Regan et al v. Hanahan, City of Doc. 52

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

James Regan and Mason Underwood, on behalf of themselves and all other similarly situated,

Plaintiffs,

v.

City of Hanahan,

Defendant.

Civil Action No. 2:16-1077-RMG

ORDER AND OPINION

This matter is before the Court on the City of Hanahan's partial motion to dismiss Plaintiff's second amended complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Dkt. No. 39.) For the reasons set forth below, the Court denies the motion.

I. Background

Plaintiffs James Regan and Mason Underwood seek to bring a collective action under 29 U.S.C. § 216(b) to recover for wages, including overtime premiums, they allege they were not paid in accordance with the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq. ("FLSA"). Plaintiffs also seek recovery under the South Carolina Payment of Wages Act, S.C Code Ann. § 41-10-10, et. seq. ("SCPWA"), which they assert qualifies to be treated as a class action under Rule 23 of the Federal Rules of Civil Procedure. Plaintiff Regan also claims that the City retaliated against him personally for complaints he made that are protected under the FLSA. The City has moved to dismiss only Plaintiffs' third cause of action for damages under the SCPWA.

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II. Relevant Facts

In their third cause of action, Plaintiffs allege that the City is liable to them for violations of the SCPWA, explaining that

> 55. Defendant owes Plaintiff and the members of the Plaintiff class "wages" as defined in § 41-10-10(2) of the [SCPWA], to compensate them for labor rendered to Defendant, as promised to Plaintiff and the members of the Plaintiff class and as required by law.
>
> 56. During Plaintiffs' employment in Defendant's Fire Department, Defendant promulgated and distributed various Policies and Procedures . . . [which] contains the following provisions regarding Defendant's wage and hour practices for Fire Department employees:
>
> a. that "Federal law on overtime shall be followed";
> b. that "if [an] employee's sleeping period or meal time is interrupted by a call to duty, the interruption is counted as hours worked";
> c. that "Employees working overtime shall be compensated by either overtime pay or the use of compensatory time. Overtime pay and compensatory time shell be given at a rate of time and one-half for all hours of overtime worked"; and
> d. that "The Employee may determine whether to accept overtime pay or compensatory time."
>
> 57. Defendant knowingly allowed Plaintiffs to "work off the clock" and failed to pay Plaintiffs for all labor rendered to Defendant.
>
> 58. Defendant has failed to pay Plaintiffs all wages due, as required by § 41-10-40 and -50 of the [SCPWA].

(Dkt. No. 38 at 10-11.)[1] For these alleged violations, Plaintiffs seek to recover wages, liquidated (treble) damages, and fees/costs under the SCPWA, § 41-10-80(C).

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[1] As the City noted in its reply brief (Dkt. No. 45 at 2, n.2), Plaintiff improperly filed a third amended complaint (Dkt. No. 41) without the City's consent or leave of the Court. Under Rule 15, "A party may amend its pleading once as a matter of course within . . . 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1). Defendant filed an answer to Plaintiffs' first amended complaint on August 2, 2016. (Dkt. No. 22.) Plaintiffs could amend their complaint as a matter of course within 21 days of that responsive pleading. Defendant's motion to dismiss filed February 15, 2017 did not trigger a new 21-day period because the "21-day periods to amend once as a matter of course after service of a responsive pleading or after service of a designated motion are not cumulative. If a responsive pleading is served after one of the

III. Legal Standard

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits the dismissal of an action if the complaint fails "to state a claim upon which relief can be granted." Such a motion tests the legal sufficiency of the complaint and "does not resolve contests surrounding the facts, the merits of the claim, or the applicability of defenses. . . . Our inquiry then is limited to whether the allegations constitute 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (quotation marks and citation omitted). In a Rule 12(b)(6) motion, the Court is obligated to "assume the truth of all facts alleged in the complaint and the existence of any fact that can be proved, consistent with the complaint's allegations." *E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000). While the Court must accept the facts in a light most favorable to the non-moving party, it "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." *Id.*

To survive a motion to dismiss, the complaint must state "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although the requirement of plausibility does not impose a probability requirement at this stage, the complaint must show more than a "sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint has "facial plausibility" where the pleading "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

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designated motions is served, for example, there is no new 21-day period." Fed. R. Civ. P. 15, Committee Notes on Rules – 2009 Amendment; *see Morris v. Nicholson*, No. RWT 09CV2726, 2010 WL 3245404, at *12 (D. Md. Aug. 17, 2010). For this reason, the Court will order the clerk of court to strike Plaintiffs' third amended complaint.

IV. Discussion

The City of Hanahan relies on the Fourth Circuit's decision in *Anderson v. Sara Lee, Corp.*, 508 F.3d 181 (4th Cir. 2007) to argue that Plaintiffs' SCPWA claims are preempted by the FLSA. In *Anderson*, the Fourth Circuit held that even though the North Carolina state law provided more generous remedies than the FLSA (e.g. a 3-year instead of a 2-year limitations period), the state claims were preempted because Plaintiffs would have to rely on proof of an FLSA violation to prevail on their state law claims. *Anderson*, 508 F.3d at 192-93. Defendants argue that *Anderson* is analogous to the case at bar, so Plaintiffs' SCPWA claims are preempted even though the SCPWA provides more generous recovery than the FLSA (e.g., the possibility of a 3-year instead of a 2-year limitations period and treble instead of double damages. (Dkt. No. 39 at 4-5.)

