UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Alemayehu Kebede	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION No. 1:13-cv-00021-LO-TRJ
	)	
S. P. Jones Enterprises LLC	)	
et al.	)	
Defendants.	)	
	)	

PLAINTIFF'S MOTION TO STRIKE NONRESPONSIVE PORTIONS OF THE ANSWER PURSUANT TO FED. R. CIV. P. 12(f)

Plaintiff Alemayehu Kebede, by counsel, brings this motion to strike certain portions of the Answer and Grounds of Defense asserted by Defendants S. P. Jones Enterprises LLC, George Anderson, Sr. and Stepney P. Jones and in support states as follows.

BACKGROUND

Plaintiff brought this action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201 et seq., against Defendants S. P. Jones Enterprises LLC ("Jones Enterprises"), George Anderson, Sr., and Stepney P. Jones (collectively referred to as "Defendants") for minimum wage and overtime violations of the FLSA. Plaintiff seeks his unpaid minimum and overtime wages, an equal amount as liquidated damages, plus his reasonable attorney's fees, costs and expenses. The FLSA violations were alleged to have occurred during plaintiff's employment with defendants.

Defendants were served with the initial Complaint, and filed their joint Answer and Grounds of Defense on February 19, 2013. *Dkt*. 3. The Answer is deficient in two ways. First, defendants have failed to respond in a meaningful way to any allegations contained in the

Complaint that allege legal conclusions. Second, defendants request their attorney's fees without stating any basis which runs contrary to the American Rule. Plaintiff therefore moves the Court to strike certain portions of the Defendants' Answer pursuant to Fed. R. Civ. P. 12(f).

LEGAL STANDARD

Fed. R. Civ. P. 8(a) requires that [a] Complaint "…shall contain a short and plain statement of the grounds upon which the Court's jurisdiction depends … (2) a short and plain statement of the claim showing that the pleader is entitled to relief … and (3) a demand for the relief the pleader seeks." Fed. R. Civ. P. 8(b) provides the standard for a Defendants' Answer to the Complaint. Fed. R. Civ. P. 8(b) states that: "A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies." The standards of Fed. R. Civ. P. 11 are applicable to an Answer and Grounds of Defense also. See, Fed. R. Civ. P. 11(a).

District Courts have broad discretion in considering a motion to strike under Fed.R.Civ.P. 12(f). *See Williams v. Eckerd Family Youth Alternative*, 908 F.Supp. 908, 910 (M.D.Fla.1995).

Federal Rule of Civil Procedure 12(f) states that "The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." When a party succeeds in establishing a defense's insufficiency, the court should grant a motion to strike to avoid unnecessary time and money in litigating invalid issues. *Spell v. McDaniel,* 591 F.Supp. 1090, 1112 (E.D.N.C. 1984). The striking of such defenses is a proper means of expediting legal proceedings. See, *Spell v. McDaniel,* 591 F.Supp. 1090, 1112 (E.D.N.C. 1984).

ARGUMENT

I. Defendants' Refusal to Answer Allegations Containing Legal Conclusions, Including the Allegations Pertaining to Jurisdiction and Venue, is Inappropriate and such Answers Should be Struck With Leave to Amend.

In their Answer, Defendants repeatedly fail to answer Plaintiff's allegations on the grounds that such allegations "consist of legal conclusions to which no response is required." (See, Dkt. 3, ¶¶ 1, 2, 3, 9, 11, 24). It is not clear what basis defendants have for asserting that legal conclusions do not need to be answered, because legal conclusions are an integral part of the notice-pleading framework, and the express provisions of Rule 8(b) require that all allegations in a Complaint must be answered with an admission or a denial. *Denton v. Hernandez*, 504 U.S. 25, 31, 112 S. Ct. 1728 (1992); *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827 (1989).

Just as Defendants are entitled to fair notice of the allegations against them, Plaintiff is entitled to fair notice of the defenses and grounds upon which Defendants will differ with the allegations of the Complaint. The Court in *Farrell v. Pike*, 342 F. Supp. 2d 433 (M.D.N.C. 2004) confirmed that: "[A] defendant's pleading should apprise the opponent of those allegations in the complaint that stand admitted and will not be in issue at trial and those that are contested and will require proof to be established to enable the plaintiff to prevail..."

a. Defendants failed to answer the allegations of the Complaint pertaining to venue and jurisdiction, which is inappropriate.

