JACKSON et al v. SWEET HOME HEALTHCARE LLC et al Doc. 25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NAKIA JACKSON, et al.,	:	
***Plaintiffs*,**	:	**CIVIL ACTION**
	:	
v.	:	
	:	
SWEET HOME HEALTHCARE, et al.,	:	**No. 16-2353**
***Defendants*.**	:	

MEMORANDUM

PRATTER, J. **APRIL 4, 2017**

Plaintiffs are employees of Sweet Home Healthcare and Sweet Home Primary Care. These employees have filed suit for alleged violations of the Fair Labor Standards Act (FLSA) and the Pennsylvania Minimum Wage Act (PMWA). The employers ask the Court to dismiss the Complaint, arguing that Plaintiffs were exempt employees, and that certain changes to Department of Labor regulations that purported to remove the claimed exemption are invalid. The Court heard oral argument on the matter, and denies the motion.

BACKGROUND

Plaintiffs are home health aides and direct care workers who claim that they were unlawfully not paid overtime wages, in violation of the FLSA and PMWA. The Plaintiffs assert that while some of them are classified as employees by the Defendants, others are erroneously classified as "independent contractors." Plaintiffs claim to bring this action as both a collective action and a class action in order to accommodate all employees in the same situation. They allege that the relevant time period is May 2012 through the present. The employees claim that they provide "home care support and services to elderly and disabled clients such as medical assistance, companionship services, homemaking services and other home care services inside

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the clients' household." They also contend that they are not subject to any FLSA exemption. Defendants move to dismiss on the ground that there is an exemption.

LEGAL STANDARD

A Rule 12(b)(6) motion to dismiss tests the sufficiency of a complaint. Although Rule 8 of the Federal Rules of Civil Procedure requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed.R.Civ.P. 8(a)(2), in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests," *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007) (citations and quotations omitted) (alteration in original), the plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* (citation omitted).

To survive a motion to dismiss, the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). Specifically, "[f]actual allegations must be enough to raise a right to relief above the speculative level. . . ." *Twombly,* 550 U.S. at 555 (citations omitted). The question is not whether the claimant will ultimately prevail but whether the complaint is "sufficient to cross the federal court's threshold." *Skinner v. Switzer,* 562 U.S. 521, 530 (2011) (citation omitted). An assessment of the sufficiency of a complaint is thus "a context-dependent exercise" because "[s]ome claims require more factual explication than others to state a plausible claim for relief." *W. Penn Allegheny Health Sys., Inc. v. UPMC,* 627 F.3d 85, 98 (3d Cir. 2010) (citations omitted).

In evaluating the sufficiency of a complaint, the Court adheres to certain well-recognized parameters. For one, the Court "must only consider those facts alleged in the complaint and accept all of the allegations as true." *ALA, Inc. v. CCAIR, Inc.,* 29 F.3d 855, 859 (3d Cir. 1994)

(citing *Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984)); *see also Twombly,* 550 U.S. at 555 (stating that courts must assume that "all the allegations in the complaint are true (even if doubtful in fact)"); *Mayer v. Belichick,* 605 F.3d 223, 230 (3d Cir. 2010) ("[A] court must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents."). The Court also must accept as true all reasonable inferences that may be drawn from the allegations, and view those facts and inferences in the light most favorable to the nonmoving party. *SeeRocks v. City of Phila.,* 868 F.2d 644, 645 (3d Cir. 1989); *see also Revell v. Port Auth. of N.Y. & N.J.,* 598 F.3d 128, 134 (3d Cir. 2010). Nonetheless, the Court need not accept as true "unsupported conclusions and unwarranted inferences," *Doug Grant, Inc. v. Greate Bay Casino Corp.,* 232 F.3d 173, 183–84 (3d Cir. 2000) (citations and quotations omitted), or the plaintiff's "bald assertions" or "legal conclusions," *Morse v. Lower Merion Sch. Dist.,* 132 F.3d 902, 906 (3d Cir. 1997) (citations and quotations omitted).

