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

ELDRED V. HARRIS, on behalf of himself, Individually and on behalf of himself and Others similarly situated,

Plaintiff,

vs. **Index No. 2009-1156**

CORNELL UNIVERSITY,

Defendant.

BEFORE: HON. ROBERT C. MULVEY
Supreme Court Justice

APPEARANCES:

EDWARD E. KOPKO, ESQ.
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DECISION & ORDER

Mulvey, Robert C., J.

The plaintiff was employed at Cornell University as a Reunion Campaign Officer in the Office of Alumni Affairs and Development from May 2003 until March 2008.

In this action, the plaintiff has alleged that the defendant Cornell is liable to him for overtime compensation and other damages. He has alleged that he regularly worked more than forty hours per week, averaging seventy to eighty hours per week over the course of his employment. The defendant contends that this position was exempt from the provisions of the Fair Labor Standards Act (FLSA) and the state Labor Law provisions which require overtime compensation.

The defendant has moved to dismiss the complaint for failure to state a cause of action, which motion was denied by the Court by decision and order dated April 23, 2010. Other aspects of the defendant's motion were held in abeyance by the Court pending completion of document discovery. The parties agreed that this phase of discovery was complete and further submissions and argument on the defendant's motion have been considered.

The motions to be determined herein seek dismissal on the basis of documentary evidence [CPLR 3211(a)(1)] and summary judgment pursuant to CPLR Section 3212.

Determination of the motions requires an analysis of the actual duties and responsibilities of the position. Cornell contends that the position is administrative and therefore exempt from overtime compensation.

Having determined that the complaint states a cause of action, the Court must now determine whether Cornell has established a documentary defense and whether undisputed facts compel a dismissal of the complaint as a matter of law.

DISCUSSION

Summary Judgment Principles

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue **Napierski v. Finn** 229 AD2d 869 (Third Dept., 1996), quoting **Moskowitz v. Garlock** 23 AD2d 943, 944 (Third Dept., 1965); it must clearly appear that no material and triable issue of fact is presented (see, **Lustyik v.**

Manaher 226 AD2d 852 (Third Dept., 1996); **Bulger v. Tri-Town Agency** 148 AD2d 44 (Third Dept., 1989), appeal dismissed 75 NY2d 808 (1990); **Stata v. Village of Waterford** 225 AD2d 163 (Third Dept., 1996).

It is well-established that the function of the court upon a motion for summary judgment is issue finding, not issue determination, and if a genuine issue of fact is found to exist, summary judgment must be denied **Super v. Abdelazim** 108 AD2d 1040 (Third Dept., 1985).

When making a motion for summary judgment, the initial burden is on the movant to establish a prima facie entitlement to judgment as a matter of law by the submission of competent evidence, see, **Amedure v. Standard Furniture Co.**, 125 AD2d 170 (Third Dept., 1987) Once the movant has met this initial burden, it becomes the obligation of the opponent to assemble and lay bare affirmative proof to demonstrate that the matters alleged are real and capable of being established upon a trial **Couch v. Schmidt**, 204 AD2d 951 (Third Dept., 1994).

It is fundamental that a party opposing a motion for summary judgment must come forward with admissible proof that would demonstrate the necessity of a trial as to an issue of fact **Zolin v. Roslyn Synagogue** 154 AD2d 369 (Second Dept., 1989); **Dugan v. Sprung** 280 AD2d 736 (Third Dept., 2001).

When considering whether a triable issue exists, the evidence in the record is viewed in the light most favorable to the party opposing summary disposition (see **Torosian v. Bigsbee Vil. Homeowners Assn.,** 46 AD3d 1314 (Third Dept., 2007).

Substantive Law

Under the Fair Labor Standards Act an employer is not required to pay overtime to any employee in a bona fide executive, administrative or professional capacity [29 USC Section 213(a)(1)] as those terms are defined by the regulations of the Secretary of Labor. In this case, the defendant has classified the plaintiff's position as "exempt" and now contends for the first time that the position is administrative. In analyzing whether a position is administrative in nature, the inquiry is whether the employee's primary duty consists of either the performance of office or non-manual work directly related to the management policies or the general business operations of the employer, and whether the performance of such duty includes work requiring the exercise of discretion and independent judgment with respect to matters of significance [29 CFR 541.214(a)].

The administrative exemption is to be narrowly construed against the employer and

will be applied only where the employee fits plainly and unmistakably within its terms, and the employer bears the ultimate burden of establishing that its employee falls within the exemption. **Scott Wetzel Services Inc. v. NYS Bd. of Industrial Appeals,** 252 AD2d 212 (Third Dept., 1998). This burden is by "clear and convincing evidence." **Shockley v. City of Newport News**, 997 F.2d 18 (4th Circuit, 1993).

The factual analysis required in making this determination makes it clear that the defendant is unable to demonstrate that the documentary evidence presented resolves all factual issues as a matter of law and definitively disposes of the plaintiff's claim, **Wallach v. Hinckley,** 12 AD3d 893, 894 (Third Dept., 2004).

The defendant contends that the position requires planning and execution of reunion campaigns and that responsibilities include the planning, coordination, supervision and implementation of various volunteer activities to reach fund-raising goals and objectives for reunion classes; goal-setting, overseeing participation initiatives, finding and cultivation of donors, etc. The defendant emphasizes that the position requires very little direct supervision and argues that the plaintiff has confirmed many of these aspects of the position in his self-evaluations.

The plaintiff argues that his main duty was to solicit Cornell alumni to in turn solicit other Cornell alumni to make financial contributions to Cornell, and that this duty was concentrated and focused during Cornell class reunions. He alleges that he was under extensive supervision and that his primary activity was office work without the exercise of discretion or independent judgment with respect to matters of significance, which was not directly related to the management or general business operations of Cornell. He further alleges that both exempt and non-exempt staff at the Office performed the same functions. He never managed more than a single assistant and did so less than forty-percent of the time.

The Court cannot conclude on this record that the defendant has sustained its prima facie burden of demonstrating entitlement to judgment as a matter of law. The affidavits by Cornell officials and the quotations from the plaintiff's correspondence and self-evaluations do not permit the conclusion as a matter of law that the position falls within the administrative exemption, especially given the heavy burden and narrow construction noted in **Scott Wetzel Services, Inc.**, supra.

Even if the defendant's proof was deemed sufficient to shift the burden to the plaintiff to demonstrate genuine issues of material fact, the Court would find that the plaintiff's averments are sufficient to do so.

CONCLUSION

For the foregoing reasons, the defendant's motion be and hereby is denied.

This shall constitute the Order of the Court.

Signed this 25TH day of July, 2011 at Ithaca, New York.

ROBERT C. MULVEY, J.S.C.