

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VERONICA MATHIS, DMD,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 02-CV-597
	:	
ABOUT YOUR SMILE, P.C. and	:	
GLENN A. BROWN, DR.,	:	
Defendants.	:	

MEMORANDUM

GREEN. S.J.

August _____, 2002

Presently before the Court are the following: (1) Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction under Rule 12(b)(1), or in the alternative, Motion for Summary Judgment under Rule 56 and Plaintiff’s Response; (2) Plaintiff’s Cross-Motion for Partial Summary Judgment, Defendants’ Response, Plaintiff’s Reply, and Defendants’ Surreply; and (3) Defendants’ Motion for Sanctions under Fed.R.Civ.P. 11, Plaintiff’s Response, and Defendants’ Reply. For the following reasons, Defendants’ motions will be denied and Plaintiff’s motion will be granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

The instant action arises as a result of Plaintiff Veronica Mathis’ (“Plaintiff”) employment by Defendants About Your Smile, P.C., a dental service provider, and Dr. Glenn A. Brown, a dentist and the principal shareholder of About Your Smile, P.C. (“Defendants”). On November 13, 2000, Plaintiff entered into a Professional Services Agreement with Defendants to work as a dentist for \$40.00 per hour. Several weeks later, Plaintiff gave 30 days notice to Defendants of her intent to resign. However, prior to her resigning, Defendants withheld her final paycheck for the pay period of December 10, 2000, through December 26, 2000, a total of

\$2,033.20. For over a year, Plaintiff made several requests to be paid. Defendants refused to pay Plaintiff and during that time, in May 2001, Defendants filed a breach of contract claim against Plaintiff in state court. Plaintiff herein requested and received a continuance from the January 30, 2002 trial date in that action.

Thereafter, Plaintiff filed the instant action against Defendants for injunctive, declaratory and monetary relief, alleging that Defendants unlawfully withheld her final paycheck in violation of the minimum pay provisions of the Fair Labor Standards Act (“FLSA” or the “Act”), 29 U.S.C. § 201 *et seq.*, (Count I) and the Pennsylvania Wage and Collection Law, 43 Pa. Cons. Stat. § 260.1 *et seq.* (Count II). Plaintiff also filed a common law breach of contract claim (Count III). Defendants now move to dismiss Plaintiff’s Complaint for lack of subject matter jurisdiction, or alternatively, move for summary judgment. Plaintiff responded to Defendants’ motion. Plaintiff also filed a cross-motion for partial summary judgment as to her FLSA claim to which Defendants filed a Response, Plaintiff filed a Reply, and Defendants filed a Surreply.¹ Defendants also move for sanctions pursuant to Fed.R.Civ.P. 11.

II. LEGAL STANDARD

Summary judgment shall be awarded “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c). An issue is “material” if the dispute may affect the outcome of the suit under the governing law and is “genuine” if a reasonable jury could return a verdict for the

¹Insofar as Plaintiff seeks summary judgment as to her claim under the FLSA (Count I), she does not seek summary judgment as to her claims under the Pennsylvania Wage and Collection Law (Count II) or her common law breach of contract claim (Count III).

nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The evidence presented must be viewed in the light most favorable to the nonmoving party. See American Flint Glass Workers Union, AFL-CIO v. Beaumont Glass Co., 62 F.3d 574, 578 (3d Cir. 1995).

III. DISCUSSION

A. Fair Labor Standards Act

Section 206 of the FLSA provides that employers pay each employee a minimum wage set by the Act. See 29 U.S.C. § 206. Moreover, the regulations provide that “‘wages’ cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or ‘free and clear.’” 29 C.F.R. § 531.35.

The FLSA does not explicitly require that wages be paid on time. However, upon review of the relevant case law, it is clear that courts have consistently interpreted the statute to include a prompt payment requirement. See Martin v. Selker Bros., Inc., 949 F.2d 1286, 1299 (3d Cir. 1991) (stating that “liquidated damages . . . compensate employees for the losses they may have suffered by reason of not receiving their proper wages *at the time they were due*”) (emphasis added); United States v. Klinghoffer Bros. Realty Corp., 285 F.2d 487, 491 (2d Cir. 1960) (stating that “[w]hile the FLSA does not expressly set forth a requirement of prompt payment, such a requirement is clearly established by the authorities”); Olson v. Superior Pontiac-GMC, Inc., 765 F.2d 1570, 1578-79 (11th Cir. 1985), *modified* 776 F.2d 265, 267 (11th Cir. 1985) (same); Rogers v. City of Troy, 148 F.3d 52, 57 (2d Cir. 1998) (“it is clear that the FLSA requires wages to be paid in a timely fashion”). Thus, the governing principle of law is that an employer must pay its employees at least minimum wage on payday.

In their motion to dismiss, or alternatively, for summary judgment, Defendants do not

dispute that they withheld Plaintiff's pay. Rather, Defendants assert that despite their withholding Plaintiff's pay, this Court lacks subject matter jurisdiction under 28 U.S.C. § 1331 because there is no federal question at issue, or alternatively, assert that they are entitled to summary judgment, because they did not violate the minimum wage provisions of the FLSA. Specifically, Defendants claim that on payday, Plaintiff received wages in excess of the minimum wage "free and clear" through Defendants' payment of federal, state and local taxes and health insurance benefits on Plaintiff's behalf. In her response and cross-motion for summary judgment, Plaintiff argues that by intentionally withholding Plaintiff's pay for over a year, Defendants violated the FLSA, thus establishing jurisdiction in the Court. Plaintiff further asserts that Defendants' payment of taxes and health benefits is insufficient to meet the requirements established by the Act.

Although Fed.R.Civ.P. 12(b)(1) provides that a party may move to dismiss a lawsuit for lack of subject matter jurisdiction, it is clear that pursuant to 28 U.S.C. § 1331, this Court retains jurisdiction over matters brought pursuant to the FLSA.² Therefore, Defendants' motion to dismiss for lack of subject matter jurisdiction will be denied.

As to Defendants' motion for summary judgment, it too will be denied. Even assuming *arguendo* that Defendants' payment of taxes and health benefits on Plaintiff's behalf constituted pay under the Act, there is no evidence of record that those payments were made on payday; the record merely discloses that those benefits were withheld on payday, not that they were actually paid that day on Plaintiff's behalf. Moreover, Defendants' contention, that Plaintiff's Complaint

²Section 1331 provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

is moot because Plaintiff received “payment,” as defined under the Act, when the due date of her 2000 federal and state tax return passed on April 16, 2000, is no more persuasive than Defendants’ previous argument; regardless of Plaintiff’s eventual receipt of those monies, Plaintiff was not paid on payday. Finally, notwithstanding the contractual agreement between Plaintiff and Defendants, the record indicates that Defendants paid nothing to Plaintiff on payday; thus, on summary judgment, because Plaintiff received no pay on payday, Defendants were not in compliance with the FLSA. Therefore, because Defendants’ arguments are unavailing, Defendants’ motion for summary judgment will be denied and Plaintiff’s motion for partial summary judgment will be granted as to her FLSA claim.

1. Liquidated Damages

Reaching this conclusion, the Court must now determine whether Plaintiff will be awarded liquidated damages. Liquidated damages are compensatory, not punitive in nature, and serve to compensate employees for losses they might suffer from not receiving their lawful wage at the time it was due. See Marshall v. Brunner, 668 F.2d 748, 753 (3d Cir. 1982). The FLSA provides that “[a]ny employer who violates the provisions of [section 206 or section 207] . . . shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation . . . and in an additional amount as liquidated damages.” 29 U.S.C. § 216(b).

Despite the mandatory language of that provision, Section 260 of the Portal-to-Portal Act provides employers with a defense to the liquidated damage provision of § 216(b). Section 260 provides that if an employer demonstrates that “the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a

violation of the [Act], . . . the court may, in its sound discretion,” award a lesser amount of liquidated damages or none at all. 29 U.S.C. § 260. Therefore, to avoid liability for liquidated damages, the employer must make a showing of good faith and reasonable grounds for its conduct. Good faith is a subjective requirement, shown if the employer had “an honest intention to ascertain and follow the dictates of the Act.” Marshall, 668 F.2d at 753 (citation omitted). The reasonableness test is an objective one, which “ignorance alone” will not satisfy. Id. “In the absence of such a showing, the district court has no discretion to mitigate an employer’s statutory liability for liquidated damages.” Id. (citing Rothman v. Publicker Indus., 201 F.2d 618, 620 (3d Cir. 1953)).

