

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
David Brewster,)
)
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Plaintiff,)
)
vs.)
)
FORM FIT AND FUNCTION, LLC, a.k.a.)
F3 Engineering,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

OPINION & ORDER

C.A. No.: 2018-CP-42-01212



This matter is before the court on Plaintiff David Brewster’s (“Plaintiff” or “Brewster”) motion for partial summary judgment on his Payment of Wages (“PWA”) cause of action. For the reasons set forth below, the court **GRANTS** Plaintiff’s motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff commenced this action on March 31, 2022. Plaintiff has brought two claims against Defendant: (1) unjust enrichment, and (2) non-payment of wages under the South Carolina Payment of Wages Act. Only the second cause of action is before the Court, and the Court makes no finding regarding Plaintiff’s other claim. On March 3, 2023, Brewster moved for partial summary judgment regarding his second cause of action to include the statutory permissible award of attorney’s fees, costs and treble damages. To support his claim, Plaintiff submitted a memorandum of law as well as exhibits, which included discovery evidence from Defendant’s responses. The Court held oral argument in this matter on March 21, 2023 where counsel for both sides ably presented their respective positions via WebEx. Brewster was represented by John G. Reckenbeil, Esquire. The Defendant was represented by Chelsea Rikard, Esquire.

Defendant FORM FIT AND FUNCTION, LLC, a.k.a. F3 Engineering (hereinafter referred to as “F3” or “Defendant”), is an aerospace and defense firm specializing in manufacturing a wide range of products for both the public and private sector. Some of the parts Defendant crafts are used by the United States Department of Defense; including, component parts for H1 Helicopter and the F/A-18 Fighter Jet. Defendant crafts all these parts at its principal place of operation located at 350 Seminole Drive, Spartanburg, South Carolina (Pl. Compl. ¶ 2; Def Ans. ¶ 2). On October 28, 2014, Defendant first announced that it was moving its North American Headquarters and manufacturing operations to the 25,000 square foot facility located 350 Seminole Drive in Spartanburg County with the promise to invest \$3.9 Million Dollars in the operation bringing 53 new jobs to the area. (Pl. Compl. ¶ 3; Def Ans. ¶ 2). In a referenced news article published on the South Carolina Department of Commerce’s website announcing Defendant’s relocation to South Carolina, the Defendant’s Founder and President is quoted saying: “We are excited about the relocation to South Carolina. It’s a business-friendly state, with not only a significant pool of employees, but also a convenient hub of technology and other support industries.” –F3 Engineering Founder and President, Odilo Vazquez, Ph.D. (Pl. Compl. ¶ 4; Def Ans. ¶ 2).

On November 8, 2020, as set forth in his F3 offer letter (Ex. 3 to Pl. MPSJ) Plaintiff was offered and accepted employment as a General Manager. (“It is with pleasure and great expectations we are able to extend an offer of employment for General Manager at our firm”). Additionally in Defendant’s Offer of Employment to Brewster, it set forth Brewster’s starting salary would be \$80,000 per year with job expectations including:

1. Manage production efforts excluding quality assurance
2. Manage customer communications and set expectations
3. As more experience is gained manage sales efforts

4. Leading to COO responsibility as growth dictates.

(Ex. 3 to Pl. MPSJ)

F3 admits that Plaintiff worked for it at its facility located at 350 Seminole Drive. (Def Ans. ¶ 3). Brewster was employed from November 16, 2020, until December 31, 2020, with his rate of pay of \$39 an hour. (Pl. MPSJ Exhibit 1 Pgs. 4,5 – Def. Resp to Interr #1(a)(b)). Plaintiff served defense counsel with discovery requests on September 27, 2022. In relevant pertinent part, Defendant’s responses set forth in graph form the specific hours Plaintiff worked and the exact amount of “earnings” it totaled. (Pl. MPSJ Exhibit 1 Pgs. 4-5; Def. 11/21/22 Discovery Responses, Pgs. 3-4)

(c) Earnings:

