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| Gonzalez v Clean Action Laundromat, Inc. |
| 2022 NY Slip Op 34068(U) |
| November 29, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 657084/2019 |
| Judge: Arthur F. Engoron |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

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| JOSE M GONZALEZ, | INDEX NO. <u>657084/2019</u> |
| Plaintiff, | MOTION DATE <u>09/15/2022</u> |
| | MOTION SEQ. NO. <u>004</u> |

- v -

CLEAN ACTION LAUNDROMAT, INC., CLEAN ACT INC.,
ANGELO RAMOS, MIKE RODRIGUEZ, RAPHAEL
GARCIA, JOSE RAMOS, A.I.R. LAUNDROMAT, INC.,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents and for the reasons stated hereinbelow, plaintiff's motion for summary judgment is granted.

Background

Between December 2014 and December 2017, plaintiff, Jose Gonzalez, worked as a laundry clerk at a laundromat located at 1965 Amsterdam Avenue, New York, New York, and owned by defendant A.I.R. Laundromat Inc. ("AIR"). NYSCEF Doc. No. 80. Plaintiff alleges that, in addition to working at that location, he also worked on an "as needed basis" at the other laundromats named herein as defendants (Clean Action Laundromat, Inc., and Clean Act Inc.), which plaintiff alleges are part of a joint enterprise. Id. ¶ 5.

Plaintiff alleges that during his employment he "typically" worked six days a week for a total of 50 to 55 hours per week. Id. ¶ 12.

Plaintiff alleges he never had a written employment contract, never received a written statement of how much he was being paid, and never received wage notices with his payments. NYSCEF Doc. No. 80 ¶ 11-13.

Plaintiff further alleges that: in December 2014 he was paid \$9.00 per hour for all hours worked, when he should have been paid time-and-a-half (\$13.50) for any overtime hours worked beyond the first 40; in 2015 and 2016 he was paid \$10.00 per hour for all hours worked, when he should have been paid time-and-a-half (\$15.00) for overtime; and, in 2017 he was paid \$11.00 per hour for all hours worked, when he should have been paid time-and-a-half (\$16.50) for overtime. NYSCEF Doc. No. 80 ¶ 14-16.

Defendant Angelo Ramos, president and owner of AIR and the other laundromat defendants, does not deny that plaintiff was his employee but alleges that he “did not work every week” and was provided daily thirty-minute meal breaks that plaintiff’s accounting misses. NYSCEF Doc. No. 83.

Mr. Ramos does not offer any documentation of what hours plaintiff worked, explaining in his deposition that such information, when kept, was retained in now-lost calendars (because when “[t]he month past, we don’t use it no more”). NYSCEF Doc. No. 77 at 19.

Mr. Ramos admits plaintiff received no wage statement or notices but alleges that he “reasonably believed in good faith that [he] was not required to provide” such statements and asserts that timely and complete payment is “a defense to any claim for damages for failure to provide such notices.” NYSCEF Doc. No. 83.

Procedural History

On November 27, 2019, plaintiff commenced this action seeking, inter alia, to recover alleged unpaid overtime wages. NYSCEF Doc. No. 1.

In a Decision and Order dated February 5, 2021, this Court granted plaintiff leave to amend the caption to add AIR as a defendant. NYSCEF Doc. No. 24.

On February 9, 2021, plaintiff filed an Amended Complaint asserting two causes of action: (1) unpaid wages under New York Labor Law; and (2) failure to provide wage notices and wage statements required by New York Labor Law. NYSCEF Doc. No. 27.

On March 5, 2021, defendants Clean Action Laundromat, Inc., Clean Act, Inc., and Mr. Ramos, answered with general denials and thirteen affirmative defenses. NYSCEF Doc. No. 29. On April 21, 2021, AIR answered with general denials and twelve affirmative defenses (unlike the other defendants, AIR did not allege improper service). NYSCEF Doc. No. 33.

Defendants Mike Rodriguez, Raphael Garcia, and Jose Ramos have not appeared in the instant action, and plaintiff has failed to prosecute his case against them.

In a Decision and Order dated July 29, 2021, this Court denied plaintiff’s motion to strike defendant AIR’s answer without prejudice and directed the parties to participate in a preliminary conference. NYSCEF Doc. No. 48.

In a Decision and Order dated January 12, 2022, this Court granted plaintiff’s motion to compel AIR to respond to outstanding discovery requests and to produce a representative for a deposition. NYSCEF Doc. No. 66.

On August 15, 2022, plaintiff moved, pursuant to CPLR 3212, for summary judgment against the laundromat defendants and Mr. Ramos, seeking, pursuant to Article 6 of New York Labor Law (“NYLL”): (1) \$9,912.50 in unpaid overtime wages, plus prejudgment interest from the filing of the lawsuit; (2) \$9,912.50 in liquidated damages; (3) \$10,000 in statutory penalties for failure to

provide wage notices and wage statements; (4) \$36,550 in attorney's fees; and (5) \$2,321.57 in costs. NYSCEF Doc. No. 74.

On September 1, 2021, defendants opposed the motion, arguing that there are factual disputes remaining as to the actual number of hours plaintiff worked, and that attorney's fees should not be awarded without a hearing or an affidavit substantiating the fees requested. NYSCEF Doc. No. 82.

Discussion

In order to obtain summary judgment, the “movant must establish its defense or cause of action sufficiently to warrant a court's directing judgment in its favor as a matter of law. The party opposing the motion, on the other hand, must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which the opposing claim rests’ [M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient’ for this purpose.” Gilbert Frank Corp. v Fed. Ins. Co., 70 NY2d 966, 967 (1988) (internal citations omitted).

