

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
Walter Parker,)
)
Plaintiff,)
)
v.)
)
Florence Carpet & Tile, Inc., John Curl,)
and Mike Barker,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2020-CP-21-01297

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ORDER
FEB 02 2022
SC Court of Appeals

This matter is before the Court on John Curl’s and Mike Barker’s motions for summary judgment as to all causes of action. The court heard argument on these motions on November 3, 2021. Present at the hearing were Jeffrey L. Payne, esquire attorney for the Defendants and J. Scott Kozacki, esquire attorney for the Plaintiff. At the hearing the Plaintiff announced that he was dismissing all claims against John Curl and Mike Barker except his claim under South Carolina’s Payment of Wages Act, S.C. Code § 41-10-10(1) (“Act”).

BACKGROUND

Plaintiff owns 47% of the outstanding shares of Florence Carpet & Tile, Inc. (“FCT”) while John Curl owns the other 53%. From April 30, 2007 until July 27, 2019, Plaintiff was the President of FCT. As President, he was in charge of the company’s day-to-day operations, including its payroll.

John Curl was never an employee of FCT and was not involved with the day to day operations of FCT, including its payroll, while the Plaintiff was employed by FCT.

Mike Barker began working for FCT in May 2014. He reported to his boss Walter Parker and handled administrative duties for FCT. Mike Barker continued to report to Walter Parker until Walter Parker’s employment ended on or about July 27, 2019. At no point during

the Plaintiff's employment with FCT did Mike Barker serve as an officer of FCT, and at no time did he have the authority to approve or alter FCT's payroll. Only Walter Parker, as President, held that authority.

The Plaintiff never informed John Curl that he was owed any wages prior to filing a lawsuit against John Curl in November 2018. Even after filing this lawsuit, the Plaintiff continued to run FCT and handle the payroll of the company, including paying himself until July 27, 2019.

SUMMARY JUDGMENT STANDARD

When deciding a Summary Judgment Motion pursuant to Rule 56, SCRCP, a trial court must weigh the facts and inferences in a light most favorable to the non-moving party. *Hancock v. Mid-South Mgmt., Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009). Summary judgment is appropriate when the pleadings, depositions, discovery, and affidavits show no genuine issue of material fact exists. *Id.* Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The non-moving party must come forward with specific facts showing a genuine issue for trial. *Id.*

ANALYSIS

Plaintiff's claims against all Defendants are based on the Act. Curl and Parker argue that they are entitled to summary judgment because the Plaintiff has presented no evidence that they knowingly allowed FCT to violate the Act.

Plaintiff alleges Defendants Barker and Curl failed to pay him the full amount of wages owed in violation of the Act. The Act defines "employer" as "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.” S.C. Code Ann. § 41-10-10(1). The employer is required to pay all wages due and “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 deductions.” S.C. Code Ann. § 41-10-40. Therefore, upon separation, an employer must pay its employees all wages due within forty-eight hours or the next regular payday, which may not exceed thirty days. S.C. Code Ann. § 41-10-50. The Act is remedial legislation, so employers who fail to pay employees in a manner that is consistent with it are responsible for any resulting underpayment. *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995).

In *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995), our Court of Appeals found that when adopting the Act, the legislature intended to impose individual liability only on those corporate agents and officers who knowingly permit the Act to be violated. *Id.* at 193-94, 463 S.E.2d at 644-45. (emphasis added)

Since that time, South Carolina courts have consistently noted several factors that are necessary to determine that an individual “knowingly” violated the Act. These factors include:

1. The individual knew that the employee was not getting paid while working for the employer;
2. The individual was actively involved with the employer and had knowledge of the employer’s payroll;
3. The individual misled the employee to continue to work for the employer; and
4. The individual was an owner or officer of the employer. See, *Id.*; *Allen v. Pinnacle Healthcare Sys., LLC.*, 394 S.C. 268, 272, 715 S.E.2d 362, 364 (Ct. App. 2011).

There is no genuine issue of material fact that could give rise to Mike Barker's or John Curl's individual liability to Plaintiff under the Act. As such, Barker and Curl are entitled to judgment as a matter of law in their favor.

In this case, the Plaintiff has failed to make a showing sufficient to establish that either John Curl or Mike Barker knowingly violated the Act such that they could be held individually liable for the Plaintiff's claim of unpaid wages. During the time of Plaintiff's employment Mike Barker was not an officer of FCT. The Plaintiff as President of FCT was always his boss. The Plaintiff and not Mike Barker had the ultimate responsibility for the payment of wages and commissions and other payroll duties. Mike Barker did not have the authority or ability to approve or alter the Plaintiff's compensation. Mike Barker did not oversee Plaintiff's compensation and was in no way responsible for ensuring the Plaintiff, the President of FCT was paid his wages.

John Curl, while a shareholder and officer of FCT, was a passive owner of FCT. He had no involvement with the day to day operation of FCT while the Plaintiff was an employee. He did not handle FCT's payroll and was not responsible for reviewing it. The Plaintiff had that role. The Plaintiff could have paid himself any wages that FCT allegedly owed him. Further, the Plaintiff never complained to John Curl that he was owed wages prior to suing John Curl in October 2018 and even after that lawsuit was filed, the Plaintiff continued to operate FCT and oversee its payroll, including his own pay.

Based on the foregoing, there is no genuine issue of material fact that could give rise to Defendant Barker's or Curl's individual liability to Plaintiff under the Act. There is simply no evidence to indicate that they knowingly violated the Act. Consequently, pursuant to Rule

56 (c), the Court finds that Defendants Curl and Barker are entitled to judgment as a matter of law.

AND IT IS SO ORDERED

_____, 2021
Florence, SC

electronic signature to follow
Michael G. Nettles, Presiding Judge



Florence Common Pleas

Case Caption: Walter Parker VS Florence Carpet & Tile Inc , defendant, et al
Case Number: 2020CP2101297
Type: Order/Summary Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140