Date	No. of Hours	Pay
November 16 – 20, 2020	67 hours	\$2,613.00
November 23 – 25, 2020		
November 30 – December 4, 2020	80 hours	\$3,120.00
December 7 – December 11, 2020		
December 14 – December 18, 2020	71 hours (half day on 12/4/20)	\$2,769.00
December 21 – December 24, 2020 (1/2 day on 24 th)		
December 28 to December 31, 2020	31 hours	\$1,209.00

(Pl. MPSJ Exhibit 1 Pg. 5, Def. 11/21/22 Discovery Responses, Pgs. 3-4)

The above totals are 249 “No. of Hours” and “Pay” \$9,711.00. However, Plaintiff’s 2020 F3 1099 only reflects \$8,502.00. (Pl. MPSJ Exhibit 2- F3 issued 1099). Defendant acknowledges a 1099 was issued in Paragraph 30 of its Answer. This indicates that Plaintiff was not compensated for 31 hours of work at \$39 an hour totaling \$1,209.00. In Defendant’s May 16, 2022 filed Answer it

denied Plaintiff was due and owed any wages under Plaintiff's Payment of Wages cause of action. (Pl. Compl. ¶ 39-46; Def. Ans. ¶ 25-28).

II. DISCUSSION OF THE LAW

A. Summary Judgment Standard

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *Wright v. PRG Real Est. Mgmt., Inc.*, 426 S.C. 202, 211, 826 S.E.2d 285, 290 (2019) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). "When reviewing a grant of a summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRPC." *Id.* (quoting *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011)). "[A] circuit court shall grant summary judgment `if ... there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.'" *Id.* (second omission by court) (quoting Rule 56(c), SCRPC).

In determining whether a genuine issue of fact exists, "a court must view the facts in the light most favorable to the non-moving party." *Id.* (quoting *George*, 345 S.C. at 452, 548 S.E.2d at 874). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

B. Plaintiff's PWA Claim

S.C. Code Ann. § 41-10-40 generally requires an employer to timely pay all wages due. When an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days. (S.C. Code Ann. § 41-10-50). "An employer shall not withhold or divert any portion of an employee's wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of the deductions as required by subsection (A) of § 41-10-30." (S.C. Code Ann. § 41-10-40(C))

The Payment of Wages Act itself defines the terms "employer" and "wages" as follows:

"Employer" means every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.

"Wages" means 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. Funds placed in pension plans or profit sharing plans are not wages subject to this chapter.
(S.C. Code Ann. § 41-10-10(1), (2) (Supp.2009))

The word "due" means "owed or owing as a debt" and, as wages are defined by the Act as amounts paid for labor rendered. *See Mathis v. Brown & Brown of SC*, 389 S.C. 299, 698 SE 2d 773 (2010). S.C. Code Ann. § 41-10-80(C) provides that when an employer violates the provisions of §§ 41-10-40 or 41-10-50 "the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow." S.C. Code Ann. § 41-10-80(C) (Supp.2005). *See Id.*

The first two central questions before the court are (1) are there no genuine issue(s) as to any material fact(s) that Defendant was Plaintiff's employer? and if so, (2) did that Employer fail to pay all due and owed wages to Plaintiff under the PWA?

Employer

The "F3 Offer of Employment General Manager" letter to Plaintiff from Defendant dated November 8, 2020 provides clear evidence Defendant was Plaintiff's employer. The offer letter sets forth the salary in which Plaintiff will be paid along with Plaintiff's expected job duties. Furthermore, the offer letter reads: "It is with pleasure and great expectations we are able to extend an offer of employment for General Manager at our firm". (Ex. 3 to Pl. MPSJ). Defendant was Plaintiff's employer. Based on the foregoing, the Court finds there is no genuine issue of material fact to support Defendant's argument that F3 was not Plaintiff's employer under the PWA.