Even assuming arguendo that Defendants intended to follow the dictates of the Act, there are no reasonable grounds for Defendants’ conduct. Defendants admit to intentionally withholding Plaintiff’s pay for the work she performed in December 2000. As such, this Court has no discretion to mitigate Defendants’ liability and must award Plaintiff liquidated damages.

To determine the appropriate amount of compensatory and liquidated damages, the Court will hold a hearing so that all parties may be heard. Moreover, because the Court retains original jurisdiction over Plaintiff’s FLSA claim, the Court will exercise supplemental jurisdiction over Plaintiff’s state law claims because they arise from the same controversy as her FLSA claim. See 28 U.S.C. § 1367(a).³

B. Motion for Sanctions

Defendants request that the Court impose sanctions on Plaintiff, claiming that paragraph

³ Section 1367(a) provides that a court “shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”

12 of the Complaint is objectively false in violation of Fed.R.Civ.P. 11.⁴ Under Rule 11, a party may move for sanctions when a pleading is intended solely to harass, is unwarranted or lacks evidentiary support. Upon reviewing the interactions between Plaintiff's counsel and Defendants, there is no evidence that the inclusion of paragraph 12 in Plaintiff's Complaint is sanctionable.⁵ Accordingly, Defendants' motion for sanctions will be denied.

IV. CONCLUSION

In the present matter, there is no evidence that Defendants were in compliance with the FLSA by paying, after payday, Plaintiff's tax obligations and health benefits. Moreover, on summary judgment, Defendants have not demonstrated reasonable grounds to justify their withholding of Plaintiff's salary. Accordingly, Defendants' motion to dismiss for lack of subject matter jurisdiction, or alternatively, motion for summary judgment will be denied, and Plaintiff's partial motion for summary judgment as to her FLSA claim will be granted. A hearing as to the amount of compensatory and liquidated damages to be awarded to Plaintiff will be held and all of the claims in Plaintiff's Complaint will be heard. Finally, Defendants' attempt to impose sanctions is without merit. Accordingly, Defendants' motion for sanctions will be denied.

An appropriate order follows.

⁴Paragraph 12 reads, "[a]t no time did [Plaintiff] sign an agreement for any Defendant to withhold any portion of her salary for any reason."

⁵In his original response to Defendants' Motion for Sanctions, Plaintiff's counsel mistakenly responded to paragraph 11 of the Complaint (See Docket No. 9.) However, Plaintiff's counsel thereafter filed a correct response to Defendants' motion. (See Docket No. 12.)

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	:	
ABOUT YOUR SMILE, P.C. and	:	
GLENN A. BROWN, DR.,	:	
Defendants.	:	

ORDER

AND NOW, this 13 day of August, 2002, upon consideration of Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction under Rule 12(b)(1), or in the alternative, Motion for Summary Judgment under Rule 56 and Plaintiff's Response, Plaintiff's Cross-Motion for Partial Summary Judgment, Defendants' Response, Plaintiff's Reply, and Defendants' Surreply, and Defendants' Motion for Sanctions under Fed.R.Civ.P. 11, Plaintiff's Response, and Defendants' Reply, **IT IS HEREBY ORDERED** that:

1. Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction under Rule 12(b)(1), or in the alternative, Motion for Summary Judgment under Rule 56 is **DENIED**;
2. Plaintiff's Cross-Motion for Partial Summary Judgment is **GRANTED** as to her request for declaratory judgment as to the liability of Defendants to her under the FLSA;
3. Defendants' Motion for Sanctions is **DENIED**; and
4. The Courtroom Deputy Clerk shall schedule a hearing to determine the appropriate amount of compensatory and liquidated damages to be awarded to Plaintiff.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.