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EMPLOYEE RETIREMENT INCOME SECURITY ACT

Hurtado v. Rainbow Disposal Co., Inc., No. 17-cv-01605, 2019 WL 1771797 (C.D. Cal. Apr. 22, 2019) (Staton, J.)

Plaintiffs brought suit for violation of the Employee Retirement Income Security Act (“ERISA”) against their employer, alleging 14 violations in connection with the sale of employee stock ownership plan assets below the market prices. Plaintiffs moved for certification.

The Court granted the motion, reasoning in support of its decision on class certification first that numerosity was satisfied on the basis of at least 460 proposed class members. Turning next to commonality, the Court found a variety of common issues on ERISA claims. While Defendant argued that disclosure-based claims require an individualized analysis on the subject of reliance, the Court found that certification could proceed, as long as the disclosures or omissions at issue were on a class-wide basis. Overall, the Court found the relevant common questions focused on Defendants’ conduct as a whole, thus satisfying commonality. Typicality was similarly satisfied.

In terms of adequacy, while Defendants argued that the relief sought under certain counts conflicted with the class’s interests, the Court found Defendants had not submitted evidence to show the class members opposed the relief sought, nor provided any authority that such would constitute a legally cognizable “conflict.” As such, the Court found there was no conflict, and that Plaintiffs and counsel were prepared for vigorous prosecution.

Turning next to Rule 23(b), the Plaintiffs contended that the class could be certified under subsections (1), (2), and (3), but the Court focused on subsection (1). The Court looked at Rule 23(b)(1)(A) as to possible prejudice against the Defendant and 23(b)(1)(B) as to possible prejudice against the class, and found both standards were satisfied.

EMPLOYMENT

Gammella v. P.F. Chang’s China Bistro, Inc., 482 Mass. 1 (Mass. Apr. 12, 2019) (Kafker, J.)

Plaintiff brought suit against their employer for wage claims, alleging violations of minimum wage laws. The lower court denied Plaintiff’s motion for class certification, and granted Defendant’s motion to dismiss the suit as moot after a tender offer was rejected. Plaintiff appealed.

The Court reversed and remanded on both motions. In support of its decision, the Court first looked at whether the wage laws at issue specified a different standard for class certification than that of Massachusetts Rule 23. The Court concluded that Massachusetts Rule 23 was the correct standard, and that the legislature had not intended to create a lower standard when it last amended the wage laws.

Turning then to certification, the Court found numerosity satisfied and that the lower court had abused its discretion in denying certification. Although the lower court had found that it was impossible to determine from time records who would fall into the class, the appellate court held that the lower court should have inferred from the facts that hundreds of employees were likely members of the class. However, the Court noted that the remaining certification factors still needed to be decided on remand.

Looking next at the tender offer, the Court found Plaintiff did not accept either of Defendant’s offers, in line with the requirements set forth in the United States Supreme Court’s Rule 68 decision in *Campbell-Ewald Co. v. Gomez*. The Court also found Plaintiff had informed the court of his intent to appeal the denial of certification, and thus the court abused its discretion in dismissing the case for mootness.

ENVIRONMENTAL

Bell v. Westrock CP, LLC, No. 17-CV-829, 2019 WL 1874694 (E.D. Va. Apr. 26, 2019) (Gibney, J.)

Plaintiffs brought nuisance and trespass claims against a local paper mill, alleging invasion of large amounts of wood dust in their land, homes, and cars. Plaintiffs moved for certification.

The Court granted the motion, reasoning in support of its decision in terms of numerosity that it was satisfied by virtue of 260 class members. In terms of commonality, the Court found that because the Plaintiffs were a class smaller in size who asserted identical issues involving a single substance, that they shared a common question resolvable by common evidence, satisfying both commonality and typicality. For adequacy, the Court found Plaintiffs and counsel were satisfactory to represent the class.

Turning next to predominance, the Court found the claims would prevail or fail in unison, such that common questions would predominate. For superiority, the Court found the judicial economy of a class action would be superior to individual suits and did not foresee any manageability problems.

The Court then looked at ascertainability, and found that land records and a definite radius were sufficiently objective criteria for ascertaining the class.

OIL & GAS

Naylor Farms, Inc. v. Chaparral Energy, LLC, No. 17-6146, 2019 WL 1967101 (10th Cir. May 3, 2019) (Moritz, J.)

Owners of oil and gas royalty interests brought suit against a well operator, alleging underpayment of royalties. After the United States District Court for the Western District of Oklahoma granted certification, Defendant appealed.

The Tenth Circuit affirmed certification. Reasoning in support of its decision, the Court analyzed Defendant's arguments against predominance. First, the Court looked at whether marketability constitutes an individual question, and relied upon the Oklahoma case *Pummill v. Hancock Expl. LLC* to ultimately rule that Plaintiffs had shown sufficient evidence that marketability in this case was subject to class-wide proof.

Next, the Court considered whether the lease language distinctions led individualized questions to predominate, rejecting Defendant's argument relying on extrinsic evidence to interpret the language as not included in the appeal. The Court found Defendant had not identified customs relied upon or their legal relevance here. The Court also rejected Defendant's reliance on variations in agreements with processing companies rather than the royalty owners, through which Defendant claimed that the owners committed fraud by using wellhead sales contracts to circumvent the law. The Court found this contention irrelevant in light of the fact that the district court did not certify the fraud claim. As such, the Court found no abuse of discretion in certifying the class despite minor variations in lease language.

Finally, the Court looked at whether certification was appropriate without evidence of a uniform payment methodology. Here, the Court found that the possibility of variable damages among the class did not defeat certification, and that Plaintiff had provided evidence that its expert could determine damages on a class-wide basis, and Defendant had not demonstrated that this model would be inaccurate or unworkable.

SETTLEMENTS

In Re: National Football League Players' Concussion Injury Litigation, Nos. 18-1040, 18-1482, 18-1639, 18-2184, 18-2582, 18-3005, 2019 WL 1868828 (3rd Cir. Apr. 26, 2019) (Smith, J.)

After professional football players reached a settlement of claims against the National Football League for concussion-related injuries in 2015 in which the first distributions were not issued until 2017, hundreds of class members entered into cash advance agreements in exchange for their rights to settlement receipts, but not the right to submit direct claims. The United States District Court for the Eastern District of Pennsylvania later entered an order voiding all such agreements as unenforceable under the settlement agreement, with a waiver procedure for rescission and return. Three groups of litigation funders appealed.

The Third Circuit reversed in part and affirmed in part, and remanded for further proceedings. In terms of the merits of the appeals, the Court considered whether the district court had authority to void the cash advance agreements, and found that the district court retained broad authority to administer the settlement, but that this authority was exceeded in voiding the agreements. The Court reasoned that the agreements did not assign the right to make claims, only to receipt of distribution funds, and therefore these were not forbidden assignments under the settlement agreement. However, the Court affirmed the order to the extent of voiding any true assignments of rights to make claims.

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