DISCUSSION

The two employers have moved to dismiss the FLSA claim for two reasons. First, they argue that under Department of Labor regulations, these Plaintiffs were exempt from FLSA protection prior to January 1, 2015. Second, they argue that regulations that went into effect on January 1, 2015, and that would potentially nullify the prior exemption, are invalid and should be struck down.

With respect to their first argument, Defendants point to 29 U.S.C. 213(a)(15), which excludes from the FLSA overtime protections "any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves." Until new regulations took effect on January 1, 2015, the

Department of Labor interpreted the quoted exclusion to include home care workers employed by third-party care providers.[1] Defendants argue that Plaintiffs clearly fall under the scope of this exemption and that the Court should therefore dismiss all of the FLSA claims to the extent they seek overtime compensation prior to January 1, 2015.

Plaintiffs counter that FLSA exemptions are affirmative defenses and they have no obligation to plead around an affirmative defense. They argue that, even so, they pleaded that the exemptions do not apply and that their duties included "household services." Given that workers performing at least 20% of their domestic services in the category of homemaking are not exempt, even prior to January 1, 2015, Plaintiffs claim that it is not clear from the face of their Complaint that the exemptions Defendants invoke exclude them.

In reply, Defendants cite *Davis v. Abington Memorial Hosp.*, 765 F.3d 236 (3d Cir. 2014), for the proposition that the Third Circuit Court of Appeals requires more than bare bones pleading in the FLSA context. However, what Defendants fail to acknowledge is that *Davis* addressed pleading standards for making out the *prima facie* case for a plausible FLSA claim – specifically what a plaintiff must plead to show that he or she was uncompensated for overtime work – not pleading standards relating to avoiding affirmative defenses. Thus, *Davis* is

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[1] As used in section 13(a)(15) of the Act, the term companionship services shall mean those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work: *Provided, however*, That such work is incidental, i.e., does not exceed 20 percent of the total weekly hours worked. The term ''companionship services'' does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse. . . Employees who are engaged in providing companionship services, as defined in § 552.6, and who are employed by an employer or agency other than the family or household using their services, are exempt from the Act's minimum wage and overtime pay requirements by virtue of section 13(a)(15). . .

29 C.F.R. §§ 552.6, 552.109(a) (1975).

inapplicable here. Courts have uniformly held that unless it is apparent from the face of the complaint that an FLSA exemption applies, granting a motion to dismiss based on an exemption affirmative defense is inappropriate. *See Anzaldua v. WHYY, Inc.*, 160 F. Supp. 3d 823, 826 (E.D. Pa. 2016) (refusing to dismiss FLSA case when it was not absolutely clear from the face of the complaint that an exemption applied, citing *Brody v. Hankin*, 145 Fed. App'x. 768, 771 (3d Cir. 2005)); *Sloane v. Gulf Interstate Field Servs., Inc.*, 2016 WL 878118, at *4-5 (W.D. Pa. Mar. 8, 2016) ("The absence of an FLSA exemption is not a required element and, therefore, Plaintiff need not plead facts which would permit a finder of fact to conclude that an exemption does not apply.") Thus, even though it appears that the exemption may ultimately be the subject of some controversy in this case, because it is not clear from the face of the Complaint that the exemption applies and because the application of an exemption is an affirmative defense, the Court will not dismiss the Complaint.

Even if the exemption did apply prior to January 1, 2015, Department of Labor regulations mandating overtime pay for companionship service providers employed by third party agencies went into effect on January 1, 2015 and eliminated that exemption. As discussed, the Department of Labor has historically interpreted the exception in 29 U.S.C. 213(a)(15) to include not just people employed directly by the elderly or disabled as companions, but also to include home health care aides (short of nurses and other similarly trained professionals) who are employed by third-party agencies. However, in 2013, the Department of Labor revised its regulations to remove the exemption from companionship workers employed by third-party agencies, reasoning that the types of services that they provide are increasingly similar to those provided in institutions like nursing homes, and that therefore they should be entitled to overtime

compensation and other FLSA protections. Those changes were scheduled to go into effect on January 1, 2015.

