

You're Out of Luck, Appellate Court tells Casino Card Dealers

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Avidor v. Sutter's Place, Inc., decided January 23, 2013, [California Court of Appeal, Sixth Appellate District](#), involved a class action brought on behalf of card dealers employed by Sutter's Place, a casino.

The dispute arose from a practice by which the employer required its dealers to contribute a set amount of the gratuities they received from players to a common account, which was distributed to other casino employees on payday.

Plaintiff alleged that this practice violated [California Labor Code section 351](#), which provides that gratuities are the sole property of the employee or employees to whom they are given, and prohibits an employer from taking the gratuity of an employee or deducting that amount from wages.

The trial court disagreed, granting demurrer, summary judgment, and finally nonsuit as to the whole action. The Court of Appeal affirmed.

First, the Court found that exclusion of evidence at trial regarding the intention of the tip-givers was not error, because such intention was irrelevant.

Second, the Court found that an employer may mandate tip pooling amongst employees, and that such pooling is not a violation of section 351:

“The purpose of section 351 . . . was to prevent an employer from taking gratuities intended for its employees or from deducting that money from an employee's wages.”

Here, where the gratuities were shared amongst the employees, such was not at issue.

All of the other derivative causes of action, for unfair business practices, conversion, minimum wage violations, likewise failed — either because of the failure of Plaintiff's section 351 argument or because of a failure to meet the necessary evidentiary burden.

Please contact the author, [Michael Newman](#), if you would like to discuss the issues addressed in this article.

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