

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF FLORENCE)	Civil Action No. 2020-CP-21-01296
)	
Allison Parker,)	
)	
Plaintiff,)	
)	
v.)	
)	
Florence Carpet & Tile, Inc., John Curl,)	
and Mike Barker,)	
)	
Defendants.)	

RECEIVED
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 as to these defendants she was dismissing all claims except her claim under South Carolina’s Payment of Wages Act, S.C. Code § 41-10-10(1) (“Act”).

BACKGROUND

Plaintiff was an at-will, salaried employee of Florence Carpet & Tile, Inc. (“FCT”) from May 1, 2007 until August 10, 2019. The Plaintiff was an officer of the Company. The Plaintiff’s husband Walt Parker was the President of FCT and at all times was the Plaintiff’s boss. As President, Walt Parker was in charge of the company’s day-to-day operations, including FCT’s payroll. John Curl was never an employee of FCT and had no involvement with the day to day operations of FCT, including its payroll.

At the time of Plaintiff’s hire, John Curl and Walter Parker were the shareholders of FCT. Mr. Parker owned 47% of the company’s shares while Mr. Curl owned 53%. Mike Barker has never been a shareholder of FCT.

Mike Barker began working for FCT in May 2014. He reported to Walter Parker and handled administrative duties. 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 point did he have the authority to approve or alter FCT's payroll. Only Walter Parker, as President, held that authority. Likewise, Walter Parker had the sole authority to approve commissions.

During her twelve-year employment with FCT, Plaintiff never received a commission check. In addition, while she was employee of FCT, Plaintiff never requested a commission check from Mike Barker, provided the documentation necessary to obtain a commission check, or spoke with Mike Barker regarding commission checks in any regard. The Plaintiff's husband Walter Parker approved all commission payments to FCT's sales people, and Walter Parker never told Mike Barker to pay Plaintiff a commission check.

Likewise, while the Plaintiff was employed by FCT, she never informed John Curl that she was owed a commission check by FCT. It was only after she filed her claim on September 5, 2019, with the South Carolina Department of Labor, Licensing and Regulation ("LLR") that either Mr. Curl or Mr. Barker knew of her claim for wages or commissions.

SUMMARY JUDGMENT STANDARD

When deciding a Summary Judgment Motion pursuant to Rule 56, SCRPC, 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 her 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 or commissions. Mike Barker during the time of Plaintiff’s employment was not an officer or owner of the employer FCT. His boss and the Plaintiff’s boss was the Plaintiff’s husband, Walt Parker. Walt Parker, as President of FCT and not Mike Barker had the ultimate responsibility for the payment of wages, commissions and other payroll duties. Mike Barker did not have the authority or ability to approve or alter employee compensation. Mike Barker, likewise, did not have the ability to approve or issue commission checks and was never asked by Plaintiff for one. Instead, FCT hired Mike Barker

seven years after Plaintiff was hired to work for FCT, at which point Plaintiff's compensation arrangements had been established. Barker reported to Plaintiff's husband, Walter Parker, and Walter Parker oversaw the day-to-day operations of FCT, including the review of payroll. Mike Barker did not oversee Plaintiff's compensation and was in no way responsible for ensuring the payment of her wages. In addition, Mike Barker had no knowledge that the Plaintiff claimed she was owed commissions while she was an employee of FCT. In fact it was not until the Plaintiff filed a claim with LLR over three weeks after she quit her job that the Plaintiff first made her claim against FCT for wages and commissions. While the Plaintiff has in opposition noted a document that Walt Parker provided to Mike Barker to sign indicating certain amounts being due to the Plaintiff, such a document does not indicate that Barker had any involvement with the FCT payroll or making sure she was paid her wages or commissions that would subject him to personal liability under the Act. To follow the Plaintiff's logic all employees that assist with the employer's payroll and sign a document requested by his boss can be subjected to personal liability if their employer fails to pay an employee her wages.

John Curl, while a shareholder and officer of FCT, was a passive owner of FCT. He was not involved 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. Walt Parker as president had that role. The Plaintiff never complained to him that she was owed a commission or wages until she filed her complaint with the LLR.

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: Allison Parker VS Florence Carpet & Tile Inc , defendant, et al
Case Number: 2020CP2101296
Type: Order/Summary Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-12-02 09:15:46 page 7 of 7