

Maylou v Mittal

2024 NY Slip Op 32203(U)

June 27, 2024

Supreme Court, Kings County

Docket Number: Index No. 516657/2020

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 27th day of June 2024

HONORABLE FRANCOIS A. RIVERA

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QUNELLA MAYLOU, MODESSIA WILLIAMS, HAAJAR CARTER, all receptionists, diagnostic technicians, medical billing associates, medical assistants, patient care assistants, licensed practical nurses, assistants,

Plaintiffs,

-against

NIRANJAN MITTAL,
NIRANJAN K. MITTAL, PHYSICIAN, PLLC,

Defendants

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Recitation in accordance with CPLR 2219 (a) of the papers considered on the motion filed on August 6, 2023, under motion sequence number nine, by the plaintiffs for an order pursuant to CPLR 901 and 902: (a) certifying this action as a class action; (b) designating The Law Office of Jason Tenenbaum, PC as class counsel; and (c) approving for publication the proposed Notice of Class Action Lawsuit and Publication Order annexed as Exhibits 14 and 15 to the motion. The motion is opposed.

- Notice of motion
- Affirmation in support
 - Exhibits 1-15
- Affidavits in support by plaintiffs Maylou, Williams, and Carter
- Memorandum of law in support
- Affirmation in opposition
 - Exhibits A-K
- Memorandum of law in opposition

DECISION & ORDER

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-Memorandum of law in reply

BACKGROUND

On September 4, 2020, the plaintiffs commenced the instant action by filing a summons and complaint with the Kings County Clerk's office (KCCO). On October 9, 2020, Niranjn Mittal, and Niranjn K. Mittal, Physician, PLLC (hereinafter the defendants) interposed and filed a joint answer with the KCCO.

The complaint alleges one hundred and thirty-six (136) allegations of fact in support of seven denominated causes of action asserted against the defendants for violations of the following various provisions of the New York State Labor Law. The first cause of action is for violation of New York Labor Law § 193 by making unlawful wage deductions. The second cause of action is for failing to provide annual wage notices. The third cause of action is for failing to provide wage statements. The fourth cause of action is for failing to pay overtime. The fifth cause of action is for failing to pay minimum wage. The sixth cause of action is for failing to pay spread of hours. The seventh cause of action is for not paying the plaintiffs on a weekly basis.

Plaintiffs Qunella Maylou, Modessia Williams, and Haajar Carter commenced the instant action on behalf of themselves and a putative class of individuals who are presently or were formerly employed by defendants Niranjn Mittal, Niranjn K. Mittal, Physician, PLLC as medical assistants, receptionists, assistants, cleaners, and call center operators at defendants' facility located at 7404 5th Avenue, Brooklyn, New York. The plaintiffs allege, among other things, that they were uniformly deprived of overtime

compensation, spread of hours compensation, minimum wage, and payment for the actual work they performed. Plaintiffs further allege that the defendants failed to maintain adequate records of the hours that plaintiffs worked, failed to give wage notices, and failed to give wage statements.

By decision and order dated January 30, 2024, the Court granted the plaintiffs' motion seeking an order pursuant to CPLR 2004, extending the date to file a motion for class certification which, in effect, rendered the instant motion timely.

Depositions of the named plaintiffs took place in 2021 and 2022 and deposition of the named defendants took place in 2022 and early 2023.

MOTION PAPERS

Plaintiffs motion papers consist of a notice of motion, an affirmation in support, an affidavit from each named plaintiff, a memorandum of law in support, and fifteen annexed exhibits labeled one through fifteen. Exhibit one is the deposition transcript of defendant Niranjn Mittal. Exhibit two is the deposition transcript of Divanshu Bansal, the owner of Vini Consulting, an entity with a contract with the defendants for services such as marketing and billing for a doctor's practice. Exhibit three is the deposition transcript of Maria Perez, an employee of the defendant. Exhibit four is the deposition transcript of Liana Puma, the supervisor of the medical assistants in the defendants' medical practice. Exhibit five is the deposition transcript of Teheten Phuntsok, also a supervisor of the medical assistants in the defendants' medical practice. Exhibit six is a stipulation related to discovery. Exhibit seven is several pay statements for plaintiff

Maylou. Exhibit eight is several pay statements for plaintiff Williams. Exhibit nine is several pay statements for plaintiff Carter. Exhibit ten is described as payroll records and certification subpoenaed from the defendants listing over 300 people who have worked for the defendant from 2011-2020. There is no exhibit ten filed in the NYSCEF system. Exhibit eleven is described as a breakdown of employees that fit the description of medical assistant, office assistant, and call center secretary. Exhibit twelve is described as a record which contains a breakdown of defendants' employees prior to 2020). Exhibit thirteen is described as a record containing a breakdown of defendants' employees from 2020-2022. Exhibit fifteen is a proposed order.

The defendants' opposition papers consist of a memorandum of law and an affirmation in opposition, and eleven annexed exhibits labeled A through K. Exhibit A is the affidavit of Migdalia Troncoso. Exhibit B is the affidavit of Sabah Lamrini. Exhibit C is the affidavit of Nino Murphy. Exhibit D is the affidavit of Mayra Ramos. Exhibit E is the affidavit of Lisa Velaidam. Exhibit F is the affidavit of Jovan Scarlett. Exhibit G is the affidavit of Jaya Chowdhury. Exhibit H is the affidavit of Humayun K. Khan. Exhibit I is the affidavit of Erenia Duran with certified translation. Exhibit J is the deposition transcript of plaintiff Maylou. Exhibit K is the deposition transcript of plaintiff Carter.

The plaintiffs submitted a memorandum of law in reply to the defendants' opposition papers.

LAW AND APPLICATION

“CPLR 901 (a) sets forth the five requirements for certification of a class action: 1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; 2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members; 3. the claims or defenses of the representative parties are typical of the claims or defenses of the class; 4. the representative parties will fairly and adequately protect the interests of the class; and 5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy” (*Medina v Fairway Golf Mgt., LLC*, 177 AD3d 727, 728 [2d Dept 2019]). “The court may also consider the merits of the action to the extent necessary for the elimination, as early as possible, of spurious actions” (*id.*, quoting *Hoerger v. Board of Educ. of Great Neck Union Free School Dist.*, 98 AD2d 274, 278 [2d Dept 1983]).

It has long been recognized that the criteria set forth in CPLR 901 (a) “should be broadly construed...because it is apparent that the Legislature intended [CPLR] article 9 to be a liberal substitute for the narrow class action legislation which preceded it” (*City of New York v Maul*, 14 NY3d 499, 509 [2010], quoting *Friar v Vanguard Holding Corp.*, 78 AD2d 83, 91 [2d Dept 1980]).

The plaintiffs have “the burden of establishing compliance with the statutory requirements for class action certification under CPLR 901 and 902” (*Rallis v City of New York*, 3 AD3d 525, 526 [2d Dept 2004], citing *Ackerman v Price Waterhouse*, 252

AD2d 179, 191 [1st Dept 1998]; *Canavan v Chase Manhattan Bank*, 234 AD2d 493, 494 [2d Dept 1996]; *Hoerger*, 98 AD2d at 281-282).

General or conclusory allegations in the pleadings or affidavits are insufficient to sustain this burden. (*Rallis v City of New York*, 3 AD3d 525, 526 [2d Dept 2004], citing *Yonkers Contr. Co. v Romano Enters. of N.Y.*, 304 AD2d 657, 658-659 [2d Dept 2003]; *Weitzenberg v Nassau County Dept. of Recreation & Parks*, 249 AD2d 538, 539 [2d Dept 1998]; *Canavan v Chase Manhattan Bank*, 234 AD2d 493, 494 [2d Dept 1996]).

“A class action certification must be founded upon an evidentiary basis” (*Rallis v City of New York*, 3 AD3d 525, 526 [2d Dept 2004], quoting *Yonkers Contr. Co. v Romano Enters. of N.Y.*, 304 AD2d 657, 658 [2d Dept 2003]). Here, there is no dispute that the defendants operate an interventional cardiology practice where invasive procedures are performed. The trade name that the defendants run the operation under is named Family Healthcare and Cardiac Center. The main address of the practice is 7404 5th Avenue, Brooklyn, New York, 11209. Hourly workers that performed work included medical assistants, assistants, and cleaners.

