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Claims Trimmed In NY Taxi Driver Wage Class Action

By **Brandon Lowrey**

Law360, Los Angeles (April 14, 2014, 11:17 PM ET) -- A New York federal judge on Monday trimmed overtime and state minimum wage claims from a putative employment class action against Plandome Taxi Inc., citing state and federal laws that exclude taxicab drivers from some labor protections.

But U.S. Senior District Judge Denis R. Hurley's ruling left alive claims by plaintiff Joseph Arena that Plandome violated federal minimum wage laws and wrongfully withheld wages from drivers in the form of taxes and mandatory fees.

The judge's decision on Plandome's motion for summary judgment eliminated the majority of the claims against the company, but called into question its practice of taking taxes and fees from its drivers.

Arena filed the class action in 2012, alleging the taxi company violated state and federal minimum wage laws by paying him \$300 for 60-hour workweeks and denied him compensation for overtime. Arena also claimed the company made him pay for gasoline, further reducing his wages, and wrongfully deducted taxes and \$14 per workday in additional fees from his paychecks without his permission.

Plandome filed a motion for summary judgment, arguing that state and federal laws exempt taxicab drivers from overtime pay, and that the drivers are not considered employees under New York labor laws. Plandome further argued that Arena was an independent contractor not eligible for Fair Labor Standards Act protections, and contended that it paid Arena more than minimum wage.

Judge Hurley on Monday agreed with Plandome that as a taxicab driver, Arena was not entitled to pursue his state overtime and minimum wage law claims.

But the judge ruled that Arena's employment status with the company under federal law was a triable issue. Judge Hurley rejected the company's argument against Arena's Fair Labor Standards Act minimum wage claim, finding that the company may not have accounted for additional expenses it passed along to drivers.

Judge Hurley also ruled that the company's practice of taking fees out of drivers' wages without permission may be unlawful, constituting conversion. Arena alleged that Plandome improperly deducted fees for radio service, the dispatch center and a "dent fund".

Judge Hurley found Monday that those costs and other mandatory expenses may have dropped the drivers' effective compensation below minimum wage.

"Defendants have not presented evidence that [Arena] authorized the deduction of 'car insurance premiums' or 'taxes' from his wages," Judge Hurley wrote.

It was also unclear how the collected taxes and fees were used, the judge wrote.

Arena worked for Plandome from Aug. 9, 2011, to Nov. 10, 2011. He drove a company-provided vehicle and received half of the fare, minus taxes and \$14 in other fees daily, according to court documents.

Representatives for the parties did not immediately respond to requests for comment Monday.

Joseph Arena is represented by David H. Rosenberg, Bryan Arbeit and Jeffery K. Brown of Leeds Brown Law PC.

Plandome Taxi Inc. is represented by David S. Feather of the Law Offices of David S. Feather.

The case is Joseph Arena et al. v. Plandome Taxi Inc. et al, case number 2:12-cv-01078 in the U.S. District Court for the Eastern District of New York.

--Editing by Chris Yates.

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