Stokely v UMG Recordings, Inc.
2016 NY Slip Op 30160(U)
January 26, 2016
Supreme Court, New York County
Docket Number: 160896/14
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55
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WILLIAM E. STOKELY, III, individually and on Behalf of other persons similarly situated who were Employed by UMG RECORDINGS, INC., UNIVERSAL MUSIC PUBLISHING INC. and/or any other Subsidiaries or entities affiliated with or controlled by UMG RECORDINGS, INC. and UNIVERSAL MUSIC PUBLISHING INC.,

Index No. 160896/14

DECISION/ORDER

Plaintiff,

-against-

UMG RECORDINGS, INC., UNIVERSAL MUSIC PUBLISHING INC. and/or any other subsidiaries or Entities affiliated with or controlled by UMG RECORDINGS, INC. and UNIVERSAL MUSIC PUBLISHING INC.,

Defendants.
---X

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :______________________

Papers	Numbered
Notice of Motion and Affidavits Annexed..................................	1
Answering Affidavits	2
Replying Affidavits..	3
Exhibits..	4

Plaintiff William E. Stokely, III, individually and on behalf of other persons similarly situated who were employed by UMG Recordings, Inc. ("UMG"), Universal Music Publishing Inc. ("Universal") and/or any other subsidiaries or entities affiliated with or controlled by UMG and Universal seeking to recover damages against defendants UMG and Universal based on

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allegations that plaintiff, along with other interns, was employed by defendants but that neither he nor the other interns received any monetary compensation. Defendant Universal now moves for an Order pursuant to CPLR § 3211(a)(7) dismissing the second amended complaint on the ground that it fails to state a claim against Universal. For the reasons set forth below, Universal's motion is denied.

The relevant facts and the procedural history of this case are as follows. In or around November 2014, named plaintiff Stokely, on behalf of himself and others similarly situated, commenced the instant action with the filing of a summons and complaint against Universal, UMG, Universal Music Group, Inc. and Universal Music Group Holdings, Inc. d/b/a Polygram Holding, Inc. asserting causes of action for violations of New York's Minimum Wage law, Overtime Compensation law, Failure to Pay Wages law and Labor Law § 195. Specifically, the complaint alleged that plaintiff and other members of the putative class were employed as interns to perform various tasks related and necessary to the maintenance of the defendants' operations and that plaintiff and the other members of the putative class were not compensated for said work.

Thereafter, Universal, Universal Music Group, Inc. and Universal Music Group Holdings, Inc. d/b/a Polygram Holding, Inc. moved to dismiss the complaint as against them on the ground that it failed to state a cause of action. However, the motion was withdrawn and the parties entered into a Stipulation pursuant to which they agreed that plaintiff would amend the complaint to name only defendants UMG and Universal, would remove the third and fourth causes of action from the complaint and that defendants UMG and Universal would thereafter respond to the complaint. In or around May 2015, plaintiff filed his first amended complaint in

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accordance with the Stipulation.

Subsequently, UMG answered the first amended complaint. However, Universal moved to dismiss the first amended complaint as against it on the ground that it failed to state a cause of action because Universal was not the entity involved in plaintiff's internship; the first amended complaint failed to allege facts pertaining to Universal; and the first amended complaint failed to allege facts that would support a "joint employer" theory of recovery. Before the motion was fully submitted, in or around July 2015, plaintiff filed the second amended complaint. Thereafter, defendant Universal moved to strike the second amended complaint on the ground that it was improperly filed. Plaintiff cross-moved for an Order granting him leave to amend his complaint if this court found that it was not filed properly.

In a Stipulation dated October 15, 2015, the parties withdrew the pending motions and agreed to treat the second amended complaint as the operative complaint in this action, which asserts two causes of action against UMG and Universal for a violation of New York's Minimum Wage laws and a violation of New York's Overtime Compensation laws. Additionally, pursuant to the Stipulation, the parties agreed that Universal would file a new motion to dismiss the second amended complaint and that UMG would answer the second amended complaint by October 23, 2015. Thus, pursuant to the Stipulation, Universal now moves for an Order pursuant to CPLR § 3211(a)(7) dismissing the second amended complaint.

On a motion addressed to the sufficiency of the complaint, the facts pleaded are assumed to be true and accorded every favorable inference. *Morone v. Morone*, 50 N.Y.2d 481 (1980). Moreover, "a complaint should not be dismissed on a pleading motion so long as, when plaintiff's allegations are given the benefit of every possible inference, a cause of action exists."

Rosen v. Raum, 164 A.D.2d 809 (1st Dept. 1990). "Where a pleading is attacked for alleged inadequacy in its statements, [the] inquiry should be limited to 'whether it states in some recognizable form any cause of action known to our law.'" *Foley v. D'Agostino*, 21 A.D.2d 60, 64-65 (1st Dept 1977) (citing *Dulberg v. Mock*, 1 N.Y.2d 54, 56 (1956)). However, "conclusory allegations – claims consisting of bare legal conclusions with no factual specificity – are insufficient to survive a motion to dismiss." *Godfrey v. Spano*, 13 N.Y.3d 358, 373 (2009).

