

Valentine v NYU Hosps. Ctr.

2020 NY Slip Op 30467(U)

February 14, 2020

Supreme Court, New York County

Docket Number: 154138/2017

Judge: Paul A. Goetz

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

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COLETTE VALENTINE

Plaintiff,

- v -

NYU HOSPITALS CENTER,

Defendant.

-----X

INDEX NO. 154138/2017

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff Colette Valentine, who was employed by defendant NYU Hospitals Center as a secretary from February 2014 to October 2016, commenced this action seeking to recover damages for alleged unpaid wages under the New York Labor Law. Defendant NYU Hospitals moves pursuant to CPLR 3212 for summary judgment seeking dismissal of plaintiff's complaint.

Plaintiff began her employment at NYU's Outpatient Surgery Center facility on a temporary basis and became a full-time employee in February 2014. Affirmation of Robert S. Whitman dated September 24, 2019, Exh. C, Tr. 44. She held the position of "Secretary II" where she was responsible for scheduling surgeries and providing administrative support for the office. Whitman Aff., Exhs. F, H. As a Secretary II, plaintiff was an hourly employee and her regular schedule required her to work 35 hours per week. Whitman Aff., Exh. D, Clarke Tr. 10; Exh. C, Pl. Tr. 48-49. From the time she was hired until approximately 2015, plaintiff's shift was from 11 a.m. to 7 p.m., Monday through Friday. Whitman Aff., Exh. D, 59. As of April 2016 until her termination in October 2016, plaintiff's schedule changed to 9:00 am to 5:00 pm.

Whitman Aff., Exh. J. Plaintiff was entitled to a one-hour lunch break each day, when she was not required to perform any work and was required to clock out. Whitman Aff., Exh. D, Clarke Tr. 57; Exh. I.

Throughout plaintiff's employment, NYU used a timekeeping system to track her time. Whitman Aff., Exh. D, Clarke Tr. 67. From the start of plaintiff's employment through mid-June 2014, plaintiff documented her time manually through a handwritten sign-in/sign-out sheet. Whitman Aff., Exh. D, Clarke Tr. 55. In June 2014, plaintiff's supervisor changed the timekeeping system for the two secretaries she supervised from a handwritten system to a digital time clock, with time cards inserted into the machine. Whitman Aff., Exh. C, Plf. Tr. 55; Exh. D, Clarke Tr. 56. Under the new system, plaintiff was required to record her arrival time at the beginning of her shift, at the start and end of her lunch break, and at the end of her shift as she left for the day. Whitman Aff., Exh. D, Clarke Tr. 60. In addition, the facility also maintained a logbook in which hourly employees were required to document their overtime hours and the reason for working overtime. Whitman Aff., Exh. D, Clarke Tr. 40-43. If plaintiff believed that she had to stay late, or come in early, in order to complete her work, she was required to communicate that to her supervisor, who would decide if plaintiff should work overtime. Whitman Aff., Exh. D, Clarke Tr. 59-63. Plaintiff's supervisor was very strict with respect to communicating any requests for overtime. Whitman Aff., Exh. D, Clarke Tr. 61-62. If plaintiff chose to come in early or stay late, and did not communicate this to her supervisor, she was not paid for this time as her supervisor had no way of knowing whether plaintiff was working during this time. Whitman Aff., Exh. D., Clarke Tr. 62-63.

In her complaint, plaintiff generally alleges that she regularly worked approximately thirty minutes after the end of her shift and for approximately thirty minutes of her lunch break,

and that she was not paid for this work. Whitman Aff., Exh. A, Complaint, ¶¶ 18, 20-22. Plaintiff cites only one specific example in her complaint, for the pay period May 1, 2016 to May 14, 2016, in which she alleges that she was not paid for four and half hours of overtime. *Id.*, ¶ 23. Plaintiff also alleges generally that she did not receive accurate wage statements. *Id.*, ¶ 24. Based on these allegations, plaintiff asserts three causes of action under the New York Labor Law: (1) nonpayment of straight time wages; (2) nonpayment of overtime wages; and (3) failure to provide accurate wage statements under NYLL, Article 6, § 195(3). Defendants now move pursuant to CPLR 3212 to dismiss plaintiff's complaint, arguing that the evidence, which primarily consists of time records and pay statements, shows that plaintiff was paid for the time that she worked, and that plaintiff does not have any evidence to support her vague allegations and recollections that she was not paid for the time she worked.

“An employee bringing an action for unpaid wages under the [NYLL] has the burden of proving that the defendant did not adequately compensate the employee.” *Avelar v. Ed Quiros, Inc.*, 2015 WL 1247102, at *8 (E.D.N.Y. 2015). Likewise, to establish liability under the NYLL for unpaid overtime, “the employee has the burden of proving that he or she performed work for which he or she was not properly compensated, and the employer had actual or constructive knowledge of that work.” *O'Donnell v. JEF Golf Corp.*, 173 A.D.3d 1528, 1529 (3d Dep't 2019) (citing *Kuebel v. Black & Decker Inc.*, 643 F.3d 352, 361 (2d Cir. 2011)). “[O]nce an employer knows or has reason to know that an employee is working overtime, it cannot deny compensation simply because the employee failed to properly record or claim his overtime hours.” *Kuebel*, 643 F.3d at 363.

Here, defendant argues that there is simply no evidence that plaintiff was not paid for the time she worked. However, in her deposition, plaintiff testified about a specific instance where

she did not believe that she received her full pay for the March 6-19, 2016 pay period. Whitman Aff., Exh. C, Plf. Tr. 31, 191. In the complaint, plaintiff cites to another instance, from May 1 to May 14, 2016, in which she allegedly was not paid for overtime. Whitman Aff., Exh A., Complaint, ¶ 23. In its motion, NYU attempts to show that plaintiff was in fact paid for this time by introducing emails and NYU timecard records and checks. However, the documents that NYU uses to support this argument are not authenticated as required under CPLR 4518(a) and therefore inadmissible to support its summary judgment motion. *Clarke v American Truck & Trailer, Inc.*, 171 AD3d 405, 406 (1st Dept 2019). Accordingly, it is

ORDERED that defendant's motion is denied.

2/14/20
DATE


PAUL A. GOETZ, J.S.C.

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| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | NON-FINAL DISPOSITION | | |
| | <input type="checkbox"/> | GRANTED | <input checked="" type="checkbox"/> | DENIED | <input type="checkbox"/> | OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |