

Reyes v Five Towns Car Wash, Inc.

2017 NY Slip Op 32761(U)

November 3, 2017

Supreme Court, Queens County

Docket Number: 7527/15

Judge: Darrell L. Gavrin

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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE DARRELL L. GAVRIN**
Justice

IA PART 27

SANTOS MARVER REYES REYES, PABEL
EDUARDO CONSTANZA, and GELBER
ANASTACIO CONSTANZA ZAPET,

Plaintiffs,

- against-

FIVE TOWNS CAR WASH, INC., and WILLIAM
BROWN, as individual,

Defendants.

Index No. 7527/15

Motion
Date July 10, 2017

Motion
Cal. No. 104

Motion
Seq. No. 1

FILED
NOV 14 2017
COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 to 8 read on this motion by defendants to dismiss the complaint on the grounds that the action is time-barred; that plaintiff, Constanza, waived his labor law claims pursuant to a signed general release; and that defendants provided proper wage notices to plaintiffs, pursuant to Labor Law section 195.

Papers
Numbered

Notice of Motion - Affirmation - Exhibits.....	1-4
Affirmation in Opposition - Exhibits.....	5-8

Upon the foregoing papers, it is ordered that the motion is determined as follows:

Plaintiffs in this labor law action seek damages to recover for defendants' alleged failure to pay proper overtime wages, minimum wages and spread of hours as well as defendants' alleged improper deductions taken from plaintiffs' wages. Defendants move to dismiss the complaint on the grounds that the action is time-barred; that plaintiff, Constanza, waived his labor law claims pursuant to a signed general release and that defendants provided proper wage notices to plaintiffs, pursuant to Labor Law section 195. Plaintiffs oppose the motion.

Facts

Defendant, William Brown, is the owner of Five Towns Car Wash, Inc. Brown testified upon an examination before trial as follows: that Five Towns employed plaintiffs as car washers. Plaintiff, Pabel Eduardo Constanza, first worked at Five Towns from October, 2003 to

the end of 2005. Constanza then worked again at Five Towns from August 26, 2007 to July 28, 2009. Plaintiff, Santos Marver Reyes, worked at Five Towns from 2007 to 2011. Plaintiff, Gelber Anastacio Constanza Zapet, worked at Five Towns from 2007 to July 28, 2009. During their employment at Five Towns, plaintiffs were paid an hourly rate equal to minimum wage minus a tip credit; plaintiffs earned approximately one hundred dollars in tips each week; plaintiffs worked 40 hours per week at Five Towns and were paid at time and a half of their regular rate for any overtime hours worked over 40 hours per week. During plaintiffs' employment, Five Towns closed for business on days with inclement weather. Throughout their employment at Five Towns, plaintiffs signed wage statements upon receiving their pay each week. The wage statements were in English and Spanish. The wage statements each week indicated the total hours worked, the regular hours worked, the overtime hours worked, the regular rate of pay, the overtime rate of pay, the total hourly pay, the weekly amount of tips received and the total paid to plaintiffs. When hired, plaintiffs completed wage statement forms, which indicated the amount of tip credit taken by the car wash. Brown testified that the pre-employment wage statement forms were destroyed, however, by water that flooded the car wash during Hurricane Sandy.

At the conclusion of his employment with Five Towns, Constanza approached Brown and stated that Brown owed Constanza money. Brown, in response, offered Constanza a general release as a settlement in order to "make all parties equal." As consideration, Brown paid Constanza one-hundred dollars (\$100), to sign the release which, Brown testified, was translated and explained to Constanza. On or around July 7, 2011, Constanza signed the general release for, *inter alia*, any and all New York labor claims against defendants.

Discussion

The branch of the motion which is to dismiss the allegations in the complaint which pertain to plaintiff Constanza, based upon Constanza's alleged signing of a general release, is denied. "A release is a contract, and its construction is governed by contract law" (*Pacheco v 32-42 55th St. Realty, LLC*, 139 AD3d 833, 833 [2d Dept 2016], quoting *Kaminsky v Gamache*, 298 AD2d 361, 361 [2d Dept 2002]). In general, "a valid release constitutes a complete bar to an action on a claim which is the subject of the release" (*Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V.*, 17 NY3d 269, 276 [2011] [internal quotation marks omitted]). "A release may be invalidated, however, for any of 'the traditional bases for setting aside written agreements, namely, duress, illegality, fraud, or mutual mistake' " (*id.* at 276, quoting *Mangini v McClurg*, 24 NY2d 556, 563 [1969]; see *Shklovskiy v Khan*, 273 AD2d 371, 372 [2d Dept 2000]).