The sworn testimony of the named plaintiffs was consistent on the following points. All employees at some point worked over 40 hours per week. Overtime at the rate of time and one half of the agreed hourly wage was not paid until 2021. Every employee had wages illegally deducted for arbitrary reasons. Spread of hours pay was not offered to the employees who worked more than ten (10) hours per shift. In addition to failing to

pay proper wages, defendants also failed to provide proper wage notices and wage statements.

In opposition to the motion, the defendants submitted, among other things, the affidavits of nine employees of the defendant. Those employees were medical assistants Migdalia Troncoso, Sabah Lamrini, Mayra Ramos, and Jovan Scarlett; ultrasound technologist Nino Murphy; eligibility specialist Lisa Velaidam; clerk Jaya Chowdhury; nuclear medicine technologist Humayun K. Khan; and cleaner Erenia Duran.

The defendants contend that the sworn testimony proffered by the plaintiffs contained many false allegations and offered the affidavits of defendants' employees to support that contention. The affidavits of the defendants' employees, however, did not conclusively establish that the plaintiffs' sworn testimony contained false allegations of fact but rather merely raised questions of fact. "It is well settled that issues of credibility are to be determined by the trier of facts and that such determinations should not be disturbed on appeal unless clearly unsupported by the record" (*D'Amico v Allstate Ins. Co.*, 194 AD2d 761 [2d Dept 1993]).

In the case at bar, contrary to the contention of the defendants, the plaintiffs have satisfied the prerequisites for class certification. The Court finds that the putative class members number over one hundred (100) individuals. This number is so numerous that joinder of all members if permissible would be impracticable. The predominate question of fact of the putative class members is the claim that the defendants made illegal and arbitrary deductions of the employees' wages. The Court finds that the named plaintiffs

are united in interest with the interest of the members of the putative class to recover all illegal and arbitrary deduction from their wages. Also, the potential damages for each member of the putative class are solely economic for a relatively small amount of money such that a class action is a desirable mechanism. Where the injuries are solely economic in nature and small in amount, class members usually have little interest in controlling their own lawsuits, making the class action a desirable mechanism for them (*see Fleming v Barnwell Nursing Home & Health Facilities, Inc.*, 309 AD2d 1132, 1134 [3d Dept 2003]). The Court finds that the representative parties will fairly and adequately protect the interests of the class. The Court also finds that the class action is superior to other available methods for the fair and efficient adjudication of the controversy. Accordingly, the plaintiffs' motion for an order pursuant to CPLR 901 and 902 certifying the instant action as a class action is granted.

The plaintiffs also seek an order designating The Law Office of Jason Tenenbaum, PC as class counsel. The legal work done by plaintiffs' counsel up to and including the filing of the instant motion supports the request to appoint them as class counsel. The defendants' opposition papers did not address and therefore did not oppose this branch of the plaintiffs' motion. It is therefore granted.

The plaintiff also seeks an order approving for publication the proposed Notice of Class Action Lawsuit and Publication Order annexed as exhibit 14 and exhibit 15 to the instant motion. The defendants' opposition papers also did not address and therefore did

not oppose this branch of the plaintiffs' motion. This branch of the plaintiffs' motion is also granted.

CONCLUSION

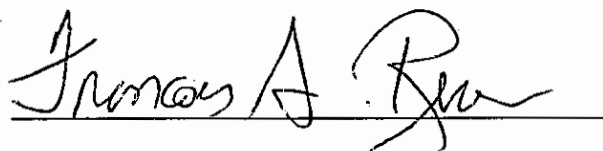
The branch of the plaintiffs' motion for an order pursuant to CPLR 901 and 902 certifying this action as a class action is granted.

The branch of the plaintiffs' motion for an order designating The Law Office of Jason Tenenbaum, PC as class counsel is granted.

The branch of the plaintiffs' motion for an order approving for publication the proposed Notice of Class Action Lawsuit and Publication Order annexed as exhibits 14 and 15 to the motion is also granted.

The foregoing constitutes the decision and order of this Court.

ENTER:

A handwritten signature in black ink, appearing to read "Francis A. Rivera", is written over a horizontal line.

J.S.C.

HON. FRANCOISA. RIVERA