Zuccarini v PVH Corp.
2016 NY Slip Op 30350(U)
February 29, 2016
Supreme Court, New York County
Docket Number: 151755/15
Judge: Cynthia S. Kern

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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MELANIE ZUCCARINI and KIORA WHEELER, Individually and on behalf of other persons similarly Situated,

Index No. 151755/15

DECISION/ORDER

Plaintiffs,

-against-

PVH CORP. a/k/a PVH DELAWARE, TOMMY HILFIGER U.S.A., INC., CALVIN KLEIN, INC., or Any other related entities,

Defendants.

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HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiffs Melanie Zuccarini and Kiora Wheeler, individually and on behalf of other persons similarly situated, commenced the instant action seeking to recover damages against defendants PVH Corp. a/k/a PVH Delaware ("PVH"), Tommy Hilfiger U.S.A., Inc. ("Tommy Hilfiger"), Calvin Klein, Inc. ("Calvin Klein") or any other related entities based on allegations that plaintiffs were improperly classified as unpaid interns rather than employees in violation of New York law. Defendant PVH now moves to dismiss the action. For the reasons set forth below, PVH's motion is denied.

The relevant facts and procedural history of this case are as follows. Plaintiffs commenced the instant action in or around February 2015. In or around October 2015, PVH moved to dismiss the action on the ground that the complaint failed to state a claim. In response, in or around January 2016, plaintiffs filed an amended complaint (the "first amended complaint"). The first amended complaint alleged that plaintiffs Zuccarini and Wheeler were employed by defendants within the meaning of the New York Labor Law and that plaintiffs and other members of the putative class were improperly classified as interns rather than employees, despite the fact that they were required to perform various tasks related and necessary to the maintenance of the defendants' operations and that plaintiffs and the other members of the putative class were not compensated for said work. The first amended complaint further alleged that defendants jointly employed plaintiffs; that each defendant has had substantial control over plaintiffs' working conditions and over the unlawful policies and practices alleged; that defendants are part of a single integrated enterprise; that defendants' operations are interrelated and unified; that PVH and Tommy Hilfiger share a common management and were centrally controlled and/or owned by defendants; that defendants had control over, and the power to change, compensation practices at both PVH and Tommy Hilfiger; and that defendants had the power to determine employee policies at both PVH and Tommy Hilfiger, including those governing the classifications and pay rates of interns.

Defendant PVH then made the instant motion to dismiss the action. In opposition to PVH's motion, plaintiffs again amended their complaint (the "second amended complaint"). However, defendant PVH has elected to apply its motion to dismiss to the second amended complaint.

On a motion addressed to the sufficiency of the complaint, the facts pleaded are assumed to be true and accorded every favorable inference. *Morone v. Morone*, 50 N.Y.2d 481 (1980). Moreover, "a complaint should not be dismissed on a pleading motion so long as, when plaintiff's allegations are given the benefit of every possible inference, a cause of action exists." *Rosen v. Raum*, 164 A.D.2d 809 (1st Dept. 1990). "Where a pleading is attacked for alleged inadequacy in its statements, [the] inquiry should be limited to 'whether it states in some recognizable form any cause of action known to our law.'" *Foley v. D'Agostino*, 21 A.D.2d 60, 64-65 (1st Dept 1977) (citing *Dulberg v. Mock*, 1 N.Y.2d 54, 56 (1956)). However, "conclusory allegations – claims consisting of bare legal conclusions with no factual specificity – are insufficient to survive a motion to dismiss." *Godfrey v. Spano*, 13 N.Y.3d 358, 373 (2009).