Failure to Pay all Due and Owed Wages

Plaintiff was employed from November 16, 2020 until December 31, 2020, with his rate of pay of \$39 an hour. (Pl. MPSJ Exhibit 1 Pgs. 4-5; Def. Resp to Interr #1(a)(b)). Defendant's own discovery responses illustrated above, (Ex. 1 to Plaintiff's MPSJ – Def. 11/21/22 Discovery Responses, Pgs. 3-4) coupled with the 1099 (Ex. 2 to Plaintiff's MPSJ) in which Defendant issued Plaintiff, demonstrates clear non-payment for Plaintiff's hours worked (31 hours at \$39 = \$1,209.00). "Wages" means all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time. ((S.C. Code Ann. § 41-10-10, (2) (Supp.2009)). When an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days. (S.C. Code Ann. § 41-10-50). Based on the foregoing, the court finds there is no genuine issue of material fact as Defendant failed to pay this Plaintiff all

due and owed wages for his hours worked while he was employed by F3. Accordingly, Plaintiff's motion for partial summary judgment is hereby **GRANTED** as to Plaintiff's PWA claim.

S.C. Code Ann. § 41-10-80(C)

When an employer fails to pay wages, an employee may recover "an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow." (Supp. 2013). S.C. Code Ann. § 41-10-80(C) (Supp. 2013) grants the trial court the discretion to award treble damages if it finds there was no bona fide dispute the wages were owed, and the withholding was unreasonable and done in bad faith. *Rice v. Multimedia, Inc.*, 318 S.C. 95, 98-99, 456 S.E.2d 381, 383 (1995). Therefore, the trial court must determine whether "a bona fide dispute" exists as to an employee's entitlement to wages before awarding treble damages or attorney's fees. *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 600-01, 675 S.E.2d 414, 415-16 (2009). When reviewing such an award, "this court can take its own view of the facts." *Ross v. Ligand Pharm., Inc.*, 371 S.C. 464, 471, 639 S.E.2d 460, 464 (Ct. App. 2006); see also *O'Neal v. Intermedical Hosp. of S.C.*, 355 S.C. 499, 509-511, 585 S.E.2d 526, 532 (Ct. App. 2003) (reversing an award of treble damages because, based on the court's review of the record, "a bona fide dispute existed as to whether and to what extent [the employee] was entitled to payment"). "[T]he relevant date for determining whether the employer reasonably withheld wages is the time at which the wages were withheld" *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 316, 698 S.E.2d 773, 782 (2010) i.e., when the employer allegedly violated the Act. See *Rice*, 318 S.C. at 99, 456 S.E.2d at 383 (in enacting the Payment of Wages Act, "the legislature intended to punish the employer who forces the employee to resort to the court in an unreasonable or bad faith wage dispute."). See *Mathis* at 773.

Treble Damages

Plaintiff's PWA cause of action is set forth in Paragraphs 39-46 of his Complaint. In Defendant's May 16, 2022 filed Answer it denied Plaintiff was due and owed any wages under Plaintiff's Payment of Wages cause of action. (Pl. Compl. ¶ 39-46 (Def. Ans. ¶ 25-28). However, Defendant's own discovery responses sent to Plaintiff on November 18, 2022, have proven Defendant has always been in possession of the requisite information which clearly establishes Plaintiff worked hours of employment which Defendant failed to pay him all wages due and owed. Defendant's own discovery responses reflected 249 "No. of Hours" and "Pay" \$9,711.00. Plaintiff's 2020 F3 1099, which was an exhibit in his Complaint, (3/31/2022 Exhibit E) only reflects payment of \$8,502.00. (Pl. MPSJ Exhibit 2- F3 issued 1099). Defendant acknowledges it did issue a 1099 to Plaintiff. (¶ 30 of Def. Answer) Brewster worked 249 hours and was only paid for 218 hours. This indicates that Plaintiff was not compensated for 31 hours of work at \$39 an hour totaling \$1,209.00. "[T]he relevant date for determining whether the employer reasonably withheld wages is the time at which the wages were withheld" *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 316, 698 S.E.2d 773, 782 (2010). The wages for 31 hours worked (\$1,209.00) were withheld in violation of the PWA as of January 31, 2021, which is 30 days after the last day of Plaintiff's employment. There is no evidence in the record to demonstrate there was any bona fide dispute as to whether these withheld wages were due and owed. In fact, Defendant's discovery responses prove unequivocally that there is no bona fide dispute that exists as to Plaintiff's entitlement to \$1,209.00 in his earned wages. "The legislature intended to punish the employer who forces the employee to resort to the court in an unreasonable or bad faith wage dispute."). *See Mathis at 773*. Accordingly, it is the finding of this Court Plaintiff is entitled to have his owed wages (\$1,209.00) trebled (\$3,627.00) in accordance with S.C. Code § 41-10-80 (C).