Pursuant to NYLL § 663 “any employee paid less than the wage to which he or she is entitled to commence a civil action to recover underpayments and liquidated damages.” See generally Tezoco v GE & LO Corp., 199 AD3d 541, 541 (1st Dep’t 2021).

To establish liability under NYLL on a claim 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 AD3d 1528, 1529 (3d Dep’t 2019) citing Kuebel v Black & Decker Inc., 643 F3d 352, 361 (2d Cir. 2011); Shang Shing Chang v Wang, 2018 Wage & Hour Cas 2d (BNA) 82930 (EDNY, Mar. 12, 2018).

Although the employee has the burden of proving a failure to compensate, “it is the employer's responsibility to maintain accurate records of an employee's hours.” Padilla v. Manlapaz, 643 F Supp 2d 302, 307 (EDNY 2009). “In situations where an employer's payroll records are inaccurate or inadequate, ‘an employee has carried out his burden if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.’” Berrios v Nicholas Zito Racing Stable, Inc., 849 F Supp 2d 372, 379 (EDNY 2012) quoting Anderson v Mt. Clemens Pottery Co., 328 US 680, 687 (1946). This burden is not high and may be satisfied through estimates based on an employee's own recollection and testimony. See Kuebel, 643 F3d at 362. After an employee meets his or her burden, it “then shifts to the employer to prove by a preponderance of the evidence that the [employee] was properly paid for the hours worked.” Padilla, 643 F Supp 2d at 307; see also O'Donnell, 173 AD3d at 1529; Heenam Bae v Indus. Bd. of Appeals, 104 AD3d 571, 572 (1st Dep’t 2013); NYLL § 196-a (where employer fails “to keep adequate records, ... the employer in violation shall bear the burden of proving that the complaining employee was paid wages, benefits and wage supplements.”).

The public policy for this burden shifting is obvious: if employers were able to disregard an employee's estimate of hours worked without documentation it would incentivize them not to keep records.

NYLL § 195 provides that employers must provide employees with wage notices at the time of hiring as well as a statement with every payment of wages listing, inter alia, the dates of the work covered, the name of the employee, the name and address of the employer, and gross wages.

Here, it is undisputed that plaintiff worked for the defendants, did not receive a wage statement before he began working for them, and did not receive wage notices each time he was paid. The question is how many overtime hours, if any, plaintiff actually worked.

In his affidavit, plaintiff attests that he worked on average 50-55 hours per week and was never paid overtime. NYSECF Doc. No. 80 ¶¶12-13. Mr. Ramos in his affidavit, however, says that plaintiff worked "45.5 hours a week" and also received "bonus money" every week of \$25-\$30 (sometimes more)." NYSCEF Doc. No. 83 ¶ 2. Mr. Ramos and the corporate defendants, however, do not provide any documentation regarding payroll, despite the conclusion of discovery, and made clear in Mr. Ramos' deposition and affidavit that further documentation is not forthcoming.

Therefore, as defendants have failed to keep adequate payroll records as required by NYLL § 195(4), plaintiff has met his (not high) burden through his own recollection to prove that he worked between 50-55 hours a week (or approximately 52.5 hours a week) while defendant's employee.

Further, Mr. Ramos' affirmative defense for failing to provide wage statements to plaintiff, based on a complete and timely payment of all wages due, fails as plaintiff has established that he worked overtime hours for which he was not compensated timely and completely.

However, pursuant to NYLL § 198(1), Mr. Ramos does have an affirmative defense for failing to provide a wage notice, as he attests in his affirmation that he "reasonably believed in good faith that [he] was not required to provide" one because plaintiff knew he was being paid the prevailing minimum wage.

Therefore, based on plaintiff having worked approximately 52.5 hours a week (or 12.5 hours overtime) for approximately 50 weeks a year, he is entitled to a total of \$9,912.50 in back overtime (\$225 in back overtime for December 2014 [12.5 hours x 4 weeks x \$9 minimum wage/2] + \$3,125 in back overtime for 2015 [12.5 hours x 50 weeks x \$10 minimum wage/2] + \$3,125 in back overtime for 2016 [12.5 hours x 50 weeks x \$10 minimum wage/2] + \$3,437.50 in back overtime for 2017 [12.5 hours x 50 weeks x \$11 minimum wage/2]). In addition, plaintiff is entitled to liquidated damages of one hundred percent due, thus \$9,912.50, pursuant to NYLL § 663(1).

Defendants also violated NYLL § 195(3) by failing to provide weekly wage statements and therefore owe plaintiff \$5,000 (\$50 per week for the 154 weeks of plaintiff's employment with a maximum total of \$5,000).

Finally, plaintiff is entitled to reasonable attorney's fees and costs pursuant to NYLL § 663(1) and submits an affidavit in support of his request. The Court has reviewed the submissions and finds, in its discretion, that defendants are entitled to \$31,067.50 in reasonable attorney's fees (73.1 hours at \$425 per hour).

This Court has considered the parties' other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

The motion of plaintiff Jose M. Gonzalez for summary judgment against defendants Clean Action Laundromat, Inc., Clean Act. Inc., A.I.R. Laundromat, Inc., and Angelo Ramos is granted and the Clerk is hereby directed to enter a judgment against them, jointly and severally, in the amount of: \$9,912.50 in unpaid overtime plus prejudgment interest at the rate of 9% per annum since the filing of this lawsuit on November 27, 2019 until the filing of judgment + \$9,912.50 in liquidated damages + \$5,000 in statutory penalties for failure to provide wage statements + \$31,067.50 in attorney's fees + \$2,321.57 in costs.



11/29/2022

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE