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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

BHIKABHAI PATEL,

Plaintiff and Appellant,

v.

GOVIND VAGHASHIA et al.,

Defendants and Respondents.

B282548

(Los Angeles County
Super. Ct. No. EC064160)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Donna Fields Goldstein, Judge. Affirmed
in part and reversed in part.

Mandeep S. Rupal for Plaintiff and Appellant.

Stone | Dean and Robyn McKibbin for Defendants and
Respondents.

Plaintiff Bhikabhai Patel appeals from a judgment entered in favor of defendants Prashant Vaghashia and Mita Vaghashia after a bench trial on plaintiff's complaint alleging, inter alia, Labor Code violations. Plaintiff complains that the court erred in entering judgment on his claims: (1) that defendants' failure to provide his final pay upon his termination violated Labor Code section 202;¹ (2) and that defendants' failure to provide complete wage statements violated section 226. Although we conclude that the court properly found plaintiff did not prove a violation of section 202, the trial court erred in finding plaintiff was not entitled to relief for defendants' failure to comply with section 226. We, therefore, affirm in part and reverse in part.

FACTUAL AND PROCEDURAL SUMMARY

Plaintiff is married to defendant Prashant Vaghashia's sister. In mid-2002 defendants hired plaintiff to work as the "resident manager" of their motel in Burbank—the Econo Inn (the Inn)—a small residential motel with 22 rooms. Plaintiff and his wife lived in an apartment connected to the motel office, and plaintiff's resident manager duties included checking residents in (and out) of the Inn; collecting the rent; maintaining records; and performing certain housekeeping duties.

In 2010, plaintiff and defendants entered into a written employment contract that set forth the terms of plaintiff's employment. The parties agreed that plaintiff would receive wages only for the hours he performed his duties,² and that plaintiff could

¹ All statutory references are to the Labor Code unless otherwise indicated.

² In the statement of decision, the trial court noted that "[a]lthough there is evidence that leads [it] to question whether [plaintiff] is a non-exempt employee, [plaintiff's status] was not raised by [defendants in the trial court]"; and therefore the trial

set his own schedule. Plaintiff spent approximately between three to five hours a day performing his duties. The parties further agreed that plaintiff's monthly pay would be \$3,350, paid \$1,000 by check and \$2,350 in cash and that defendants would receive \$550 per month credit for plaintiff's housing and utilities. The parties also agreed that plaintiff's employment was "at will" and that if plaintiff quit he would give defendants a one-month notice and would provide defendants with all records, accounting information and keys to the premises when he left.

Defendants paid plaintiff \$1,000 a month by check from 2011 through the end of 2014. Each check contained a wage statement that omitted plaintiff's hours worked and the rate of pay per hour. Defendants claimed they omitted the information from the wage statements because plaintiff scheduled his hours and because that information was exclusively within plaintiff's knowledge.

As for the portion of his wages plaintiff received in cash, the evidence shows that plaintiff periodically paid himself from the cash he collected from the rentals at the Inn. Plaintiff signed the bottom portion of the cash report to document the cash collected from the rentals and any amount of cash he took representing his wages. Defendants stated that they did not prepare wage statements for the cash wage payments because plaintiff solely determined the amount (and how often) he took his wages in the form of cash. Between 2011 to the end of 2014 plaintiff paid himself in cash a total \$111,435. In January 2015, he paid himself \$2,845 in cash and \$1,600 in cash for February and April 2015 respectively.³

court's analysis and findings assumed that plaintiff was a non-exempt hourly employee. Neither party has challenged the court's assumption on appeal.

³ There was no evidence produced at trial that defendants paid plaintiff the \$1,000 a month by check in 2015. Likewise, no

In early May 2015, defendants discovered that plaintiff had terminated his employment without notice and vacated the premises, taking the business records and the keys to the Inn with him. Plaintiff did not provide defendants with a forwarding address and had no contact with defendants until he filed his suit. According to the defendants, plaintiff gave the keys and the records to defendants' family members with whom defendants were engaged in an ongoing, separate legal dispute.

