above-captioned matter on February 28, 2007, be modified as follows:

On page 2, the paragraph numbered “(1)” is deleted and the following paragraph is substituted:

“(1) An individual’s assignment of a cause of action to a third party does not carry with it the individual’s statutory right to sue in a representative capacity conferred under the Labor Code Private Attorneys General Act of 2004 (Labor Code section 2699) and under the unfair competition law (Business and Professions Code section 17203).”

On page 5, the third sentence in the first paragraph of the Discussion section is deleted and the following sentence is substituted:

“They further assert the assignments confer standing upon the Unions to sue in a representative capacity, and that the Unions may sue under the UCL in a representative capacity without meeting the procedural requirements applicable to class actions.”

On page 5, in the Discussion section, the third and fourth sentences of the paragraph numbered (1) are deleted and the following sentences are substituted:

“The assignment of a cause of action, as authorized by Civil Code sections 953 and 954, is the transfer “by the owner” of “a right to recover money or other personal property” in a judicial proceeding. An individual’s statutorily conferred right to sue on behalf of others is not itself a cause of action, or any other form of property, that is owned and therefore assignable within the meaning of the Civil Code. Accordingly, while a person may assign his own cause of action to another, the assignment does not carry with it the right to sue in a representative capacity. Nothing in *Vermont Agency of Natural Resources v. United States ex rel. Stevens* (2000) 529 U.S. 765 (*Vermont Agency*), upon which the Unions rely, supports a contrary conclusion.”

On page 6, Heading “A” is deleted and the following heading is substituted:

“A. Although an employee may assign his right to recover money to the Union, such an assignment does not carry with it the employee’s statutorily granted right to pursue claims on behalf of others.”

On page 6, the first sentence in part “A” is deleted and the following sentence is substituted:

“The Unions contend they have the right to pursue representative claims on behalf of others because one or more employees with that right assigned their causes of action to the Unions.”

On page 6, the following new footnote is inserted at the end of the third sentence in part A.

“In a petition for rehearing, the Unions asserted they do not rely on the language in the employee’s assignment, which states that the employee’s assignment of his right to sue to recover wages owing to him ‘includ[es] my right to sue in a representative capacity’ At oral argument, counsel stated this language was ‘a mistake’ and is ‘surplusage’ because, by virtue of the assignment of the employee’s cause of action or injury, the assignee-union has all the rights the employee had, including the right to sue in a representative capacity. We agree it does not matter whether or not the assignment by its terms purports to assign the right to sue in a representative capacity. We disagree, however, with the Unions’ conclusion that the assignment of the employee’s cause of action effectively transfers ‘[a]ll of the rights to which the assignor may have been entitled had the assignor brought the action himself’ In short, the question at issue is the legal effect of the assignment of the employee’s cause of action, that is, whether or not it includes, by operation of law, the employee’s right to sue in a representative capacity.”

The addition of this footnote requires the renumbering of all subsequent footnotes.

On page 6, the final sentence of the first paragraph in part A is deleted and the following sentence is substituted:

“Authorization to bring a representative suit is conferred by the Legislature, and persons authorized to bring suit have no power to assign that authorization to a third party, nor does an assignment of a cause of action include, by operation of law, the authorization to bring a representative suit.”

On page 8, the first paragraph of part A.2. is deleted, and the following one-sentence paragraph is substituted:

“While an employee may assign his own cause of action, the statutes defining causes of action and the law of assignment clearly demonstrate that the right to sue in a representative capacity is not a cause of action, or any other form of property right, and is therefore not assignable, either expressly or by operation of law.”

On page 9, footnote 5 (renumbered footnote 6 as a result of this modification order), the parenthetical citation in the final line of the footnote is deleted and the following citation is substituted: “(See footnote 5, *ante.*)”

On page 10, the final sentence of the first full paragraph, immediately preceding the part 3 heading, is deleted and the following sentence is substituted:

“Stated differently, because the assignor (the employee), although authorized by section 17203 or PAGA to bring an action on behalf of others, has no ownership interest in the causes of action owned by others, the employee necessarily has no right, expressly or by operation of law, to transfer those causes of action to a third party.”

On page 14, the first full sentence is deleted and the following sentence is substituted:

“In short, *Vermont Agency* does not suggest that an assignment by a person with an injury in fact – merely because the person is authorized by statute to seek relief for others as well as for himself or herself – carries with it the assignor’s procedural right to sue in a representative capacity.”

On page 14, the first sentence of footnote 9 (renumbered footnote 10 as a result of this modification order) is revised to insert the phrase “, whether expressly or by operation of law,” after the word “assignment” in the first line of the footnote.

There is no change in the judgment.

BOLAND, J.

I concur:

RUBIN, J.

I would grant the petition for rehearing.

COOPER, P. J.