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NJ Dairy Co.'s 'Good Faith' Defense Can't Cream OT Suit

By Jeannie O'Sullivan

Law360 (June 19, 2019, 5:08 PM EDT) -- The New Jersey state appeals court ruled that a state regulator's opinion on a complaint doesn't preclude a separate lawsuit arising from the same type of matter, issuing a published decision Wednesday that reinstated a Cream-O-Land Dairy LLC driver's proposed class action seeking more overtime pay.

A three-judge Appellate Division panel's opinion handed a victory to Elmer Branch, who appealed a lower court's ruling that the New Jersey Department of Labor's three decisions on previous overtime complaints sufficed as a "good-faith defense" for the warehousing and logistics firm. Those decisions, in which the division found that the company falls under the motor carrier exemption of the state's Wage and Hour Law, led to the dismissal of Branch's suit.

Under that exemption, trucking industry employers must only pay 1½ times minimum wage for every hour worked past 40 a week, rather than the "traditional" overtime pay of 1½ times the regular rate of pay. However, the appeals court reasoned that DOL's findings were only unbinding determinations that weren't handed down from its top tier of authority.

"The three initial determinations addressed discrete complaints by individual employees based on information received from the employer. They were not espousing a general policy that applied broadly to a class of employers," the appeals court's opinion said.

"Furthermore, the determinations by lower-level representatives of the [New Jersey Department of Labor] were subject to further administrative appeal and thus are not comparable to the final agency decisions that would suffice under the [New Jersey Wage and Hour Law]," the appeals court added.

The appeals court went on to say it agreed with the good-faith defense interpretation of the state's Office of the Attorney General, which it had invited to weigh in on the matter. The OAG maintained that only the DOL commissioner's final decision, rendered after a hearing before an administrative law judge or in response to a wage collection referee's final decision, qualifies as "a regulation, order, ruling, approval or interpretation" that would suffice as a good-faith defense, the appeals opinion said.

"This interpretation is consistent with both the plain language of [Wage and Hour Law] and the enforcement structure of the WHL. Accordingly, the three initial determinations relied on by defendant do not serve as a basis for the good-faith defense under this portion of [the law]," the appeals opinion said.

According to his November 2016 complaint, Branch, of Neptune, New Jersey, began

working as a driver for Cream-O-Land's Jersey City location in September 2015. Branch and other members of the proposed class performed nonexempt tasks, such as loading and unloading Cream-O-Land products and delivering those products to customers on assigned routes, the complaint said.

The drivers routinely worked 60 to 80 hours per week, yet weren't paid 1½ times their hourly rate when they exceeded 40 hours in a week, Branch claimed. He has sought to represent a class of drivers who worked for the company since November 2014.

During an oral appeals **argument** in March, an attorney for Branch urged the court to consider the "humanitarian" public policy behind the WHL and disputed that Cream-O-Land could be classified as a trucking industry employer based on the myriad items it sells.

Superior Court Judge Joseph V. Isabella granted Cream-O-Land's summary judgment motion in September 2017 and denied Branch's reconsideration motion the following month, according to court orders.

Attorney Ravi Sattiraju, representing Branch, hailed the appeals court's reversal of Judge Isabella's decision.

"It clarifies that employers can't just rely on the decision of a hearing officer or investigator as a basis to strip workers of their statutory rights," Sattiraju told Law360.

A representative for Cream-O-Land, Mark E. Tabakman of Fox Rothschild LLP, said he was very disappointed in the ruling and plans to seek New Jersey Supreme Court review. He noted that the Appellate Division acknowledged there was no New Jersey state court case law that defines a binding "enforceable policy" from a regulator.

"The usual rule is that when there's no New Jersey law on a particular issue, the court will be guided by federal precedent," Tabakman told Law360, adding there are federal regulations that could have guided the matter.

Judges Thomas W. Summers, Jack M. Sabatino and Stephanie A. Mitterhoff sat on the panel for the Appellate Division.

Branch is represented by Ravi Sattiraju and Anthony Santos Almeida of the Sattiraju Law Firm PC.

Cream-O-Land is represented by Mark E. Tabakman and Ian W. Siminoff of Fox Rothschild LLP.

Amicus curiae New Jersey Office of the Attorney General is represented in-house by Caroline G. Jones and Donna Sue Arons.

The case is Elmer Branch v. Cream-O-Land Dairy LLC et al., case number A-001313-17-T01, in the Superior Court of the State of New Jersey, Appellate Division.

--Editing by John Campbell.

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