

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Konstantynovska v. Caring Professionals, Inc.

2023 N.Y. Slip Op. 01763 · No. Index No. 159883/16; Appeal Nos. 17636-17637; Case Nos. 2022-00368, 2022-04365 · Decided April 4, 2023

SUMMARY

The Appellate Division, First Department affirmed orders granting class certification and approving class-action notice in a wage-and-hour action brought by home health aides against Caring Professionals, Inc. The court held that evidence of systematic underpayment, inadequate meal and sleep breaks, and violations of minimum-wage and overtime requirements supported certification, and that differing individual damages did not defeat commonality.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Webber, J.P.; Gesmer, J.; Mendez, J.; Shulman, J.
JURISDICTION	New York
DECIDED	April 4, 2023
DOCKET	Index No. 159883/16; Appeal Nos. 17636-17637; Case Nos. 2022-00368, 2022-04365
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from orders granting plaintiffs' motion for class certification and approving the form and publication of class-action notice.
PRECEDENTIAL VALUE	published
PARTIES	Caring Professionals, Inc. v. Lyudmyla Konstantynovska et al.

TOPICS

- class actions
- wage and hour
- employment law
- appellate procedure

PRACTICE AREAS

- employment law
- wage and hour
- class actions

QUESTIONS PRESENTED

1. Whether Supreme Court properly granted class certification based on evidence of systemic wage-and-hour violations affecting plaintiffs and putative class members.
2. Whether differences in the damages amounts owed to individual class members defeated commonality or otherwise weighed substantially against class certification.
3. Whether disputes concerning the merits of plaintiffs' claims precluded class certification.

HOLDINGS

1. Class certification was proper because plaintiffs submitted evidence that defendant's common policies systematically resulted in unpaid wages, inadequate meal breaks, and insufficient sleep periods for plaintiffs and putative class members.
2. The possibility that individual class members would be entitled to different amounts of damages did not undermine commonality or weigh substantially against class certification.
3. Defendant's arguments disputing the merits of plaintiffs' claims did not preclude class certification at that stage.

KEY QUOTATIONS

*"Claims of systemic wage violations, such as the ones presented here, are "particularly appropriate for class certification"" (2023 NY Slip Op 01763, at *1)*

*"the evidence is sufficient to show that their causes of action are "neither spurious nor sham"" (2023 NY Slip Op 01763, at *1)*

FACTUAL BACKGROUND

Plaintiffs were home health aides who submitted evidence that they worked with at least 40 other aides and that Caring Professionals systematically paid workers for only 13 hours of 24-hour shifts. The evidence also indicated that workers were not provided proper meal breaks or uninterrupted sleep periods and were not paid minimum wage, overtime wages, or other wage benefits allegedly required by law.

PROCEDURAL HISTORY

Supreme Court, New York County, entered orders on January 14 and September 16, 2022, granting class certification and approving the class notice. The Appellate Division, First Department, unanimously affirmed the orders to the extent appealed from, with costs.

DISPOSITION

affirmed

CASES CITED

- Andryeyeva v. New York Health Care, Inc., 33 N.Y.3d 152 (2019)

- Kurovskaya v. Project O.H.R. (Office for Homecare Referral), Inc., 194 A.D.3d 612 (1st Dep't 2021)
- Lavrenyuk v. Life Care Servs., Inc., 198 A.D.3d 569 (1st Dep't 2021)
- Guzman v. Americare, Inc., 202 A.D.3d 504 (1st Dep't 2022)
- Bloom v. Cunard Line, 76 A.D.2d 237, 241 (1st Dep't 1980)
- Brown v. Mahdessian, 206 A.D.3d 511, 512 (1st Dep't 2022)

OPINION

PER CURIAM.

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Konstantynovska v Caring Professionals, Inc. (2023 NY Slip Op 01763)

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<td align="center">Konstantynovska v Caring Professionals, Inc.</td>

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<td align="center">2023 NY Slip Op 01763</td>

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<td align="center">Decided on April 04, 2023</td>

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<td align="center">Appellate Division, First Department</td>

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<td align="center">Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.</td>

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<td align="center">This opinion is uncorrected and subject to revision before publication in the Official Reports.</td>

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Decided and Entered: April 04, 2023

Before: Webber, J.P., Gesmer, Mendez, Shulman, JJ.

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Index No. 159883/16 Appeal No. 17636-17637 Case No. 2022-00368, 2022-04365

<div align="center">[*1]Lyudmyla Konstantynovska et al., Respondents,

v

Caring Professionals, Inc., Appellant.

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<p>Jackson Lewis P.C., Melville (Noel P. Tripp of counsel), for appellant.</p>

<p>Virginia & Ambinder, LLP, New York (LaDonna M. Lusher of counsel), for respondents.</p>

<p>Orders, Supreme Court, New York County (Shlomo Hagler, J.), entered January 14 and September 16, 2022, which, to the extent appealed from, granted plaintiffs' motion for class certification and approved the form and publication of notice of the class action, unanimously affirmed, with costs.</p>

<p>Supreme Court providently granted class certification, as plaintiffs submitted evidence that they worked with at least 40 other home health aides, and that defendant systematically paid them and the putative class members for only 13 hours of their 24-hour shifts, without providing them proper meal breaks or uninterrupted periods of sleep (<i>see Andryeyeva v New York Health Care, Inc.</i>, 33 NY3d 152 [2019]). Plaintiffs also submitted affidavits, testimony, and payroll records showing that they and the putative class members were not paid the minimum wage, overtime wages, or other wage benefits due to defendant's policies (see <i>Kurovskaya v Project O.H.R. [Office for Homecare Referral], Inc.</i>, 194 AD3d 612 [1st Dept 2021]). Claims of systemic wage violations, such as the ones presented here, are "particularly appropriate for class certification" (<i>id.</i> at 613, quoting<i> Andryeyeva</i> at 184; <i>see also Lavrenyuk v Life Care Servs., Inc.</i>, 198 AD3d 569 [1st Dept 2021]; <i>Guzman v Americare, Inc.</i>, 202 AD3d 504 [1st Dept 2022]).</p>

<p>Defendant's arguments disputing the merits of plaintiffs' claims are unavailing at this juncture, as the evidence is sufficient to show that their causes of action are "neither spurious nor sham" (<i>Bloom v Cunard Line</i>, 76 AD2d 237, 241 [1st Dept 1980]). The differing

amounts of damages to which each individual class member may be entitled does not undermine commonality or weigh substantially against class certification (*see Brown v Mahdessian*, 206 AD3d 511, 512 [1st Dept 2022]). THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 4, 2023

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