

Dancer v. Golden Coin, Ltd., 124 Nev. Adv. Op. No.2, (Jan. 31, 2008)¹

Civil Procedure- Class Action Certification

Summary

Appeal from Eighth Judicial District Court's order dismissing claims and counterclaims in a labor law dispute.

Disposition/Outcome

Reversed and remanded. The Court, deciding that Nevada law governs the dispute, reversed the lower court's decision and remanded the case with instructions to decide the class certification issue under NRCP 23.

Factual and Procedural History

Appellants, seeking class certification, filed a complaint against their employer, respondent, alleging that appellants were denied minimum wages and benefits according to the Nevada Wage and Hour Law (NWHL).²

Respondent argued that the case should proceed under the Federal Fair Labor Standards Act (FLSA)³ because it preempted Nevada law. The district court agreed and granted respondent's motion to proceed with the class action under FLSA.

Appellants then filed a motion to substitute the class representative with a new proposed class representative. The district court granted respondents motion to dismiss, arguing that the proposed class representative's claims were barred by the statute of limitations and that the proposed class representative was not similarly situated as the other class members.

Discussion

The Court decided that FLSA did not preempt NWHL. FLSA explicitly provides that that a state law establishing a higher minimum wage than FLSA is not preempted. NWHL disallows a tip deduction which results in a higher minimum wage and therefore is not in conflict with the FLSA. Because the NWHL governs the appellant's claim, the class action should have proceeded under state class action law NRCP 23.

Under FLSA class actions, class members must "opt-in" within the statute of limitations period.⁴ Here, the federal statute of limitations had already run, barring

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² NEV. REV. STAT. § 608.005 *et seq.* (2005).

³ 29 U.S.C. § 201 *et seq.* (2000).

⁴ 29 U.S.C. 216(b) (2000).

substitution of a new class member. However, because Nevada law governs the dispute, the result of the NRCP 23 “opt-out” class action filing is to toll the statute of limitations on all potential unnamed plaintiffs claims.⁵ Tolling therefore applies here and a previously unnamed plaintiff can be appointed as class representative.

Under NRCP 23(a)(4) and (4), the class representative must have claims or defenses typical of those of the class and be able to “fairly and adequately protect the interests of the class.”⁶ In determining whether the representative has claims or defenses typical of those of the class, the district court focuses on whether the proposed representatives claims arise from the same event and involve similar legal arguments.⁷ The Court concluded that the proposed representative satisfied these requirements because her asserted claims were factually and legally similar to those of the other class members.

Conclusion

Nevada law applies to appellant’s claims because the NWHL sets a higher minimum wage than the FLSA. Therefore, class certification should proceed under Nevada law. Because NRCP 23 tolls the statute of limitation upon filing, and the proposed substitute class representative meets the NRCP 23(a) requirements, the district court should grant appellant’s motion for substitution and proceed with the case.

⁵ Nev. R. Civ. P. 23(c)(2).

⁶ Nev. R. Civ. P. 23(a)(4)

⁷ Shuette v. Beazer Homes Holding Corp., 121 Nev. 837, 848-49.