Defendants argue, however, that the regulations are invalid. Applying the first step of the *Chevron* test, which requires courts to determine whether "Congress has directly spoken to the precise question at issue," Defendants insist that Congress, in 1974, intended the exemptions in the statute to apply to individuals employed by third-party agencies, and that the Department of Labor exceeded its authority in removing that exemption through regulation. *See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). Defendants argue that the "any employee employed" language in the exemption is broad and shows Congress's intent to capture all companionship service providers, no matter their employer. They argue that Congress used the old Department of Labor definitions when it amended the FLSA and created the exemption back in 1974, which demonstrates a reliance on the broad exemption. They also note that the legislative history shows that Congress intended to keep the cost of home care for the elderly low, which Defendants argue is an intent defeated by the new regulation.

Defendants try to persuade the Court that a recent case from the Court of Appeals for the D.C. Circuit that addressed this very issue should be ignored, and also fail to fully acknowledge that Supreme Court precedent undermines their argument. *See Long Island Home Care v. Coke*, 551 U.S. 158 (2007); *Home Care Ass'n of Am. v. Weil*, 799 F.3d 1084 (D.C. Cir. 2015) (Srinivasan, J.). In *Coke*, the Supreme Court faced the converse of the argument here – a home health care aide employed by a third-party agency argued that the Department of Labor did not have authority to extend the exemption to employees of third-party agencies. *Coke*, 551 U.S. 158. The employee argued that Congress clearly did not intend for third-party agency employees

to be covered by the exemption. Various *amici* argued, much as Defendants argue here, that Congress's intent was the opposite, and that the "unambiguous language" of the exemption requires that third-party agency employees are covered by the exemption. *See Weil*, 799 F.3d at 1090-91 (analyzing, in depth, the arguments advanced in *Coke*). The Supreme Court, however, chose a middle ground and held that "the text of the FLSA does not expressly answer the third-party-employment question" and that the legislative history held no "clear answer." *Coke*, 551 U.S. at 168. Absent a clear, unambiguous answer in the statutory text, the Supreme Court held that the question of "whether to include workers paid by third-parties within the scope of the [exemption's] definitions" is one of the "details" for the "agency to work out." *Id*. at 167.

Resting in large part on this holding in *Coke*, the D.C. Circuit Court of Appeals held that the Department of Labor's new regulations taking third-party agency employees out of the exemption fell within the authority granted to them by Congress, reasoning that because the *Coke* court found that Congress left to the Department of Labor the authority to determine that third-party agency employees belonged within the exemption (*i.e.*, that Congress's intent was unclear and the Department of Labor was not compelled to take one interpretation or the other), the Department of Labor also had the authority to determine that such personnel did *not* belong in the exemption. *See Weil*, 799 F.3d at 1090-91. The *Weil* court further held that under the second step of the *Chevron* analysis, which requires courts to determine whether an agency's construction of a statute is reasonable, the Department of Labor's new regulations passed muster, noting that the Department simply recognized a change in the home care industry that made those workers more like professionals with a vocation than casual babysitters. *Id.* at 1093-94. Finally, the *Weil* court noted that this reasoned explanation for the new regulation demonstrated that it was not arbitrary or capricious. *Id.* at 1095.

The Court will accept the D.C. Circuit Court of Appeals' reasoning in *Weil*. Thus, even if Plaintiffs were exempt employees prior to January 1, 2015, a point which the Court has already concluded is unclear at this juncture, after January 1, 2015, Plaintiffs were not exempt employees.

CONCLUSION

For the foregoing reasons, the Defendants' Motion is **DENIED**. An appropriate Order follows.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge