

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2013 APR 22 PM 2:43

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ROSA CASTILLO,

Plaintiff,

v.

DOUBLETREE BY HILTON HOTEL
TARRYTOWN; DOUBLETREE
FRANCHISE LLC; DOUBLETREE HOTEL
SYSTEMS, LLC; 455 HOSPITALITY LLC;
RICHARD FRIEDMAN; MICHELLE CIPINO;
And DOREEN CLARKE,

Defendants.
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COMPLAINT

13 CV _____

13 CV 2637

JUDGE SEGRE

JURY TRIAL DEMANDED

Plaintiff Rosa Castillo, by her attorneys, Yankwitt & McGuire, LLP and Vincent Volino PLLC, for her complaint against defendants DoubleTree by Hilton Hotel Tarrytown; Doubletree Franchise LLC; Doubletree Hotel Systems, LLC; 455 Hospitality LLC; Richard Friedman; Michelle Cipino; and Doreen Clarke (collectively, "Defendants"), in this action, alleges as follows:

INTRODUCTION

1. This is an action to remedy Defendants' unlawful failure to pay Plaintiff for overtime at the rate of time-and-a-half as required by federal and state law. Defendants intentionally evaded their statutory obligations and violated Plaintiff's rights by falsifying her timekeeping records and prohibiting Plaintiff, as well as other employees, from recording all the hours she worked.

2. Plaintiff worked for Defendants as a supervisor of housekeeping for almost four years from March 2009 until February 2013. During that time, Defendants repeatedly and intentionally underpaid Plaintiff and failed to pay her the full compensation she was owed.

3. Plaintiff worked approximately twenty hours of overtime per week for almost four years for which Defendants unlawfully failed to pay Plaintiff.

4. In addition, Defendants failed to pay Plaintiff for her accrued vacation days when she terminated her employment in February 2013; improperly deducted from Plaintiff's paycheck the costs of lunch even when Plaintiff did not eat lunch or take a lunch break; failed to pass gratuities along to her when left by hotel customers; and failed to reimburse Plaintiff for the costs of purchasing cleaning supplies.

THE PARTIES

5. Plaintiff Rosa Castillo is an individual and a resident of Westchester County in the state of New York.

6. Plaintiff is an "employee" of each Defendant as defined by 29 U.S.C. § 203(e).

7. Defendant DoubleTree by Hilton Hotel Tarrytown ("Hotel") is a hotel with a place of business at 455 South Broadway, Tarrytown, NY 10591.

8. Defendant Doubletree Franchise LLC ("Doubletree Franchise") is a limited liability company organized under the laws of Delaware with its principal place of business in Beverly Hills, California. Upon information and belief, it is the franchisor of the Hotel.

9. Upon information and belief, defendant Doubletree Hotel Systems, LLC, was the predecessor in interest to Doubletree Franchise.

10. Upon information and belief, defendant Doubletree Franchise controlled the payroll and computer systems utilized by the Hotel as well as relevant operations at the Hotel.

11. Defendant 455 Hospitality LLC is a limited liability company organized under the laws of the State of New York and is the owner, operator and manager of the Hotel and a franchisee of Doubletree Franchise.

12. Defendant Richard Friedman is the General Manager of the Hotel and works out of the Hotel located in Tarrytown, NY.

13. Defendant Michelle Cipino is the Director of Operations of the DoubleTree Hotel and works out of the Hotel located in Tarrytown, NY.

14. Defendant Doreen Clarke is the Director of Housekeeping of the DoubleTree Hotel and works out of the Hotel located in Tarrytown, NY.

15. Upon information and belief, each Defendant (i) had the authority and power to hire and fire Plaintiff; (ii) supervised and controlled Plaintiff's work schedule and conditions of employment; (iii) determined Plaintiff's rate and method of payment; (iv) maintained Plaintiff's employment records; and/or (v) made decisions related to each of Plaintiff's causes of action set forth below.

16. Alternatively, upon information and belief, each Defendant exercised functional control over Plaintiff's job functions insofar as her work upheld the professional interests of each Defendant.

17. Each Defendant was Plaintiff's "employer" as defined by 29 U.S.C. § 203(d).

18. At all relevant times, Defendants were engaged in interstate commerce.

JURISDICTION AND VENUE

19. This Court has jurisdiction over Plaintiff's federal law claims pursuant to 28 U.S.C. § 1331 because they arise under the laws of the United States.

20. This Court has jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal law claims in that they form part of the same case or controversy under Article III of the United States Constitution.

21. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

FACTUAL BACKGROUND

22. Plaintiff was hired by the Hotel in March 2009 to be the supervisor of housekeeping as well as a housekeeper.

23. Plaintiff remained a supervisor of housekeeping and a housekeeper until February 9, 2013, when she voluntarily terminated her employment.

24. At all times during Plaintiff's employment, defendant Clarke was Plaintiff's direct supervisor.

25. From March 2009 until February 2011, Plaintiff was paid at the rate of \$12.00 per hour.

26. From March 2011 until she terminated her employment, Plaintiff was paid at the rate of \$12.50 per hour.

27. Plaintiff was primarily responsible for cleaning guest rooms, and her tasks included making beds, replacing linens, cleaning bathrooms, providing and replacing toiletries, vacuuming carpets and removing trash.

28. Plaintiff was responsible for cleaning approximately sixteen to seventeen guest rooms on a daily basis.

29. At all relevant times, Plaintiff worked five days per week, though the five days she worked varied based on the schedule determined solely by Defendants.

30. During her first year of employment, Plaintiff was scheduled to work 8.5 hours per day, which included a half-hour lunch break.

31. After this first year, Defendants scheduled Plaintiff to work for eight hours, which included a half-hour lunch break. She was thus paid for 7.5 hours of work per day.

32. After her first year, Plaintiff was generally scheduled to arrive for work at 11:00 a.m. and leave at 7:00 p.m.

33. Plaintiff often arrived at the Hotel and started working before 11:00 a.m.

34. On most days, she left between 8:30 p.m. and 9:00 p.m., if not later.

35. On the busiest days, including most Saturdays and Sundays, Defendants directed Plaintiff to work as many as thirteen hours.

36. Although Plaintiff was entitled to a thirty minute unpaid lunch break, she would often not take a lunch break or take a break for less than thirty minutes because of the amount of work she had to complete.

37. Even when she did not take a lunch break or took one for less than thirty minutes, Plaintiff would have thirty minutes of pay deducted from her wages.

38. In addition, for approximately three years during Plaintiff's employment, Defendants would deduct one dollar per day from Plaintiff's paycheck as a cost of lunch. Plaintiff seldom purchased the lunch provided by Defendants and was never informed if she could opt out of the lunch program or how to do so.

39. Upon information and belief, Plaintiff worked approximately twenty hours of overtime per week for which Plaintiff was not paid.

40. Employees were instructed to punch out at the end of their scheduled shift and then continue to work "off the clock."

41. Despite this instruction, sometimes Plaintiff did not clock out at the end of her scheduled shift, but rather remained "on the clock" until she completed her assigned work. Her

recorded time was later adjusted to inaccurately show that she was not owed overtime pay. Other times, Plaintiff clocked out at the end of her scheduled shift but continued to work as instructed.

42. Plaintiff did not speak to management about her unpaid overtime wages because management, including defendant Clarke, would get angry when approached by employees about unpaid work.

43. Defendant Clarke was the person primarily responsible for setting Plaintiff's schedule, controlling when she would clock in and out and revising payroll records to reduce Plaintiff's hours worked.

44. Defendant Clarke revised the records of Plaintiff's hours by altering the number of hours worked reflected in those records. Defendant Clarke also controlled payroll to ensure Plaintiff would not receive the overtime pay to which she was entitled.

45. When Plaintiff left the Hotel's employ in February 2013, she had accumulated twelve days of unpaid vacation.

46. Defendants failed to pay Plaintiff her accrued vacation time upon her departure.

47. As a supervisor, Plaintiff made sure rooms were cleaned to the standard required by the Hotel.

48. Plaintiff was not involved in interviewing, selecting, hiring or firing employees.

49. Plaintiff was not involved in adjusting employees' rates of pay or hours of work or in directing the work of other employees.

50. Plaintiff was not involved in evaluating employees' productivity or efficiency for the purpose of recommending promotions or other changes in status or in handling employee complaints and grievance.

51. Plaintiff was not involved in disciplining employees.

52. Plaintiff was not involved in planning the work, determining the techniques to be used, or apportioning the work among the employees.

53. Plaintiff was not responsible for providing for the safety and security of the employees or the property, planning and controlling the budget, or monitoring or implementing legal compliance measures.

54. Accordingly, at all relevant times, Plaintiff was a non-exempt employee covered under the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

COUNT ONE

(Violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*)

55. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 54 with the same force and effect as if set forth herein.

56. Plaintiff was entitled to receive overtime payments at the rate of time-and-a-half for working more than forty hours per week during the time she worked for the Hotel under applicable federal law.

57. Although Plaintiff worked overtime as a housekeeper from March 2010 through February 2013, she was not paid overtime compensation for this period.

58. Defendants' failure to pay Plaintiff the overtime wages due to her at the rate of time-and-a-half was willful.

59. By reason of the foregoing, Plaintiff is entitled to recover damages from Defendants in an amount to be determined at trial, plus attorneys' fees and costs.

COUNT TWO

(Violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*)

60. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 59 with the same force and effect as if set forth herein.

61. Plaintiff was mandated a thirty minute lunch break during which she often had to work.

62. She was considered to be “off the clock” during this time regardless of whether she worked.

63. Defendants knew or should have known Plaintiff was performing work at this time on their behalf and permitted Plaintiff to continue performing her work.

64. Plaintiff should have been paid for work performed during her lunch break, and Defendants failed to pay her for this time worked.

65. By reason of the foregoing, Plaintiff is entitled to recover damages from Defendants in an amount to be determined at trial, plus attorneys’ fees and costs.

COUNT THREE

(Violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*)

66. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 65 with the same force and effect as if set forth herein.

67. For approximately three years, Plaintiff was charged each day one dollar as a cost of lunch regardless of whether she purchased food or even took a lunch break.

68. Defendants did not provide a mechanism for Plaintiff to stop these automatic deductions for lunch costs.

69. Even if Defendants did provide such a mechanism, it was never communicated to Plaintiff.

70. By reason of the foregoing, Plaintiff is entitled to recover damages from Defendants in an amount to be determined at trial, plus attorneys' fees and costs.

COUNT FOUR

(New York Labor Law and 12 N.Y. Comp. Codes R. & Regs. § 142-2.2)

71. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 70 with the same force and effect as if set forth herein.

72. Plaintiff was entitled to receive overtime payments at the rate of time-and-a-half for working more than forty hours per week during the time she worked for the Hotel under applicable state law.

73. Although Plaintiff worked overtime as a housekeeper from March 2010 through February 2013, she was not paid overtime compensation for this period.

74. Plaintiff did not receive such overtime compensation.

75. Defendants' failure to pay Plaintiff the overtime wages due to her at the rate of time-and-a-half was willful.

76. By reason of the foregoing, Plaintiff is entitled to recover damages from Defendants in an amount to be determined at trial, plus attorneys' fees and costs.

COUNT FIVE

(New York Labor Law § 196-d)

77. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 76 with the same force and effect as if set forth herein.

78. From time to time, guests of the Hotel left gratuities for the housekeeping staff.

79. On at least two occasions, guests left these gratuities which were meant for the housekeeping staff, including Plaintiff, with Hotel administration.

80. On at least two occasions, Defendants failed to provide these gratuities to Plaintiff.

81. By failing to provide these gratuities to Plaintiff, Defendants violated New York Labor Law § 196-d.

82. By reason of the foregoing, Plaintiff is entitled to recover damages from Defendants in an amount to be determined at trial, plus attorneys' fees and costs.

COUNT SIX

(New York Labor Law)

83. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 82 with the same force and effect as if set forth herein.

84. When Plaintiff left Defendants' employ in February 2013, she had twelve accrued and unpaid vacation days.

85. She was not paid for these accrued and unused vacation days.

86. Defendants did not have any policy forfeiting reimbursement for unpaid vacation time.

87. Defendants informed Plaintiff that she would have been paid for these vacation days had she provided more advance notice of her departure of Defendants' employ.

88. There was no written policy or corporate practice in support of this statement.

89. Upon information and belief, other employees of Defendants were paid for their accrued and unused vacation time.

90. By reason of the foregoing, Plaintiff is entitled to recover damages from Defendants in an amount of \$1,125, plus attorneys' fees and costs, for accrued and unpaid vacation days.

COUNT SEVEN

(New York Labor Law § 193)

91. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 90 with the same force and effect as if set forth herein.

92. Plaintiff was required to purchase her own cleaning supplies and tools in order to perform her duties on behalf of Defendants.

93. Defendants knew of such purchases and failed to reimburse Plaintiff for these costs.

94. This failure was intentional and reflected Defendants' bad faith violation of state law. The omission was tantamount to an improper charge against pay that effectively lowered Plaintiff's regular and overtime wage rates.

95. By reason of the foregoing, Plaintiff is entitled to recover damages from Defendants in an amount to be determined at trial, plus attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court enter judgment for Plaintiff and against Defendants and award:

- a. Unpaid wages at the rate of time-and-a-half owed by Defendants to Plaintiff for hours worked in excess of forty hours per week;
- b. An equal amount in liquidated damages for Defendants' willfulness in failing to pay Plaintiff overtime wages;
- c. Wages for accrued and unpaid vacation days in the amount of \$1,125;
- d. Prejudgment interest;
- e. Costs of this action, including attorneys' fees; and
- f. Such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues properly before this Court and all questions of fact raised by this Complaint.

Dated: April 22, 2013
White Plains, New York

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