

DAVID M. BODENHEIMER

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NO. 2017-CA-0595

VERSUS

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COURT OF APPEAL

**CARROLLTON PEST
CONTROL & TERMITE
COMPANY**

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS
NO. 2016-08223, SECTION "C"
Honorable Veronica E Henry, Judge

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Judge Regina Bartholomew-Woods

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(Court composed of Judge Roland L. Belsome, Judge Sandra Cabrina Jenkins,
Judge Regina Bartholomew-Woods)

ON APPLICATION FOR REHEARING

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**REHEARING GRANTED; JUDGMENT MODIFIED AS TO THE
ISSUE OF ATTORNEY'S FEES; MATTER REMANDED
MARCH 14, 2018**

On February 14, 2018, this Court reversed the judgment of the First City Court for the City of New Orleans regarding Appellant's wage claim. Appellant also sought attorney's fees pursuant to La.R.S. 23:632, which provides:

A. Except as provided for in Subsection B of this Section, any employer who fails or refuses to comply with the provisions of R.S. 23:631 shall be liable to the employee either for ninety days wages at the employee's daily rate of pay, or else for full wages from the time the employee's demand for payment is made until the employer shall pay or tender the amount of unpaid wages due to such employee, whichever is the lesser amount of penalty wages.

B. When the court finds that an employer's dispute over the amount of wages due was in good faith, but the employer is subsequently found by the court to owe the amount in dispute, the employer shall be liable only for the amount of wages in dispute plus judicial interest incurred from the date that the suit is filed. If the court determines that the employer's failure or refusal to pay the amount of wages owed was not in good faith, then the employer shall be subject to the penalty provided for in Subsection A of this Section.

C. Reasonable attorney fees shall be allowed the laborer or employee by the court which shall be taxed as costs to be paid by the employer, in the event a well-founded suit for any unpaid wages whatsoever be filed by the laborer or employee after three days shall have elapsed from time of making the first demand following discharge or resignation.

In our previous ruling, we declined to award attorney's fees based on our finding that Appellee did not withhold payment to Appellant in bad faith. However, based on the plain language of subsection (C), Appellant shall be allowed attorney's fees as this Court's ruling found his suit for unpaid wages to be well-founded.

Accordingly, we grant Appellant's motion for rehearing for the limited purpose of holding that Appellant is entitled to attorney's fees pursuant to La.R.S. 23:632(C). This matter is remanded to the district court for further proceedings in this regard.

**REHEARING GRANTED; JUDGMENT MODIFIED AS TO THE ISSUE OF
ATTORNEY'S FEES; MATTER REMANDED**