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Docket: SUCV2016-3182 BLS 2

Date: December 13, 2017

Parties: MICHAEL FRATEA, on behalf of himself And all others similarly situated, Plaintiff vs. UNITRENDS, INC., BRADLEY MILLER, and PAUL BRADY Defendants

Judge: /s/Janet L. Sanders

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTION TO DISMISS

This is an action alleging both statutory and common law claims for failure to pay overtime compensation. In particular, the plaintiff alleges violations of the Massachusetts Wage Act, G.L.c. 149 § 148, and the Massachusetts Fair Wages Act, G.L.c. 151 § 1A and § 1B. Plaintiff Michael Fratea was a salesman for the defendant Unitrends from December 2015 until March 2016, when he left the company. On his last day of employment, Fratea received a separation agreement (the Agreement) containing a Release of all claims in exchange for a lump sum payment of \$1,875. He signed and returned the Agreement to the company one week later. See Declaration of Lisa Crawford and Exhibit A attached thereto.[1] The defendants now move to dismiss the Complaint on the basis of this Release. This Court concludes that the Motion must be ALLOWED.

The Release states in relevant part that Fratea releases Unitrends and its officers and agents (defined as the "Releasees") from all claims:

...arising out of or in connection with (i) your employment with [Unitrends] or termination thereof; (ii) any and all federal, state or local law, constitution or regulation regarding either employment, employment benefits... (iii) any Massachusetts state or local laws respecting employment, including but not limited to, the Massachusetts Wage Payment Act (M.G.L.c. 149 148)... (iv) breach of contract (express or implied) or breach of the implied covenant of good faith and fair dealing...(vi) any other tort, statutory or common law cause of action.

¶ 2(a) of Agreement. As consideration for this Release, Fratea acknowledged the receipt of \$1,875 in "Separation Pay." Under a section entitled "Representations," Fratea acknowledged that this payment represents "complete and unconditional payment, settlement, accord and/or satisfaction with respect to all obligations and liabilities of the Releasees to You [Fratea] including, without limitation, all claims for back wages" and that all compensation owed by the company to the plaintiff has been paid in full. ¶ 4 of Agreement. Section 18 contains a similar acknowledgment, stating that the Separation Pay is in "full settlement of all possible claims you might have or ever had, against the Company" and that in executing the Agreement, Fratea is specifically agreeing to the Release. The Agreement by its terms gave Fratea fourteen days to consider it and at the end of the document, states in bold face and all capital letters that he should consult with an attorney before signing since "THIS AGREEMENT CONTAINS A RELEASE OF CERTAIN LEGAL RIGHTS WHICH YOU MAY HAVE."

The case that guides this Court's analysis is Crocker v. Townsend Gulf Oil Co., Inc., [464 Mass. 1](#), 14 (2012). Like Fratea, the plaintiffs in Crocker alleged (among other things) a violation of the Wage Act for failure to pay overtime. After several years of employment, the plaintiffs left the company and the parties signed termination agreements that included a general release. Specifically, that release stated that each plaintiff: "forever releases, remises and discharges [the defendant]...of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands, obligations and liabilities whatsoever of every name and nature, both in law and equity...that [the plaintiffs] now have or ever had (or may in the future have, arising out of or in connection with any events occurring on or about

the date hereof) against [the defendant].

464 Mass. at 14, n.4. In determining whether this general release barred the plaintiffs' claim, the SJC acknowledged that, as a general rule, releases in written contracts that are freely entered into between the parties should be enforced, even as to claims that were not specifically in the parties' minds at the time the release was executed. *Id.*, citing *Eck v. Godbout*, [444 Mass. 724](#), 728 (2005). On the other hand, the legislative purpose behind the Wage Act is to "provide strong statutory protection for employees and their right to wages" -- a purpose made explicit by a provision in the statute itself prohibiting an employer from exempting itself from coverage by any "special contract." Striking a balance between these competing policies, the SJC held that an employment termination agreement that includes a general release will be enforceable as to Wage Act claims "only if such an agreement is stated in clear and unmistakable terms." That is, "the release must be plainly worded and understandable to the average individual, and it must specifically refer to the the rights and claims under the Wage Act that the employee is waiving." 464 Mass. at 14. Under this standard, the general release at issue in Crocker plainly failed.

The Release in the instant case does makes specific reference to the Wage Act. The plaintiff contends that this is not specific enough, since it does not explicitly refer to overtime compensation, the right to treble damages, and the right to pursue class relief. There is also no reference to the Massachusetts Fair Wages Act, a violation of which is also alleged in the Complaint. This Court does not read Crocker to require such specificity in order for a release to prevent enforcement of wage claims, however. In reaching the conclusion that it did, the SJC wanted to make sure that an employee did not "unwittingly" waive his or her rights. 464 Mass. at 14-15. It further stated that the adequacy of the language should be measured against the "average individual" in the plaintiff's position. *Id.* Here, the Agreement made several references to what it was that Fratea was giving up. In addition, it advised him (in bold face and capital letters) to consult an attorney because of the nature of the rights that he was relinquishing, and gave him two weeks to make a decision as to whether to accept the Agreement as proposed. The Complaint does not allege any facts to suggest that the plaintiff was coerced into the Agreement or that it was a contract of adhesion. Finally, although the amount of severance pay that the plaintiff received in exchange for the Release was not substantial, he was employed with Unitrends for only a matter of months. In short, this Court sees no reason why this Release should not be enforced. The defendant's Motion to Dismiss is therefore ALLOWED and the Complaint is DISMISSED, with prejudice.
/s/Janet L. Sanders
Justice of the Superior Court

[1] Although the Agreement was not part of or described in the Complaint and is before the Court by way of an affidavit, the plaintiff does not dispute the authenticity of that document or the plaintiff's signature on it. Nor does the plaintiff suggest that there are additional facts that would change the Court's ruling on the issue before me.