

Turgunbaev v Home Family Care, Inc.

2021 NY Slip Op 31178(U)

March 22, 2021

Supreme Court, Kings County

Docket Number: 515325/15

Judge: Lawrence S. Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part Comm 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22nd day of March, 2021.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X

IKRAM TURGUNBAEV AND MASHRAB ASROVOV,
INDIVIDUALLY AND ON BEHALF OF ALL
OTHERS SIMILARLY SITUATED,

PLAINTIFFS,

-AGAINST-

Index No. 515325/15

HOME FAMILY CARE INC.,

DEFENDANT,

-----X

The following papers read herein:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

NYSCEF Docket No.:

12-18, 53-59, 60-64

Opposing Affidavits (Affirmations) _____

19-20

Reply Affidavits (Affirmations) _____

21-24, 65-69

_____ Affidavit (Affirmation) _____

Other Papers _____

Upon the foregoing papers, defendant Home Family Care Inc. (defendant) moves, in motion (mot.) sequence (seq.) 2, for an order, pursuant to CPLR 3212, granting it summary judgment dismissing plaintiff Ikram Turgunbaev's (plaintiff) complaint. Plaintiff and co-plaintiff Mashrab Asrovov (plaintiffs) move, in mot. seq. 4, for an order (1) compelling defendant to respond to discovery pursuant to CPLR 3124, and (2) extending the deadlines for pre-class certification discovery, time to move for class certification, and time to file a

note of issue and certificate of readiness. Defendant cross-moves, in mot. seq. 5, for a protective order striking certain items of discovery requested in plaintiffs' second set of pre-class certification demand for the production of documents and plaintiffs' second set of pre-certification interrogatory demands.

Background Facts and Procedural History

On December 17, 2015, plaintiff commenced the instant action individually and on behalf of a putative class consisting of home health care attendants employed by defendant who did not live in the homes of defendant's clients, but worked 24-hour shifts providing them with personal care, assistance, health related tasks, and other services in the State of New York. Among other things, the complaint sought damages under the Labor Law and New York Codes, Rules, and Regulations based upon defendant's alleged failure to provide legally required wage statements and notices, unpaid minimum wages, unpaid overtime compensation, and unpaid spread of hours pay. In particular, the complaint alleged that plaintiff and members of the putative class worked 24-hour shifts in the homes of defendant's clients but were only paid for 13 hours of this time per shift.

On or about July 25, 2016, defendant filed the instant motion for summary judgment dismissing plaintiff's complaint. In so moving, defendant argued that, under the New York State Department of Labor's (DOL) interpretation of its Miscellaneous Industries and Occupations Minimum Wage Order (the Wage Order), it was only required to pay plaintiff and members of the putative class for 13 hours per 24-hour shift provided that they were

afforded at least eight hours of sleep and actually received five hours of uninterrupted sleep, and that they were afforded three hours for meals. Defendant further noted that plaintiff did not allege in her complaint that she and members of the putative class failed to receive the requisite hours for sleep and meals. Under the circumstances, defendant argued that there was no basis for plaintiff's action inasmuch as it was perfectly legal for it to pay home health care attendants for 13 hours of work during their 24 hours shifts. Defendant also argued that plaintiff's action must be dismissed inasmuch as a class action was not a proper remedy for resolving the underlying wage claims. In particular, defendant claimed that individual fact inquiries would be required for each claim. Finally, defendant argued, in the alternative, that the court should stay the action pending the outcome of the Appellate Division, Second Department's determination in the appeal of the case of *Andryeyeva v New York Health Care, Inc.* (45 Misc. 3d 820 [2014]).

In an order dated August 19, 2016, this court stayed the case pending the Appellate Division's determination in *Andryeyeva*. In this regard, the *Andryeyeva* case revolved around the issue of whether or not the Wage Order allowed home health care employers to only pay their employees for 13 hours during a 24-hour shift. Thus, the Appellate Division's ruling could prove dispositive regarding defendant's pending summary judgment motion.

On September 13, 2017, the Appellate Division issued its decision in *Andryeyeva*, which upheld the lower court's ruling granting class certification (*Andryeyeva v New York Health Care, Inc.*, 153 AD3d 1216 [2017]). In so ruling, the Appellate Division found that

the DOL's interpretation of the Wage Order was neither rational nor reasonable because it conflicted with the plain language of the Order (*id.* at 1218). On March 26, 2019, the Court of Appeals reversed the Appellate Division's ruling in *Andryeyeva* (*Andryeyeva v New York Health Care, Inc.* 33 NY3d 152 [2019]). In this regard, the Court determined that the Appellate Division erred in ruling that the DOL's interpretation of the Wage Order was irrational and unreasonable (*id.* at 164). The Court further remitted the matter "for consideration of alternative grounds for class-certification for alleged violations of New York's Labor Law, inclusive of defendants' alleged systematic denial of wages earned and due, unaddressed by the courts below because of their erroneous rejections of DOL's interpretation [of the Wage Order]" (*id.*). Further, although the Court did not rule on the merits of the plaintiffs' class certification motions, in dicta, it addressed the defendants' argument that, because each putative class member's claim is fact specific and turns on whether the attendant received the required number of uninterrupted sleep and meal hours, the plaintiffs could not offer generalized proof on a class-wide basis. In particular, the Court noted that "the fact that damages may vary by class member does not per se foreclose class certification" and that "[a] difference in damage awards is an insufficient basis to deny certification as a matter of law where the class may rely on representative evidence of the class wide violations" (*Andryeyeva*, 33 NY3d at 185). The court further stated:

"Plaintiffs allege, and claim there is evidence of, defendants' systemic violations of the Wage Order and Labor Law, such as defendants' failure to adequately compensate home health care aides when they did not receive the minimum time for sleep and

meal breaks during their 24-hour shifts, maintain adequate records of, or compensate for, the hours actually worked, and provide appropriate sleep facilities. Claims of uniform systemwide violations are particularly appropriate for class certifications.” (*id.* at 184).

On September 18, 2019, plaintiff moved, in mot. seq. no. 3, for an order lifting the stay and for leave to amend her complaint. In this regard, plaintiff sought to add an additional representative plaintiff to the action, to remove the causes of action for failure to provide wage notices and wage statements, to add failure to pay wages and breach of contract causes of action, and to add factual allegations. These new factual allegations included claims that plaintiff and the members of the putative class did not receive the requisite amount of time for sleep and meals when working 24 hours shifts as required by the Wage Order. In an order dated October 18, 2019, the court granted, without opposition, plaintiff’s motion to vacate the stay and to amend the complaint and directed that plaintiff file an amended complaint. On October 22, 2019, plaintiff filed an amended complaint which contained the new causes of action, new factual allegations and added plaintiff Mashrab Asrovov to the caption.

On December 18, 2019 and December 20, 2019, after a compliance conference order was issued directing discovery, plaintiffs served certain discovery demands upon defendant including a demand for documents and interrogatories. Thereafter, on February 21, 2020, a status conference was held and the court issued an order directing that defendant respond to plaintiffs’ discovery demands by March 9, 2020, that depositions be completed by April

30, 2020, that all pre-class certification discovery be completed by May 29, 2020, that plaintiffs move for class certification by June 30, 2020, and that plaintiffs file a note of issue by July 22, 2020.

On May 5, 2020, after defendant failed to respond to plaintiffs' discovery demands, plaintiffs made the instant motion for an order compelling discovery and extending the deadlines for completing discovery, moving for class certification, and filing a note of issue. Thereafter, defendant made the instant cross motion for a protective order.

In a correspondence dated September 22, 2020, plaintiffs' counsel informed the court that plaintiffs were withdrawing that branch of their motion which sought to compel discovery and that the remaining portions of the motion seeking time extensions be deemed submitted. The correspondence further informed the court that defendant sought to withdraw its cross motion for a protective order. On January 22, 2021, after another conference was held, the court issued an order directing that all pre-class certification discovery including depositions be completed by March 22, 2021, that plaintiffs move for class certification 30 days after the completion of discovery, and that plaintiffs file a note of issue by June 18, 2021. The instant motions are now before the court.

Discovery Motions and Deadlines

As noted above, plaintiffs have withdrawn that branch of their motion seeking an order compelling discovery and defendant has withdrawn its cross motion for a protective order. Further, the remaining branches of plaintiffs' motion seeking time extensions have

been resolved by the court's January 22, 2021 order. Accordingly, mot. seq. 4 and mot. seq. 5 have been resolved.

Defendant's Motion for Summary Judgment

Turning to defendant's motion for summary judgment, as noted above, defendant maintains that the complaint must be dismissed inasmuch as it does not allege that defendant failed to provide its home health care attendants with the requisite number of hours for sleep and meals when it only paid them for 13 hours of their 24-hour shifts. In this regard, the court notes that a lack of allegations and evidence regarding the failure to provide such sleep and meal time constitutes grounds for denying class certification (*Moreno v Future Health Care Servs. Inc.*, 186 AD3d 594, 596 [2020]). However, here the court previously granted plaintiff's unopposed motion to serve an amended complaint which specifically added allegations that defendant failed to provide its home health care attendants with the prescribed breaks during their 24-hour shifts. Accordingly, there is no longer a basis for the argument underlying defendant's motion for summary judgment. Finally, defendant has failed to make a prima facie showing that individual questions of fact would predominate over questions common to the class (*Andryeyeva*, 33 NY3d at 184-185). Accordingly, defendant's motion for summary judgment is denied.

Summary

In summary, the court rules as follows: (1) defendant's motion, in mot. seq. 2, for summary judgment is denied; (2) that branch of plaintiffs' motion, in mot. seq. 4, which seeks an order compelling discovery is withdrawn. The remaining branches of plaintiffs' motion, which seek time extensions, is granted to the extent provided in the court's January 22, 2021 order; and (3) defendant's motion, in mot. seq. 5, for a protective order is withdrawn.

This constitutes the decision and order of the court.

ENTER,



J. S. C.

HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE