UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Hepler v. Abercrombie & Fitch Co.

54 F. Supp. 3d 221 (E.D.N.Y. 2014) · Decided October 3, 2014

SUMMARY

The court granted defendants' motion to dismiss an FLSA collective action as moot after defendants made Rule 68 offers exceeding the maximum recovery available to the named plaintiff and one opt-in plaintiff. The court held that the plaintiffs were not entitled to the requested injunctive or declaratory relief under the FLSA and declined supplemental jurisdiction over the NYLL claims, dismissing those claims without prejudice.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Wexler
JURISDICTION	New York
DECIDED	October 3, 2014
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(1) to dismiss a putative FLSA collective action as moot after serving Rule 68 offers of judgment that plaintiffs conceded exceeded the maximum amounts recoverable on their FLSA claims.
STANDARD OF REVIEW	The court considered whether it lacked subject-matter jurisdiction because the action had become moot under Federal Rule of Civil Procedure 12(b)(1).
PRECEDENTIAL VALUE	published district court opinion; persuasive authority

TOPICS

motions to dismiss · subject matter jurisdiction · class actions · flsa · civil procedure

PRACTICE AREAS

civil procedure · employment law · wage and hour · flsa · remedies

QUESTIONS PRESENTED

1. Whether defendants' Rule 68 offers of judgment for more than the maximum recoverable FLSA amounts rendered Hepler's and the opt-in plaintiff's FLSA claims moot.
2. Whether the requested declaratory and injunctive relief prevented the FLSA claim from becoming moot.
3. Whether later-joined opt-in plaintiffs or a post-offer motion for conditional certification prevented dismissal of the moot FLSA claim.
4. Whether the court should exercise supplemental jurisdiction over the New York Labor Law claims after dismissing the sole federal claim.

HOLDINGS

1. A Rule 68 offer providing full recovery of the amounts available under the FLSA renders the named plaintiff's FLSA claim moot when the offer is rejected or expires.
2. The requested declaratory and injunctive relief did not prevent mootness because the FLSA does not authorize these plaintiffs to obtain that relief for the alleged minimum-wage and overtime violations.
3. Later joinder of opt-in plaintiffs and a motion for conditional certification filed after the Rule 68 offers did not prevent dismissal of the moot FLSA claim or revive it.
4. The court declined to exercise supplemental jurisdiction over the New York Labor Law claims after dismissing the sole federal claim and dismissed those claims without prejudice.

KEY QUOTATIONS

> *"Upon consideration, the Court finds that this action is moot, and declines to exercise supplemental jurisdiction over the state law claims, see 28 U.S.C. § 1367(c)(3)."* (223)

> *"Accordingly, plaintiffs' FLSA claim is dismissed as moot; and the Court declines to exercise supplemental jurisdiction over the state law claims, which are dismissed without prejudice."* (223)

FACTUAL BACKGROUND

Hepler brought a putative FLSA collective action for unpaid overtime, together with New York Labor Law claims for overtime and notice and recordkeeping violations. After two individuals opted into the action, defendants served Rule 68 offers of judgment on Hepler and the opt-in plaintiffs. Hepler and one opt-in plaintiff allowed their offers to expire, and they conceded that the offers exceeded the maximum amounts recoverable on their FLSA claims; later opt-ins and a motion for conditional certification occurred after the offers.

PROCEDURAL HISTORY

Hepler filed a putative class action asserting FLSA overtime claims and supplemental New York Labor Law claims. Two opt-in plaintiffs joined; one accepted the Rule 68 offer and the offers to Hepler and another opt-in plaintiff expired. Plaintiffs later joined additional opt-ins and moved for conditional certification. The district court granted defendants' motion, dismissed the FLSA claim as moot, declined supplemental jurisdiction over the state-law claims, dismissed those claims without prejudice, and directed the Clerk to close the case.

DISPOSITION

dismissed

CASES CITED

- N.Y. State Court Clerks Ass'n v. Unified Court Sys. of the State of N.Y., 25 F. Supp. 3d 459, 468 (S.D.N.Y. 2014)
- Briggs v. Arthur T. Mott Real Estate LLC, 2006 WL 3314624, at *3 (E.D.N.Y. Nov. 14, 2006)
- Velasquez v. Digital Page, Inc., 842 F. Supp. 2d 486, 488 (E.D.N.Y. 2012)
- Genesis Healthcare Corp. v. Symczyk, 133 S. Ct. 1523, 1530, 185 L. Ed. 2d 636 (2013)
- Silva v. Tegrity Personnel Servs., Inc., 986 F. Supp. 2d 826, 835 (S.D. Tex. 2013)
- Ritz v. Mike Rory Corp., 959 F. Supp. 2d 276, 279-80 (E.D.N.Y. 2013)

OPINION

WEXLER, J.

MEMORANDUM AND ORDER WEXLER, District Judge. Plaintiff Veronique Hepler (“Helper”) filed this action on May 10, 2013 against defendants Abercrombie & Fitch Co. and Abercrombie & Fitch Stores, Inc., asserting a putative class action under the Fair Labor Standards Acts (“FLSA”) for unpaid overtime (First Claim), as well as supplemental state law class claims under New York Labor Law (“NYLL”) for unpaid overtime (Second Claim) and failure to comply with notice and record keeping requirements (Third Claim).

After the action was commenced, opt-ins Edith Buck-land (“Buckland”) and Dominique Marceau (“Marceau”) joined as plaintiffs in the prosecution of claims. On February 18, 2014, defendants served an Offer of Judgment under Rule 68 of the Federal Rules of Civil Procedure (“FRCP”) on Hepler and opt-ins Buckland and Marceau (“Rule 68 Offer”). Buckland accepted the Rule 68 Offer, and Hepler and Marceau impliedly rejected the Rule 68 Offers when they expired by rule on March 4, 2014.

Before the Court is defendants’ motion to dismiss this action as moot under FRCP 12(b)(1). Plaintiffs oppose the motion. In support of their motion, defendants argue (1) that the Rule 68 Offers exceeded the maximum amount that He-pler and opt-in Marceau could recover on their FLSA claim, thereby rendering that claim moot and requiring its dismissal; and (2) that the Court should decline to exercise supplemental jurisdiction over the supplemental state law claims given the dismissal of the only federal claim.

In opposing the motion, plaintiffs concede that the Rule 68 Offers exceeded the maximum amount that Hepler and Mar'ceau could recover on their FLSA claim, but they argue that the Rule 68 Offers do not render this action moot for various reasons, including: (1) the Rule 68 Offers do not account for other relief sought in the complaint, specifically, declaratory and in-junctive relief under the FLSA and NYLL; (2) the Rule 68 Offers do not provide for all of the monetary damages obtainable in the case, namely, additional liquidated damages under NYLL (Second Claim) and statutory damages under NYLL (Third Claim); (3) additional plaintiffs have joined this action, albeit after the Rule 68 Offers; and (4) plaintiffs have moved for conditional certification under the FLSA, albeit after the Rule 68 Offers.

Upon consideration, the Court finds that this action is moot, and declines to exercise supplemental jurisdiction over the state *223law claims, see 28 U.S.C. § 1367(c)(3). Contrary to plaintiffs' arguments, the FLSA does not permit the injunctive or declaratory relief they seek. See N.Y. State Court Clerks Ass'n v. Unified Court Sys. of the State of N.Y., No. 13 Civ.

7691, 25 F.Supp.3d 459, 468, 2014 WL 2604106, at *7 (S.D.N.Y. June 9, 2014) ("[O]nly the United States Secretary of Labor is authorized to seek injunctive relief for alleged violations of the FLSA's minimum wage and overtime compensation provisions."); Briggs v. Arthur T. Mott Real Estate LLC, No. 06-0468(DRH)(WDW), 2006 WL 3314624, at *3 (E.D.N.Y. Nov. 14, 2006) ("Briggs was no longer an employee •of Defendant when this action was commenced and fails to allege that he was either discharged or discriminated against for filing this action.

He is therefore not entitled to equitable relief, which includes declaratory relief."). Moreover, the offer of full recovery under the FLSA claim rendered that claim moot notwithstanding potential further recovery of certain damages under the state law claims (over which the Court declines to exercise supplemental jurisdiction). See Velasquez v. Digital Page, Inc., 842 F.Supp.2d 486, 488 (E.D.N.Y.2012) (collecting cases).1 Lastly, neither the belated joining of new opt-in plaintiffs nor plaintiffs' motion for conditional certification made after the Rule 68 Offers precludes dismissal for mootness or revives their moot FLSA claim.

See Genesis Healthcare Corp. v. Symczyk, — U.S. -, 133 S.Ct. 1523, 1530, 185 L.Ed.2d 636 (2013); Silva v. Tegrity Personnel Servs., Inc., 986 F.Supp.2d 826, 835 (S.D.Tex.2013); Ritz v. Mike Rory Corp., 959 F.Supp.2d 276, 279-80 (E.D.N.Y.2013) ("A case is dismissed as moot when an offer of full relief to the named plaintiff is rejected and no other parties have opted into the litigation despite reasonable opportunity to do so, especially if no motion for conditional certification has been made" (citing cases)).

For the above reasons, defendants' motion to dismiss is granted. Accordingly, plaintiffs' FLSA claim is dismissed as moot; and the Court declines to exercise supplemental jurisdiction over the state law claims, which are dismissed without prejudice.

The Clerk of Court is directed to close the file in this action. SO ORDERED.. The parties dispute whether plaintiffs are entitled to recover "additional" liquidated damages under the NYLL (Second Claim). Given that the FLSA claim is moot and that the Court declines to exercise supplemental jurisdiction over the state law claims, the Court need not determine whether plaintiffs are entitled to recover "additional" liquidated damages under the NYLL.

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