Paragraphs 2 and 3 of the Complaint concern jurisdiction and venue. In paragraphs 2 and 3 of the Answer, Defendants assert that no response is necessary to the allegations of jurisdiction and venue. For purposes of an Answer, the allegations of jurisdiction and venue are legal conclusions which must be answered. *State Farm v. Riley*, 199 F.R.D. 276 (N.D. Ill. 2001). The answers found in paragraph 2 and 3 of the Answer should be struck with leave to amend.

b. Defendants fail to answer certain critical allegations in this case, especially those pertaining to Mr. Kebede's employers.

In paragraphs 6-7, 9, 11, and 24 of the Answer, Defendants fail to respond to the paragraphs of the Complaint. These paragraphs all pertain to the individual liability of Mr. Anderson and Mr. Jones for the FLSA violations alleged in the Complaint. The allegations of the complaint are explicit: the defendants are alleged to have been employers, and Jones and Anderson are alleged to have had day-to-day control over the corporate defendant, with the ability to hire, fire, and otherwise control employees. *Complaint*, ¶¶ 6-7, 9 11 and 24. As this Court has pointed out, this is enough to allege individual liability under the FLSA. See, *Zegarra v. Marco Polo Inc., et al.,* 2009 WL 143428 (E.D.Va. 2009).

Moreover, defendants' assertion that the allegations contain conclusions of law is not entirely accurate in any event. In fact, the allegations of paragraphs 6 and 7 are allegations of fact mixed with conclusions of law. The allegations of paragraph 6 are as follows:

> At all times relevant to this Complaint, Anderson exercised significant control over the day to day happenings at Jones Enterprises including the power to select and hire any employee, the power to fire any employee, the power to set wages and compensation for any employee, and the power to control any employee. At all times relevant to this Complaint, Anderson was an employer of Plaintiff under the FLSA.

The allegations of paragraph 7 are identical except that they pertain to Mr. Jones.

All of the evidence available to plaintiff's counsel indicates that it would simply not be possible for defendants to deny these allegations outright.

Simply put, the failure to admit or deny these paragraphs of the Complaint will cause unnecessary work and unnecessary expense for plaintiff. Plaintiff will be forced to spend time preparing discovery on elements of the case that should have been admitted initially. Plaintiff should not be required to draft Requests for Admissions under Fed. R. Civ. P. 36, or Interrogatories under Rule 34 to establish basic elements of the case that should have been admitted in the Answer to the Complaint. While Plaintiff may serve an unlimited number of

Requests for Admission, parties are limited to 25 interrogatories absent a Court Order to the contrary.

These non-responsive answers to paragraph 6-7, 9, 11 and 24 should be struck with leave to amend so that defendants can either admit or deny those allegations.

II. Defendants' request for their attorney's fees should be struck, as there is no basis alleged for an award of fees on defendants' behalf.

Finally, at the end of defendants' pleading, a request is made for an award of defendants' attorney's fees. *Answer*, *Dkt*. 3. No basis is alleged which would allow defendants to recover their reasonable attorney's fees, and that request should be struck. As is well known to the Court, the “American Rule” prohibits fee shifting in most cases. See *Alyeska Pipeline Service Co. v. Wilderness Society,* 421 U.S. 240, 259, 95 S.Ct. 1612, 1622, 44 L.Ed.2d 141 (1975).

The American Rule is of course not a substantive rule of law. Rather, it is a common law presumption that, in the absence of a specific statutory provision awarding fees or a contractual agreement between the parties as to the payment of fees, each party will bears its own attorney's fees. The presumption takes its name from the fact it is a departure from the common law of England, where the losing party bears the fees and costs of the winning party absent some specific agreement or other rule to the contrary.

The Fair Labor Standards Act includes a specific provision providing for a mandatory award of reasonable attorney's fees to a prevailing plaintiff 29 U.S.C. § 216(b). No such provision is made for an award of attorney's fees to a prevailing defendant. The defendants' request for relief in the form of attorney's fees should be struck without leave to amend.

CONCLUSION

For these reasons, Plaintiff requests that this Court strike the above-reference portions of the Answer to the Complaint. With regard to those paragraphs unanswered because they contain a legal conclusion, leave to amend should be granted so that defendants can correct their Answer. With regard to the request for attorney's fees, that request for relief should be struck without leave to amend. Plaintiff further requests any additional or alternative relief the Court may deem appropriate.

For Plaintiff Alex Kebede:

/s/

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CERTIFICATE OF SERVICE

This is to certify that on March 12, 2013 I filed a copy of the foregoing with the PACER/ECF system which will effect service on opposing counsel.

/s/

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