IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, *Plaintiff*, v. **J.D. NURSING AND MANAGEMENT SERVICES INC., *et al*,** *Defendants*.	Civil Action No.: 2017 CA 008411 B Calendar 13 Judge John M. Campbell

ORDER

The District of Columbia brings this action under the D.C. Wage Payment and Collection Law against defendants J.D. Nursing and Management, Inc. and its former CEO, James Ibe, for their failure to pay wages to 26 former employees. The District has moved for summary judgment on its claims and the defendants' counterclaims. For the reasons described below, the Court enters judgment as a matter of law in favor of the District.

BACKGROUND AND SUMMARY JUDGMENT EVIDENCE

J.D. Nursing is a defunct in-home health care service provider in the District of Columbia. Prior to its closure in 2016, J.D. Nursing entered into a Medicaid provider agreement with the Department of Health Care Finance. Under the agreement, J.D. Nursing employed personal care aides that conducted home visits to Medicaid beneficiaries, and the Department of Health Care Finance reimbursed J.D. Nursing for these services using Medicaid funds. J.D. Nursing paid its personal care aides $13.80 per hour.

On September 2, 2015, the Department of Health Care Finance suspended Medicaid reimbursement payments to J.D. Nursing on the grounds that some of J.D. Nursing's personal

care aides fraudulently overbilled for their services.[1] The suspension occurred during the August 30 – September 12, 2015 pay period. Twenty-six personal care aides that were not the subject of the fraud investigation continued to provide in-home services to J.D. Nursing clients after the September 2nd suspension and beyond the August 30 – September 12, 2015 pay period. The number of hours that the personal care aides worked beyond the August 30 – September 12, 2015 pay period varied. J.D. Nursing paid the 26 personal care aides wages for all work performed during the August 30 – September 12, 2015 pay period. However, with the exception of one personal care aide, Mr. Mbianga, whom J.D. Nursing paid for work performed during the September 13 – 25, 2015 pay period, J.D. Nursing did not pay the personal care aides for work performed on or after September 13, 2015.

Between October 2015 and January 2016, all but one of the 26 personal care aides (Ramadhani Kamguna) filed administrative complaints for non-payment of wages against J.D. Nursing at the D.C. Department of Employment Services. The Department of Employment Services concluded that J.D. Nursing violated the Wage Theft Prevention Amendment Act of 2014 and "owed the amount claimed in unpaid wages and up to treble the amount in liquidated damages." (December 14, 2019 Initial Determination, p. 2).[2]

STANDARD OF REVIEW

A party moving for summary judgment must demonstrate that there are no material facts in dispute and that the party is entitled to judgment as a matter of law. Once the moving party

[1] The District of Columbia Office of Administrative Hearings affirmed the Department of Health Care Finance's determination on May 6, 2016, following an evidentiary hearing.

[2] For some of the personal care aides, the amount of unpaid wages claimed in the Department of Employment Services complaint differs from the amount the District claims in its complaint. This difference is explained by the fact that the Department of Employment Services relied on the personal care aides' allegations whereas in the instant litigation, the District obtained and relied on J.D. Nursing's payroll recordings. The number of hours claimed by the District is therefore reliable.

meets its burden, the non-moving party must present specific facts demonstrating that there is a material factual dispute. *See, e.g.*, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87. A motion for summary judgment must be granted if, taking all inferences in the light most favorable to the nonmoving party, a reasonable juror could not properly find for the nonmoving party under the appropriate burden of proof. *See, e.g., Woodfield v. Providence Hosp.*, 779 A.2d 933, 936-37 (D.C. 2001).

DISCUSSION

The District of Columbia's claim in this case is straightforward—it seeks payment from the defendants on behalf of the 26 personal care aides for unpaid wages following the suspension of J.D. Nursing's Medicaid reimbursements. The District brings its claim under the D.C. Wage Payment and Collection Law, which provides that "[a]n employer shall pay all wages earned to his or her employees on regular paydays." D.C. Code § 32-1302. It is undisputed that J.D. Nursing and Mr. Ibe qualify as employers.[3] Accordingly, the District is entitled to summary judgment on its claim if it can demonstrate that the 26 personal care aides were employees of the defendants and that the defendants failed to pay the personal care aides for hours worked.

The law defines an employee as "any person suffered or permitted to work by an employer." D.C. Code § 32-1301(2). J.D. Nursing conceded in interrogatories that 24 of the 26 personal care aides were its employees. As to the remaining two personal care aides, the record makes clear that Mr. Mbianga and Mr. Kamguna were employees of the defendants. J.D. Nursing's payroll documents—a payroll summary in Mr. Mbianga's case and timesheets in Mr.

[3] D.C. Code § 32-1301(1B) defines an employer as "every individual . . . [or] corporation . . . employing any person in the District of Columbia." Mr. Ibe argues he cannot be personally liable for the personal care aides' unpaid wages because he lacked operational control and thus was not effectively an employer. For reasons explained below, the Court rejects this argument and will hold Mr. Ibe personally liable for his former employees' unpaid wages.

Kamguna's case—demonstrate that Mr. Mbianga and Mr. Kamguna worked at J.D. Nursing and outline how many hours each worked, as presented in the table above. Indeed, Mr. Mbianga and Mr. Kamguna submitted affidavits testifying that were employees of J.D. Nursing and that they worked the number of hours listed in the table above. When given the opportunity to testify as to the employment status of Mr. Mbianga and Mr. Kamguna during J.D. Nursing's deposition, Mr. Ibe, as J.D. Nursing's corporate representative, invoked the Fifth Amendment and refused to answer whether Mr. Mbianga and Mr. Kamguna were employees of J.D. Nursing. *See SEC v. Colello*, 139 F.3d 674, 677 (9th Cir. 1998) ("Parties are free to invoke the Fifth Amendment in civil cases, but the court is equally free to draw adverse inferences from their failure of proof."); *see also SEC v. Whittemore*, 691 F. Supp. 2d 198, 206 (D.D.C. 2010) ("The Court may make an adverse inference because this is a civil case and these Defendants control the evidence.").[4]

The record is also clear that the defendants did not pay the 26 personal care aides wages for the hours that they worked. J.D. Nursing's payroll records, namely payroll summaries and timesheets, demonstrate that Mr. Mbianga received his final paycheck on October 7, 2015, for the August 30 – September 12, 2015 pay period even though he continued to work until November 20, 2015. J.D. Nursing's payroll records also demonstrate that the remaining 25 personal care aides continued to work after they received their final paychecks, which were dated September 23, 2015 and for the August 30 – September 12, 2015 pay period.

The defendants' arguments to the contrary, and their related counterclaims, are futile. J.D. Nursing argues that the personal care aides ceased being its employees following the

[4] In its opposition, J.D. Nursing stated that "Dany Mbakop Mbianga was not employed by JDNMS but had an employee by the name of Dany Mbianga Mbakop. Mr. Mbianga did not allege in his affidavit that he is the same person as Mr. Mbakop. Mr. Mbakop did not file a claim with the Department of Employment Services and was not included in Plaintiff's complaint." (Statement of Material Facts, ¶ 13). This discrepancy is not a material dispute—the District's allegations plainly relate to the individual in J.D. Nursing's records listed as "Mbakop, Dany." Indeed, the District "is more than willing to concede the proper ordering of his middle and last names." (Reply, p. 3).

September 2nd suspension and thus terminated J.D. Nursing's obligations to pay them wages.[5] J.D. Nursing points to the "economic reality" test, under which courts considers factors such as whether the alleged employer "(1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records." *Bonilla v. Power Design, Inc.*, 201 F. Supp. 3d 60, 63 (D.D.C. 2016) (internal citations and quotation marks omitted).[6] J.D. Nursing argues that it lacked operational control over the personal care aides because the Department of Health Care Finance instructed it not to terminate the personal care aides' services to Medicaid beneficiaries until the beneficiaries were transferred to a new service provider. For the same reason—an alleged lacked operational control over the personal care aides—Mr. Ibe argues that he should not be found personally liable. The defendants also characterize the work performed by the personal care aides after the suspension not as work conducted on behalf of J.D. Nursing, but as work provided "based on the duty imposed on them by their professional license and at the direction of DHCH to continue to perform their duties despite the payment suspension." (Defendants' Opposition, p. 15). This characterization forms the basis of the defendant's counterclaims for quasi-contract and promissory estoppel, through which the defendants argue that the Department of Health Care Finance promised that it would pay the personal care aides for work performed after the suspension.

[5] J.D. Nursing makes this argument in its opposition, despite conceding in interrogatories that the aforementioned 24 personal care aides were its employees.

[6] In *Bonilla*, the Court examined the plaintiff's claims under the Fair Labor Standards Act and various District of Columbia wage laws. In so doing, the court noted that,"[b]ecause of the definitions' similarity, courts in this district have consistently concluded that 'determinations of employer or employee status under the FLSA apply equally under the District of Columbia wage laws." *Bonilla*, 201 F. Supp. 3d at 63 (citing *Thompson v. Linda & A., Inc.*, 779 F. Supp. 2d 139, 146 (D.D.C. 2011)).

The defendants' attempt to strip themselves of control over the personal care aides fails. Under J.D. Nursing's Medicaid provider agreement, it had an obligation to continue employing its personal care aides to provide services notwithstanding a suspension of its reimbursements. (Defendants' Opposition, Ex. 2, pp. 4-12). Contrary to J.D. Nursing's argument, the Department of Health Care Finance's email stating that "[t]he rules require the PCAs not to abandon the clients and the home health agency to provide services until the transfer is completed" was not an order. It merely reminded J.D. Nursing of its obligations under the Medicaid provider agreement. Accordingly, the reminder cannot serve as the basis of the defendants' counterclaims as the Department of Health Care Finance never promised the defendants anything. Moreover, the defendants' counterclaims fail because it is well-established that the existence of the Medicaid provider agreement forecloses quasi-contract claims. *Dale Denton Real Estate v. Fitzgerald*, 635 A.2d 925, 929 (D.C. 1993).

Under the D.C. Wage Payment and Collection Law, the Attorney General, on "behalf of an aggrieved employee," "shall be entitled to" the "payment of back wages unlawfully withheld" and "[a]dditional liquidated damages equal to treble the back wages unlawfully withheld." D.C. Code § 32-1306(a)(2)(A)(iii); *see also Martinez v. Asian 328, LLC*, 220 F. Supp. 3d 117, 122-23 (D.D.C. 2016) ("[T]he liquidated damages provision of the DCWPCL awards treble damages as liquidated damages *in addition to* the actual damages in the form of unpaid wages.") (emphasis in original). The actual damages in this case are the unpaid wages, which are calculated by multiplying the number of uncompensated hours that the aggrieved personal care aides worked by their hourly wage of $13.80. The liquidated damages are calculated by trebling the actual damages for each aggrieved personal care aide. The sum of these two numbers forms the total damages. The damages are summarized in the following table:

personal care aide	number of hours worked after final date of payment	actual damages	treble damages	total damages
1. Abraham, Michael	680	$9,384.00	$28,152.00	$37,536.00
2. Akinbolusire, Alice	104	$1,435.20	$4,305.60	$5,740.80
3. A-nyoumea, Josphine	128	$1,766.40	$5,299.20	$7065.60
4. Baez-Valerio, Maria	184	$2,539.20	$7,617.60	$10,156.80
5. Bamba, Sinaly	392	$5,409.60	$16,228.80	$21,638.40
6. Bonilla, Marta	128	$1,766.40	$5,299.20	$7,065.60
7. Boyd, Ladon	120	$1,656.00	$4,968.00	$6,624.00
8. Clarke, Danita	10	$138.00	$414.00	$552.00
9. Eferunu, Stephen	104	$1,435.20	$4,305.60	$5,740.80
10. Gonzalez, Jenie	120	$1,656.00	$4,968.00	$6,624.00
11. Harrison, Christina	72	$993.60	$2,980.80	$3,974.40
12. Johnson, Evonna	217	$2,994.60	$8,983.80	$11,978.40
13. Kamguna, Ramadhani	48	$662.40	$1,987.20	$2,649.60
14. Kamguna, Sartana	176	$2,428.80	$7,286.40	$9,715.20
15. Lazo, Blanca	104	$1,435.20	$4,305.60	$5,740.80
16. Lopez, Gladys	104	$1,435.20	$4,305.60	$5,740.80
17. Mbazang, Yannick	116	$1,600.80	$4,802.40	$6,403.20
18. Mbianga, Dany	240	$3,312.00	$9,936.00	$13,248.00
19. Menendez, Dora	20	$276.00	$828.00	$1,104.00
20. Okorie, Becky	120	$1,656.00	$4,968.00	$6,624.00
21. Onyegbula, Francisca	15	$207.00	$621.00	$828.00
22. Ortiz, Sarah	76	$1,048.80	$3,146.40	$4,195.20
23. Ramirez, Anuhara	64	$883.20	$2,649.60	$3,532.80
24. Techwei, George	60	$828.00	$2,484.00	$3,312.00

25. Tegum, Emmanuel	72	$993.60	$2,980.80	$3,974.40
26. Tengwei, Stella	56	$772.80	$2,318.40	$3,091.20
TOTAL	**3,530**	**$48,714.00**	**$146,142.00**	**$194,856.00**

In addition to damages, the D.C. Wage Payment and Collection Law provides for statutory penalties in the amount of $50 per employee "[f]or the first offense . . . for each day that the violation occurred or continued." D.C. Code § 32-1307(b)(1); *see also* D.C. Code § 32-1306(a)(2)(A)(ii) (stating that the Attorney General is entitled to "[s]tatutory penalties equal to any administrative penalties provided by law"). Here, the defendants' violations under the D.C. Wage Payment and Collection Law occurred over 441 days. At $50 per day, for 441 days, the defendants are liable for $22,050.00 in statutory penalties.[7]

Accordingly, it is this 17th day of December, 2019, hereby

ORDERED, that the District of Columbia's motion for summary judgment is **GRANTED**; and it is further

ORDERED, that the defendants' counterclaims are **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that a judgment in the amount of $216,906.00 is entered against the defendants, jointly and severally.

John M. Campbell
Associate Judge

[7] Without conceding liability for statutory damages, the defendants argue that any alleged violations of the D.C. Wage Payment and Collection Law occurred over 358 days, which is the number of days the defendants were in violation according to the Department of Employment Services. The Court rejects this argument for the same reasons it rejected this argument when calculating the total number of hours that the personal care aides worked.

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