In the instant action, PVH's motion for an Order pursuant to CPLR § 3211(a)(7) dismissing the second amended complaint as against it on the ground that it fails to state a claim is denied. "Under New York law, there are two well-established doctrines – the single and joint employer doctrines – that allow an employee to assert employer liability against an entity that is not formally his or her employer." *Fowler v. Scores Holding Co., Inc.*, 677 F.Supp.2d 673, 680-81 (S.D.N.Y. 2009). "The single employer doctrine provides that, 'in appropriate circumstances, an employee, who is technically employed on the books of one entity, which is deemed to be part of a larger single-employer entity, may impose liability for certain violations of employment law not only on the nominal employer but also on another entity comprising part of the single integrated employer." *Id.* at 681 (citing *Arculeo v. On-Site Sales & Mktg., LLC*, 425 F.3d 193, 198 (2d Cir. 2005). "[F]our factors [must be examined] in order to assess whether two nominally distinct entities are actually a single employer: '(1) interrelation of

operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control.'" *Shiflett v. Scores Holding Co.*, 601 Fed.Appx. 28, 30 (2d Cir. 2015) (citing *Cook v. Arrowsmith Shelburne, Inc.*, 69 F.3d 1235, 1240-41 (2d Cir. 1995)(internal citations omitted)). Under the single employer doctrine, "[a]lthough no one factor is determinative[,] control of labor relations is the central concern." *Brown v. Daikin Am. Inc.*, 756 F.3d 219, 227 (2d Cir. 2014)(internal citations omitted). Further, "[t]he joint employer doctrine applies where there is no single integrated enterprise, but where two employers 'handle certain aspects of their employer-employee relationship jointly.'" *Fowler*, 677 F.Supp.2d at 681 (citing *Arculeo*, 425 F.3d at 198). "Under the joint employer doctrine, a court may conclude that 'the employee is...constructively employed by' the defendant." *Shiflett*, 601 Fed.Appx. at 30. "Such a relationship will exist where there is evidence that the entity which is not the formal employer 'had immediate control over the other company's employees.'" *Conde v. Sisley Cosmetics USA. Inc.*, 2012 WL 1883508 *3 (S.D.N.Y. 2012) (citing *Gonzalez v. Allied Barton Sec. Servs.*, 2010 WL 3766964 *3 (S.D.N.Y. 2010)). "[F]actors courts have used to examine whether an entity constitutes a joint employer of an individual include 'commonality of hiring, firing, discipline, pay, insurance, records, and supervision.'" *Shiflett*, 601 Fed.Appx. at 30 (citing *St. Jean v. Oreint-Express Hotels Inc.*, 963 F.Supp.2d 301, 308 (S.D.N.Y. 2013)). A complaint will survive a motion to dismiss in this context as long as the "facts set forth in the Complaint plausibly suggest a degree of control and involvement by [the defendant] in Plaintiff's employment." *Dias v. Community Action Project, Inc.*, 2009 WL 595601 *5 (E.D.N.Y. 2009).

Here, defendant PVH's motion to dismiss the second amended complaint pursuant to CPLR § 3211(a)(7) is denied on the ground that this court finds that the second amended

complaint sufficiently states a claim against PVH. Specifically, PVH asserts that the second amended complaint must be dismissed as against it on the ground that it fails to sufficiently allege that PVH is plaintiffs' employer either under the single employer doctrine or the joint employer doctrine. However, such assertion is without merit. With regard to the allegations that PVH is plaintiffs' employer, the second amended complaint alleges as follows:

- "Defendants PVH [] and Tommy Hilfiger [] jointly employed Plaintiffs and similarly situated employees at all relevant times. Each Defendant has had substantial control over Plaintiffs' working conditions and over the unlawful policies and practices alleged herein";
- "Defendants are part of a single integrated enterprise that jointly employed Plaintiffs and similarly situated employees at all relevant times";
- "Defendants' operations are interrelated and unified";
- "PVH and Tommy Hilfiger shared a common management and were centrally controlled and/or owned by Defendants";
- "Defendants had control over, and the power to change compensation practices, at both PVH and Tommy Hilfiger";
- "Defendants had the power to determine employee policies at both PVH and Tommy Hilfiger, including, but not limited to, policies governing the classifications and pay rates of interns";
- "[W]hen an individual applies for an internship at Tommy Hilfiger, he/she must apply through the PVH website";
- "[W]hen applying for an internship at Tommy Hilfiger through the PVH website, the job posting explicitly states PVH's employment policies....";
- "PVH is a covered employer within the meaning of the [New York Labor Law], and, at all relevant times, employed Plaintiff and/or jointly employed Plaintiff and similarly situated employees";
- PVH had power over personnel decisions including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment";
- Both PVH and Tommy Hilfiger had a "common policy and/or plan to violate New York wage and hour statutes by (1) misclassifying the Named Plaintiffs and members of the putative class as exempt from minimum wage compensation, and (2) failing to provide minimum wages for work performed";
- "Defendants PVH and Tommy Hilfiger operate as joint employers, and are inexplicably linked";
- "Defendants PVH and Tommy Hilfiger share the same corporate officers";
- "Defendants PVH and Tommy Hilfiger both operate a uniform internship program, and thus have direct control over the working conditions of the Plaintiffs and putative class members"; and

- "Plaintiff Wheeler's resume explicitly references 'PVH' as her employer."

Contrary to PVH's contentions, said allegations are sufficient to state a claim against PVH under either a single employer or joint employer theory of liability in order to survive a motion to dismiss. Indeed, a plaintiff is not "required to plead specific facts establishing single or joint employment" in order to survive a motion to dismiss. *Id.*

Additionally, PVH's motion to dismiss must be denied on the ground that a "determination of whether [a defendant] was [plaintiff's] employer is a question of fact that cannot be decided on a motion to dismiss." *Fowler*, 677 F.Supp.2d at 681. *See also Dias*, 2009 WL 595601 at *6 ("the court concludes that, whether [the defendants] are a single integrated enterprise, and whether [the defendant] jointly employed [plaintiff], are essentially factual questions that cannot be disposed of on a motion to dismiss.")

To the extent PVH moves to dismiss the amended complaint pursuant to CPLR § 3211(a)(1) based on documentary evidence, such motion must also be denied. In order to prevail on a defense founded on documentary evidence pursuant to CPLR § 3211(a)(1), the documents relied upon must definitively dispose of plaintiff's claim. *See Bronxville Knolls, Inc. v. Webster Town Partnership*, 221 A.D.2d 248 (1st Dept 1995). Additionally, the documentary evidence must be such that it resolves all factual issues as a matter of law. *Goshen v. Mutual Life Ins. Co. of New York*, 98 N.Y.2d 314 (2002).

Here, PVH's motion to dismiss the amended complaint pursuant to CPLR § 3211(a)(1) must be denied on the ground that the documentary evidence provided by PVH fails to definitively dispose of plaintiffs' claim or resolve all factual issues as a matter of law. In support of its motion, PVH provides the court with plaintiffs' LinkedIn profiles which state that

plaintiffs interned for Tommy Hilfiger and make no mention of PVH. As an initial matter, PVH has failed to demonstrated that LinkedIn profiles may be considered documentary evidence under CPLR § 3211(a)(1). However, even if they could be considered documentary evidence, they fail to dispose of plaintiffs' claim against PVH as they do not establish, as a matter of law, that PVH was not plaintiffs' employer for the purpose of liability. Indeed, LinkedIn profiles are prepared for the purpose of professional networking and to seek further employment and not to create a record of all prior employers and any entity which may be considered a joint employer. Thus, plaintiffs' failure to name PVH in their LinkedIn profiles is irrelevant for the purposes of the instant motion to dismiss.

Finally, PVH's request that if this court denies its motion to dismiss, it issue an Order limiting discovery that might be obtained from PVH to only that discovery obtained directly from Tommy Hilfiger is denied as PVH has failed to establish a sufficient basis for such relief.

Accordingly, PVH's motion to dismiss the action is denied. This constitutes the decision and order of the court.

Dated: 2/29/16

Enter: _____
J.S.C.
CYNTHIA S. KERN
J.S.C.