

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

Mendez v. Radec Corp.

260 F.R.D. 38 (W.D.N.Y. 2009) · No. Dkt. # 216 · Decided August 20, 2009

SUMMARY

The court considers defendants’ motion to decertify a Rule 23(b)(3) class in an action alleging violations of the Fair Labor Standards Act and New York Labor Law. Defendants argue that class counsel is inadequate and that individual issues predominate, including because counsel simultaneously pursued summary judgment and class certification and failed to obtain class notice. The decision explains the court’s continuing duty to reassess certification and addresses the alleged inadequacy of class counsel.

CASE DETAILS

COURT	United States District Court for the Western District of New York
WRITING FOR THE COURT	David G. Larimer
JURISDICTION	New York
DECIDED	August 20, 2009
DOCKET	Dkt. # 216
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved to decertify a previously certified Rule 23(b)(3) class alleging violations of the Fair Labor Standards Act and New York Labor Law. The district court denied the motion and directed plaintiffs to move for approval of class notice.
STANDARD OF REVIEW	Decertification is committed to the district court's discretion, and the court applies the same standard used for initial class certification: whether the requirements of Federal Rule of Civil Procedure 23 are satisfied.
PRECEDENTIAL VALUE	published district court decision

TOPICS

- class actions
- wage and hour
- flsa
- civil procedure
- employment law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the previously certified Rule 23(b)(3) class should be decertified because class counsel allegedly failed to provide adequate representation.
2. Whether the simultaneous filing and adjudication of class-certification and partial-summary-judgment motions warranted decertification under the rule against one-way intervention.
3. Whether the failure to seek court-approved notice or to pursue additional alleged joint employers demonstrated inadequacy of class counsel.
4. Whether the absence of a separately filed written FLSA consent by the named plaintiff demonstrated counsel's inadequacy or invalidated Mendez's participation in the FLSA collective action.
5. Whether individual issues had come to predominate over common issues under Rule 23(b)(3).
6. Whether New York CPLR § 901(b) barred class treatment of the New York Labor Law claims.

HOLDINGS

1. The alleged errors and delays by class counsel, including simultaneous summary-judgment and certification motions, delayed notice, failure to pursue additional defendants, and failure to file a separate consent for Mendez, did not establish inadequate representation warranting decertification.
2. Defendants waived any objection to the simultaneous filing and adjudication of the summary-judgment and class-certification motions by failing to raise the issue when those motions were pending.
3. The court's prior rulings that Radec engaged in specified unlawful wage practices were part of the law of the case and could apply to the certified class, subject to each class member establishing that the unlawful policies applied to him or her.
4. Decertification was not warranted because common questions concerning Radec's allegedly unlawful wage and overtime policies continued to predominate over individualized damages and factual issues.
5. CPLR § 901(b) did not require decertification because class members could waive liquidated damages or opt out; class members who remained in the class would have to waive Labor Law liquidated-damages claims.
6. Mendez's signed affirmation, read together with the caption and its statement that he was the named plaintiff in an action brought on behalf of similarly situated employees, satisfied the written-consent requirement of 29 U.S.C. § 216(b).

KEY QUOTATIONS

“Even after a [class] certification order is entered, the [district] judge remains free to modify it in the light of subsequent developments in the litigation.” (at 39)

“In fact, a federal district court judge has an affirmative obligation to ensure” (at 39)

“Accordingly, I will deny defendants’ motion to decertify plaintiffs’ Labor Law claims, with the understanding that, barring an intervening change in the law from the Supreme Court or otherwise, any plaintiff who does

not opt out of the class will have to waive any claims to liquidated damages under the Labor Law.” (at 55)

FACTUAL BACKGROUND

Mendez alleged that Radec failed to pay employees legally required wages, including compensation for certain travel time and overtime, and retaliated against him for complaining about wage violations. The court had certified a Rule 23(b)(3) class concerning specified New York Labor Law wage claims and had granted Mendez partial summary judgment on liability for certain uncompensated travel time and overtime practices. Defendants argued that subsequent litigation developments showed class counsel were inadequate and that individual issues predominated.

PROCEDURAL HISTORY

Mendez sued his former employer and company officers for unpaid wages and retaliation under the FLSA and New York Labor Law. The court previously certified a Rule 23(b)(3) class for specified Labor Law claims, denied defendants' motion to decertify the FLSA collective action, and granted partial summary judgment to Mendez on certain travel-time and overtime-liability issues. Defendants then moved to decertify the Rule 23 class based on alleged inadequacy of class counsel, predominance of individual issues, and New York CPLR § 901(b).

DISPOSITION

other

CASES CITED

- General Telephone Co. of the Southwest v. Falcon, 457 U.S. 147, 160 (1982)
- Cordes & Co. Financial Services, Inc. v. A.G. Edwards & Sons, Inc., 502 F.3d 91, 104 n.9 (2d Cir. 2007)
- Daffin v. Ford Motor Co., 458 F.3d 549, 554 (6th Cir. 2006)
- In re Integra Realty Resources, Inc., 354 F.3d 1246, 1261 (10th Cir. 2004)
- Daffin v. Ford Motor Co., 458 F.3d 549, 554 (6th Cir. 2006)
- Wu v. MAMSI Life & Health Ins. Co., 256 F.R.D. 158, 162-63 (D. Md. 2008)
- Boucher v. Syracuse University, 164 F.3d 113, 118 (2d Cir. 1999)
- Richardson v. Byrd, 709 F.2d 1016, 1019 (5th Cir. 1983)
- Chisolm v. TranSouth Financial Corp., 194 F.R.D. 538, 544 (E.D. Va. 2000)
- Marlo v. United Parcel Service, Inc., 251 F.R.D. 476, 479 (C.D. Cal. 2008)
- Marisol A. v. Giuliani, 126 F.3d 372, 375-76 (2d Cir. 1997)
- Williams v. Balcor Pension Investors, 150 F.R.D. 109, 119 n.10 (N.D. Ill. 1993)
- In re Integra Realty Resources, Inc., 262 F.3d 1089, 1112 (10th Cir. 2001)
- Z-Seven Fund, Inc. v. Motorcar Parts & Accessories, 231 F.3d 1215, 1219 (9th Cir. 2000)
- Foe v. Cuomo, 892 F.2d 196, 198 (2d Cir. 1989)
- Amati v. City of Woodstock, 176 F.3d 952, 957 (7th Cir. 1999)

- Premier Electric Construction Co. v. National Electrical Contractors Association, Inc., 814 F.2d 358, 362 (7th Cir. 1987)
- Becherer v. Merrill Lynch, Pierce, Fenner, and Smith, Inc., 193 F.3d 415, 429 (6th Cir. 1999)
- Bertrand v. Maram, 495 F.3d 452, 455 (7th Cir. 2007)
- Schwarzschild v. Tse, 69 F.3d 293, 296 (9th Cir. 1995)
- Philip Morris Inc. v. National Asbestos Workers Medical Fund, 214 F.3d 132, 135 (2d Cir. 2000)
- Ahne v. Allis-Chalmers Corp., 102 F.R.D. 147, 151 (E.D. Wis. 1984)
- Rivell v. Private Healthcare Systems, Inc., No. CV 106-176, 2007 WL 1221315, at *3 (S.D. Ga. Apr. 20, 2007)
- Wright v. Schock, 742 F.2d 541, 544 (9th Cir. 1984)
- Postow v. OBA Federal Savings & Loan Association, 627 F.2d 1370 (D.C. Cir. 1980)
- Schweizer v. Trans Union Corp., 136 F.3d 233, 239 (2d Cir. 1998)
- Waste Management Holdings, Inc. v. Mowbray, 208 F.3d 288, 299 n.7 (1st Cir. 2000)
- Peritz v. Liberty Loan Corp., 523 F.2d 349, 354 (7th Cir. 1975)
- Chevron USA Inc. v. School Board of Vermilion Parish, 294 F.3d 716, 720 (5th Cir. 2002)
- Aguilera v. Pirelli Armstrong Tire Corp., 223 F.3d 1010, 1013 n.1 (9th Cir. 2000)
- Feathers v. Chevron U.S.A., Inc., 141 F.3d 264, 269 n.2 (6th Cir. 1998)
- Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985)
- In re Veneman, 309 F.3d 789, 792 (D.C. Cir. 2002)
- Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 173-74 (1974)
- Lemon v. International Union of Operating Engineers, Local No. 139, AFL-CIO, 216 F.3d 577, 580 (7th Cir. 2000)
- Smith v. Shawnee Library System, 60 F.3d 317, 321-22 (7th Cir. 1995)
- Gert v. Elgin National Industries, Inc., 773 F.2d 154, 159 (7th Cir. 1985)
- Richards v. Delta Air Lines, Inc., 453 F.3d 525, 530 (D.C. Cir. 2006)
- Abbott Laboratories v. CVS Pharmacy, Inc., 290 F.3d 854, 859 (7th Cir. 2002)
- Twigg v. Sears, Roebuck & Co., 153 F.3d 1222, 1227 (11th Cir. 1998)
- In re Farmers Insurance Co., Inc. FCRA Litigation, No. CIV-03-158, 2006 WL 1042499, at *2 (W.D. Okla. Apr. 13, 2006)
- Koss v. Wackenhut Corp., No. 03 Civ. 7679 (S.D.N.Y. Mar. 30, 2009)
- In re Honeywell International Inc. Securities Litigation, 211 F.R.D. 255, 262-63 (D.N.J. 2002)
- Sheinberg v. Sorensen, No. 00-6041, 2008 WL 928121, at *1, *4-*8 (D.N.J. Apr. 4, 2008)
- Feder v. Electronic Data Systems Corp., 429 F.3d 125, 135 (5th Cir. 2005)
- Paper Systems, Inc. v. Mitsubishi Corp., 193 F.R.D. 601, 611 (E.D. Wis. 2000)
- Harkins v. Riverboat Services, Inc., 385 F.3d 1099, 1101-02 (7th Cir. 2004)
- Anderson v. Montgomery Ward & Co., 852 F.2d 1008, 1018-19 (7th Cir. 1988)
- Ketchum v. City of Vallejo, No. S-05-1098, 2007 WL 4356137, at *2 (E.D. Cal. Dec. 11, 2007)

- Bonilla v. Las Vegas Cigar Co., 61 F. Supp. 2d 1129, 1139 (D. Nev. 1999)
- McLaughlin v. American Tobacco Co., 522 F.3d 215, 223-26, 234 (2d Cir. 2008)
- Frederick v. Dreiser Loop Supermarket Corp., No. 06 Civ. 15341 (S.D.N.Y. Oct. 24, 2008)
- Niemiec v. Ann Bendick Realty, No. 04-CV-897, 2007 WL 5157027, at *10 (E.D.N.Y. Apr. 23, 2007)
- Mentor v. Imperial Parking Systems, Inc., 246 F.R.D. 178, 184 (S.D.N.Y. 2007)
- Iglesias-Mendoza v. La Belle Farm, Inc., 239 F.R.D. 363, 373 (S.D.N.Y. 2007)
- Damassia v. Duane Reade, Inc., 250 F.R.D. 152, 163 (S.D.N.Y. 2008)
- Ali v. Mukasey, 529 F.3d 478, 490 (2d Cir. 2008)
- Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)
- Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co., 549 F.3d 137, 143 (2d Cir. 2008)
- Klein v. Ryan Beck Holdings, Inc., No. 06 Civ. 3460 (S.D.N.Y. July 20, 2007)
- Roe v. City of Waterbury, 542 F.3d 31, 41 (2d Cir. 2008)
- Central Hudson Gas & Electric Corp. v. Empresa Naviera Santa S.A., 56 F.3d 359, 368 (2d Cir. 1995)
- Faulkner v. National Geographic Enterprises Inc., 409 F.3d 26, 37 (2d Cir. 2005)
- Thomas v. SLT/TAG, Inc., No. Civ. 030-297, 2004 WL 1068782, at *2-*3 (D. Or. May 11, 2004)
- In re TransOcean Tender Offer Securities Litigation, 455 F. Supp. 999, 1008 (N.D. Ill. 1978)
- Deposit Guaranty National Bank, Jackson, Miss. v. Roper, 445 U.S. 326, 354 (1980)
- Raper v. State of Iowa, 165 F.R.D. 89, 92 (S.D. Iowa 1996)
- Culver v. City of Milwaukee, 277 F.3d 908, 915 (7th Cir. 2002)
- In re Franklin National Bank Securities Litigation, 574 F.2d 662, 670 (2d Cir. 1978)
- Greenfield v. Villager Industries, Inc., 483 F.2d 824, 832 (3d Cir. 1973)
- Dubin v. Miller, 132 F.R.D. 269, 273 (D. Colo. 1990)
- Wells v. McDonough, 188 F.R.D. 277, 279-80 & n.3 (N.D. Ill. 1999)
- Thorn v. Jefferson-Pilot Life Insurance Co., 445 F.3d 311, 330 n.25 (4th Cir. 2006)
- Sarasota Oil Co. v. Greyhound Leasing & Financial Corp., 483 F.2d 450, 452 (10th Cir. 1973)
- Carlough v. Amchem Products, Inc., 10 F.3d 189, 200 (3d Cir. 1993)
- Penson v. Terminal Transport Co., Inc., 634 F.2d 989, 995 (5th Cir. 1981)
- Katz v. Carte Blanche Corp., 496 F.2d 747, 760 (3d Cir. 1974)
- Macarz v. Transworld Systems, Inc., 201 F.R.D. 54, 58 (D. Conn. 2001)
- Williams v. Lane, 129 F.R.D. 636, 642 n.10, 648 (N.D. Ill. 1990)