A party may move for judgment dismissing one or more causes of action asserted against him [or her] on the ground that ... the cause of action may not be maintained because of ... [a] release" (CPLR 3211[a] [5]). However, a motion pursuant to CPLR 3211(a)(5) to dismiss a complaint on the basis of a release "should be denied where fraud or duress in the procurement of the release is alleged" (*Farber v Breslin*, 47 AD3d 873, 877 [2d Dept 2008]; see *Warmhold v Zagarino*, 106 AD3d 994, 995 [2d Dept 2013]).

Here, in support of their motion to dismiss the complaint, the defendants submitted a general release executed by Constanza, which, by its terms, barred the instant action against them, as pertaining to Constanza's allegations (*see Davis v Rochdale Vil., Inc.*, 109 AD3d 867, 867 [2d Dept 2013]). However, Constanza testified that defendants made him sign the general release because defendants "didn't want to pay [Constanza] for the last week that [Constanza] worked." Also, Constanza alleges that he was instructed to sign without having the document translated into his native language, Spanish, and without having the document explained to him. These allegations are sufficient to support a possible finding that the defendants procured the release by means of fraud and that the release was signed by plaintiff "under circumstances which indicate unfairness" (*Farber v Breslin*, 47 AD3d at 877, quoting *Gibli v Kadosh*, 279 AD2d 35, 41 [1st Dept 2000]). Accordingly, the branch of the defendants' motion which was pursuant to CPLR 3211(a)(5), which is to dismiss the allegations in the complaint (which pertain to Constanza) as barred by the release, is denied (*see Pacheco v 32-42 55th St. Realty, LLC*, 139 AD3d at 834; *Warmhold v Zagarino*, 106 AD3d at 995).

The statute of limitations for violations of New York's overtime and spread of hours requirement is six (6) years (*see N.Y. Labor Law §§198[3], 663[3]*). The complaint in this action was filed on June 10, 2015. Accordingly, the last date that defendants could be held liable under New York Labor Law for violations that accrued during the six years preceding the filing of the complaint, is June 10, 2009. Plaintiff, Zapet, worked for defendant from 2007 until July 28, 2009. Plaintiff, Constanza, first worked at Five Towns from October 2003 until the end of 2005. He then worked again at the car wash from August 26, 2007 until July 28, 2009. Thus, with regards to plaintiff, Zapet and Constanza, any claims for unpaid wages prior to June 10, 2009, are time-barred. Specifically, Zapet and Constanza can allege violations for the six weeks and six days from June 10, 2009 to July 28, 2009.

Similarly, plaintiff, Santos Marver Reyes, worked at Five Towns from 2007 until June 10, 2011. Thus, any claims by this plaintiff for unpaid wages prior to June 10, 2009, are also time-barred. Specifically, it appears that the maximum amount of time that plaintiff, Santos Marver Reyes, can allege violations for is 104 weeks, for the employment period following June 10, 2009.

Accordingly, the branches of defendants' motion which are to dismiss parts of plaintiffs' claims as time-barred, are granted, as provided above.

The branch of defendants' motion which is for summary judgment in their favor dismissing plaintiffs claims that defendants failed to provide proper notice pursuant to Labor Law section 195, is denied. The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Greenberg v Manlon Realty*, 43 AD2d 968, 969 [2d Dept 1974]). Here, defendants failed to make a *prima facie* showing of entitlement to judgment as a matter of law

(see generally *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853).

Pursuant to New York Labor Law 195, employers are required to furnish each employee with a statement with every payment of wages, listing the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the statement shall include the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked.

While defendants contend that they provided such information to plaintiffs, plaintiffs dispute this contention and plaintiff, Reyes, testified otherwise. In fact, when asked if he provided any type of pay stub or wage statement to his employees, Brown answered "not on a weekly basis." Defendants contend that their proof that the information was given to plaintiffs was destroyed by flooding during Superstorm Sandy. The court concludes that whether this information was provided, pursuant to Labor Law section 195, is a triable issue of fact based upon the evidence presented, or lack thereof.

Conclusion

The branch of the motion which is to dismiss the complaint based upon plaintiff, Constanza's alleged signing of a general release, is denied.

The branches of defendants' motion which are to dismiss parts of plaintiffs' claims as time-barred, are granted, as provided above.

The branch of the motion which is for summary judgment in defendants' favor dismissing plaintiffs claims that defendants failed to provide proper notice, pursuant to Labor Law § 195, is denied.

Dated: November 3, 2017

DARRELL L. GAVRIN, J.S.C.