In the instant action, Universal's motion for an Order pursuant to CPLR § 3211(a)(7) dismissing the second amended complaint as against it on the ground that it fails to state a claim is denied. "Under New York law, there are two well-established doctrines – the single and joint employer doctrines – that allow an employee to assert employer liability against an entity that is not formally his or her employer." *Fowler v. Scores Holding Co., Inc.*, 677 F.Supp.2d 673, 680-81 (S.D.N.Y. 2009). "The single employer doctrine provides that, 'in appropriate circumstances, an employee, who is technically employed on the books of one entity, which is deemed to be part of a larger single-employer entity, may impose liability for certain violations of employment law not only on the nominal employer but also on another entity comprising part of the single integrated employer." *Id.* at 681 (citing *Arculeo v. On-Site Sales & Mktg., LLC*, 425 F.3d 193, 198 (2d Cir. 2005). "[F]our factors [must be examined] in order to assess whether two nominally distinct entities are actually a single employer: '(1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control.'" *Shiflett v. Scores Holding Co.*, 601 Fed.Appx. 28, 30 (2d Cir. 2015) (citing *Cook v. Arrowsmith Shelburne, Inc.*, 69 F.3d 1235, 1240-41 (2d Cir. 1995)(internal citations omitted)). Under the single employer doctrine, "[a]lthough no one factor is

determinative[,] control of labor relations is the central concern." *Brown v. Daikin Am. Inc.*, 756 F.3d 219, 227 (2d Cir. 2014)(internal citations omitted). Further, "[t]he joint employer doctrine applies where there is no single integrated enterprise, but where two employers 'handle certain aspects of their employer-employee relationship jointly.'" *Fowler*, 677 F.Supp.2d at 681 (citing *Arculeo*, 425 F.3d at 198). "Under the joint employer doctrine, a court may conclude that 'the employee is...constructively employed by' the defendant." *Shiflett*, 601 Fed.Appx. at 30. "Such a relationship will exist where there is evidence that the entity which is not the formal employer 'had immediate control over the other company's employees.'" *Conde v. Sisley Cosmetics USA, Inc.*, 2012 WL 1883508 *3 (S.D.N.Y. 2012) (citing *Gonzalez v. Allied Barton Sec. Servs.*, 2010 WL 3766964 *3 (S.D.N.Y. 2010)). "[F]actors courts have used to examine whether an entity constitutes a joint employer of an individual include 'commonality of hiring, firing, discipline, pay, insurance, records, and supervision.'" *Shiflett*, 601 Fed.Appx. at 30 (citing *St. Jean v. Oreint-Express Hotels Inc.*, 963 F.Supp.2d 301, 308 (S.D.N.Y. 2013)). A complaint will survive a motion to dismiss in this context as long as the "facts set forth in the Complaint plausibly suggest a degree of control and involvement by [the defendant] in Plaintiff's employment." *Dias v. Community Action Project, Inc.*, 2009 WL 595601 *5 (E.D.N.Y. 2009).

Here, defendant Universal's motion to dismiss the second amended complaint pursuant to CPLR § 3211(a)(7) is denied on the ground that this court finds that the second amended complaint sufficiently states a claim against Universal for violations of the Labor Law. Specifically, Universal asserts that the second amended complaint must be dismissed as against it on the ground that it fails to sufficiently allege that Universal is plaintiff's employer either under the single employer doctrine or the joint employer doctrine. However, such assertion is without

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merit. With regard to the allegations that Universal is plaintiff's employer, the second amended complaint alleges as follows:

- Defendants UMG and Universal "operate as part of a single integrated enterprise that employed or jointly employed Plaintiffs at all relevant times";
- "Defendants are a single and/or joint employer under the NYLL in that they share a common business purpose and ownership, maintain common control, oversight and direction over the operations of the work performed by Plaintiffs, including payroll practices. Upon information and belief, each Defendant has had substantial control of Plaintiffs' working conditions and over the unlawful policies and practices alleged herein"; and
- "Upon information and belief, both UMG [] and Universal [] are subsidiaries of the parent corporation Vivendi S.A."

Contrary to Universal's contentions, said allegations are sufficient to state a claim against Universal under either a single employer or joint employer theory of liability in order to survive a motion to dismiss. Indeed, a plaintiff is not "required to plead specific facts establishing single or joint employment" in order to survive a motion to dismiss. *Id.*

Additionally, Universal's motion to dismiss must be denied on the ground that a "determination of whether [a defendant] was [plaintiff's] employer is a question of fact that cannot be decided on a motion to dismiss." *Fowler*, 677 F.Supp.2d at 681. *See also Dias*, 2009 WL 595601 at *6 ("the court concludes that, whether [the defendants] are a single integrated enterprise, and whether [the defendant] jointly employed [plaintiff], are essentially factual questions that cannot be disposed of on a motion to dismiss.")

Accordingly, Universal's motion to dismiss the complaint as against it is denied. This constitutes the decision and order of the court.

Dated: 1/26/16

Enter: ______________________
J.S.C.
CYNTHIA S. KERN
J.S.C.