Costs and Attorney's Fees

Additionally, in accordance with S.C. Code § 41-10-80(C), it is the finding of this Court Plaintiff is entitled and shall be awarded costs and attorney fees as set forth below.

The specific amount of attorney's fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion. See *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). The court's determination of the reasonableness of a fee award begins with the court's calculation of the lodestar figure. See *Laymen vs. State of South Carolina* 376 S.C. 434, 457, 658 S.E. 2d 320, 332 (2008). See also *Robinson v. Equifax Information Svcs., LLC*, 560 F.3d 235, 243 (4th Cir. 2009). Plaintiff's counsel seeks attorney's fees and costs supported by Affidavit. (Pl. MPSJ Exhibit 4). The lodestar amount is calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended. *Id.* South Carolina Rule 1.5 of Professional Responsibility uses a 6-part test for making a lodestar determination: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. See *Jackson v. Speed* 326 S.C. at 308, 486 S.E.2d at 760.

Reasonable Hours

To establish the number of hours reasonably expended, the attorney "should submit evidence supporting the hours worked". The attorney should "exclude 'hours that are excessive, redundant, or otherwise unnecessary' in order to reflect the number of hours that would properly be billed to the client." See *Laymen vs. State of South Carolina* 376 S.C. 434, 457, 658 S.E. 2d 320, 332 (2008).

This matter came before the Court as a motion for partial summary judgment as there is one cause of action that remains. The Court finds it ‘Reasonable’ of the fees and costs request, Plaintiff’s counsel, in his Affidavit, (Pl. MPSJ Exhibit 4) has set forth by presenting a spreadsheet (Pl. MPSJ Exhibit 4) of work performed, minus any direct time not applicable (*i.e.*, Defendant’s Motion to Strike), and then reduced any time by half that could be easily deduced as joint causes of action work. Plaintiff’s Counsel has expended approximately 43.6 hours of labor in relation to prosecuting Plaintiff’s claim for the Payment of Wages Act. The court has considered the time and labor required, the novelty and difficulty of the questions, the time limitations imposed by the client or the circumstances, and the amount involved, and the results obtained in determining the reasonableness of the hours claimed. Accordingly, the court finds 43.6 hours was a reasonable number of hours for Plaintiff’s counsel to expend on the instant case.

Reasonable Rate

This attorney’s labor rate is \$300.00 per hour. In addition, Plaintiff’s Counsel seeks \$188.88 in litigation costs. Plaintiff’s counsel has set forth his itemized fees and costs, attached as Exhibit 4 to his Affidavit. Plaintiff Counsel’s billing rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skills, experience, and reputation. This is supported by the finding of United State Senior District Court Judge Herlong’s Order that \$300 an hour was reasonable. (Pl. MPSJ Ex. 5, pgs. 7-8). After considering the level of skill required to perform the legal service properly, the contingency fee arrangement of Plaintiff and his counsel, the experience, reputation, and ability of the attorney, and the undesirability of the case, the Court finds that \$300 per hour is reasonable.

Lastly, “the most critical factor” in calculating a reasonable fee award is whether “beneficial results [were] obtained”. *Brodziak v. Runyon*, 145 F.3d 194, 196 (4th Cir. 1998)

(quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). Plaintiff is clearly entitled to the owed wages of \$1,209.00 and it took Plaintiff Counsel's litigation efforts to achieve; therefore, the Court finds a beneficial result has been obtained.

The Court finds Plaintiff's costs are recoverable. The court awards Plaintiff costs in the amount of \$188.88

It is therefore

ORDERED that Defendants are directed to pay Plaintiff an amount of \$3,627.00 in PWA damages. It is further

ORDERED that Defendants are directed to pay Plaintiff an amount of \$8,790.00 in attorney's fees and \$188.88 in costs.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Spartanburg Common Pleas

Case Caption: David Brewster VS Form Fit And Function, Llc

Case Number: 2022CP4201162

Type: Order/Summary Judgment

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087