Plaintiffs agree that they may not rely on the SCPWA to seek minimum wages or overtime pay because such claims are preempted by the FLSA but argue that their SCPWA claims for "unpaid, prevailing wages, over and above the minimum wage" as well as their claims connected to the City's "failure to pay these wages *when they were due*" are not preempted because these state law claims are not duplicative of their FLSA claims. ((Dkt. No. 42 at 3) (emphasis in original).) This Court agrees.

Since the Fourth Circuit's 2007 decision in *Anderson*, courts in this circuit have frequently found that plaintiffs' state law wage claims are not preempted by the FLSA when they seek redress for unpaid wages they were promised that were above the federal minimum wage. For example, this Court distinguished *Anderson* in a 2015 case on allegations similar to Plaintiffs' here:

> Plaintiffs' state law claims are not "merely duplicative" of their FLSA claims. In their state claims, Plaintiffs seek (1) payment the prevailing wage, which is higher than the federal minimum wage, during the first week of work, (2) payment of the prevailing

> wage, which is again higher than the federal minimum wage, during other weeks, where Plaintiffs allege Defendant made improper housing and transportation deductions, and (3) the higher supplemental prevailing wage issued by the DOL in 2013 in non-overtime weeks. Plaintiffs have no ability to under the FLSA to seek this compensation. Plaintiffs also seek to enforce notice provisions of the South Carolina Payment of Wages Act that are not contained in the FLSA.

Moodie v. Kiawah Island Inn Co., 124 F. Supp. 3d 711, 724-25 (D.S.C. 2015); *see also Hanson-Kelly v. Weight Watchers Int'l, Inc.*, No. 1:10CV65, 2011 WL 2689352, at *5 (M.D.N.C. July 11, 2011) ("In Plaintiffs' NCWHA unpaid wage claim, they assert that Defendants failed to pay them for all hours worked ... This claim is distinct from the claim under the FLSA, in which Plaintiffs allege that Defendants have failed to pay them the federal minimum wage"); *Martinez-Hernandez v. Butterball, LLC*, 578 F. Supp. 2d 816, 819–20 (E.D.N.C. 2008) (state wage claims not preempted because Plaintiffs "claim that Butterball violated the North Carolina Wage and Hour Act by failing to pay its employees (1) wages, when due, for all hours worked at their regular hourly rate (which exceeded the minimum wage rate under the FLSA)").

Defendant aggressively asserts that the "prevailing wage" referenced in *Moodie* was a "term of art for certain additional minimum wage rates guaranteed by federal laws other than the FLSA relating to pay for employees working pursuant to student visas" and that "[t]here is no legal basis (nor have Plaintiffs offered one) for extending that treatment to agreed-upon wages in excess of FLSA minimum wage which are not required by any law." (Dkt. No. 45 at 2, n. 3.) Counsel for Defendant should temper their zealous advocacy with careful research before boldly claiming that "there is no legal basis" for Plaintiffs' argument – especially when this Court has held, in a decision Plaintiffs cited in their Response brief (Dkt. No. 43 at 4), that claims based on "Defendants' alleged failure to honor agreements to pay wages which may be in excess of minimum wage and failure to pay wages when due [are] are separate and distinct from Plaintiff's FLSA claims." *McMurray v. LRJ Restaurants, Inc.*, No. 4:10-CV-01435-JMC, 2011 WL

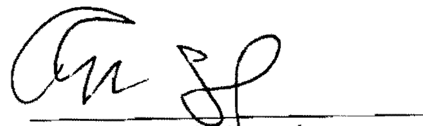
247906, at *2 (D.S.C. Jan. 26, 2011) (involving promise to pay one plaintiff a $0.50 raise when he was promoted to shift manager); *see also Chaplin v. SSA Cooper, LLC*, No. 2:15-CV-01076-DCN, 2015 WL 2127610, at *2 (D.S.C. May 6, 2015) (SCPWA claims arising out of "alleged failure to pay a 'nondiscretionary bonus' mandated by the employee compensation plan" not preempted by the FLSA).

Finally, Defendant's argument that amounts for hours worked off the clock are not expressly guaranteed under the SCPWA because it "does not create any statutory right to be paid any particular amount of money for any or all hours of work" is misleading. (Dkt. No. 45 at 3.) The SCPWA requires employers to pay all wages due to workers for the hours they have worked. S.C Code Ann. § 41-10-40(D). Under the SCPWA, "wages" are "all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract." *Id.* § 41-10-10(2). Plaintiffs may be entitled to recovery under the SCPWA based on the allegation that they were not paid the wages they were due. Accordingly, Plaintiffs' SCPWA claims are not preempted by the FLSA.

V. Conclusion

For the foregoing reasons, Defendant's motion to dismiss (Dkt. No. 39) is **DENIED**, and the Clerk of Court is ordered to **STRIKE Plaintiffs' third amended complaint** (Dkt. No. 41).

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

April 3, 2017
Charleston, South Carolina