In June 2015, plaintiff filed a complaint alleging 11 causes of action including Labor Code violations for the failure to pay wages, overtime pay, waiting time penalties, and the failure to provide wage statements, as well as claims for financial elder abuse and breach of contract. After a bench trial, the court entered judgment for defendants, finding that plaintiff had failed to prove his claims and that he was not a credible witness.⁴

Plaintiff timely appealed.

evidence was presented that plaintiff performed any work or was paid by check or cash for the month of March 2015.

⁴ Although the record does not contain a transcript of the trial or the other oral proceedings, the court did issue an extensive statement of decision.

DISCUSSION

Before this court, plaintiff only challenges the trial court's rulings on the sixth cause of action for a violation of section 202 and the seventh cause of action for the failure to provide wage statements in violation of section 226. As we shall explain, only plaintiff's claim concerning the wage statements has merit.

I. Section 202 Waiting Time Penalties Claim

Under section 202, subdivision (a), when “an employee . . . quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter. . . . Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address.” (§ 202, subd. (a).) Nonetheless, “[a]n employee who secretes or absents himself or herself . . . or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.” (§ 203, subd. (a).)

Plaintiff contends the court erred in finding that he was not entitled to waiting time penalties under section 202 for defendants' failure to pay his wages in 2015 promptly. We disagree.

Plaintiff contends that the trial court erroneously applied the equitable doctrine of unclean hands to deny him relief under the statute.⁵ The statement of decision, however, shows that the trial court grounded its decision solely on the statutory language of section 203. The court found that plaintiff had “secret[ed]” himself

⁵ The court relied up the doctrine of unclean hands only in support of its denial of recovery on plaintiff's claim for breach of contract.

after he quit and avoided contact with defendants until he sued them. Plaintiff left his job without notice and without providing contact information or a forwarding address, and, thus, defendants did not know where to send his final wages. The court concluded that defendants did not willfully violate section 202, and, therefore, they were excused from waiting time penalties under the statute.

Plaintiff has pointed to no evidence in the record to undermine the trial court's explicit findings on this cause of action and, thus, he has failed to overcome the presumption that the trial court's judgment is correct and shows reversible error. (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) Accordingly, the trial court properly entered judgment in favor of defendants on the sixth cause of action.

II. Section 226 Wage Statement Claims

Plaintiff's seventh cause of action sought penalties for incomplete and missing wage statements in violation of section 226, subdivision (a), which requires an employer to provide accurate, itemized written wage statements that disclose information, including total hours worked by the employee and rate of pay. (§ 226, subd. (a).) Subdivision (e) of section 226 provides statutory damages, including costs and attorney fees for an "employee suffering injury as a result of a knowing and intentional failure by an employer to comply" with the disclosures required in subdivision (a).⁶ Thus, a claim for relief under section 226,

⁶ Pursuant to section 226, subdivision (e): "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000),

subdivision (e) requires proof of a violation of section 226, subdivision (a) that is a “knowing and intentional” injury. (See § 226, subds. (a) & (e).)

The trial court found that defendants did not provide any wage statements for plaintiff’s cash wages and that the wage statements for plaintiff’s wages paid by check did not include all of the information required by section 226, subdivision (a). The trial court, nonetheless, concluded that plaintiff was not entitled to relief for the failure to comply with subdivision (a) because he could not show the failure to comply was willful and knowing and because plaintiff did not prove he suffered injury. Plaintiff contends, and we agree, that he should have been granted relief under section 226, subdivision (e).

With respect to defendants’ knowledge and intent, we disagree with the court’s determination that defendants’ failure to comply with subdivision (a) was unintentional. Indeed, whether the employer, before an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with section 226, subdivision (a) is a relevant factor in determining the employer’s intent and knowledge. In our view, the only reasonable inference that can be drawn from defendants’ course of conduct throughout the parties’ employment relationship as described by the court’s statement of decision is that defendants knowingly and intentionally failed to comply with section 226; and that defendants knew that certain information was omitted from the wage statements for the wages paid by check and did not intend to provide separate wage statements for the cash wages. “[A] ‘knowing and intentional’ failure must be more than an ‘isolated and unintentional payroll error due to a clerical or inadvertent

and is entitled to an award of costs and reasonable attorney’s fees.” (§ 226, subd. (e)(1).)

mistake’ ”—“a ‘knowing and intentional’ violation requires a showing that the defendant knew that facts existed that brought its actions or omissions within the provisions of section 226[, subdivision (a)].” The “defendant’s lack of awareness as to the illegality of its deficient wage statements is irrelevant to the determination of whether the ‘knowing and intentional’ element is satisfied.” (See *Willner v. Manpower, Inc.* (N.D.Cal. 2014) 35 F.Supp.3d 1116, 1131.)

Under section 226, subdivision (a), the burden to comply with the statute falls upon the employer, not the employee. Defendants, however, placed the burden of compliance with section 226 on plaintiff—defendants agreed to the arrangement in which they paid part of plaintiff’s wages by check and then plaintiff separately and at various times during the month paid himself the other part of his wages in cash from the Inn’s receipts. Defendants owed plaintiff complete and accurate wage statements for each of these distinct pay periods. And although some of the information required to be included in those wage statements was in possession of plaintiff, defendants were in regular contact with plaintiff until he left his employment, and, thus, they had the opportunity to require plaintiff to provide the information necessary to generate the statutorily required wage statements both for his wages paid by check and for the separate wages paid in cash. Based on the evidence as described in the statement of decision, it does not appear that defendants ever asked plaintiff to provide the information or that plaintiff ever refused to do so.

In addition, with respect to plaintiff’s showing of injury from the failure to provide wage statements for the cash payments, section 226, subdivision (e)(2)(A), unambiguously provides: “An employee is *deemed* to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.” (§ 226, subd. (e)(2)(A), italics added.) Consequently, plaintiff was

not required to demonstrate actual injury from the failure to provide the wage statement. Where, as here, the employer knowingly and intentionally failed to provide a wage statement, the failure to comply with the statute, standing alone is a cognizable injury.

Likewise, we disagree with the trial court's determination on the issue of injury with respect to the incomplete wage statements for the wages defendants paid plaintiff by check. In reaching its conclusion that plaintiff was not injured by the missing information in his wage statements, the trial court relied on *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1142-1144. In *Price*, the court rejected a section 226, subdivision (a) claim because the plaintiff failed to prove that he suffered actual injury arising from the missing information. Decided in 2011, *Price* interpreted a version of section 226 that has been superseded and no longer reflects the current state of the law on the issue of injury.

Effective January 2013, the California Legislature amended section 226, subdivision (a) to clarify the injury requirement under section 226, subdivision (e). The amended version reads in relevant part: "An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information . . . and the employee cannot promptly and easily determine from the wage statement alone . . . any of the . . . information required to be provided on the itemized wage statement." (§ 226, subd. (e)(2)(B)(i).) For purposes of this paragraph, "promptly and easily determine" means a reasonable person would be able to readily ascertain the information without reference to other documents or information. (§ 226, subd. (e)(2)(B)(i) & (C).) Thus, the injury requirement is met if the employee must refer to "other documents or information" beyond the four corners of each wage statement to determine the missing information. (§ 226, subd. (e)(2)(C).)

Based on the record before us, it does not appear that plaintiff could determine his hours worked and rate of pay by examining only the wage statements. Thus, plaintiff suffered an injury within the meaning of the statute.

Accordingly, the court erred in entering judgment for defendants on plaintiff's seventh cause of action for the failure to comply with section 226.

DISPOSITION

The judgment on the seventh cause of action for violation of Labor Code section 226 is reversed, and the matter is remanded for further proceedings under Labor Code section 226, subdivision (e)(1). The judgment is affirmed in all other respects.

The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur.

CHANEY, J.

BENDIX, J.