

STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO: CV-10-327

*FILED*



STATE OF MAINE and MAINE  
DEPARTMENT OF LABOR,  
BUREAU OF LABOR STANDARDS

**ORDER**

Plaintiffs,

v.

STEPHEN KLEIN and MERMAID  
TRANSPORTATION COMPANY,  
INC.

Defendants

**STATE OF MAINE**  
Cumberland, SS. Clerk's Office  
FEB 23 2011  
**RECEIVED**

Defendant Stephen Klein moves to dismiss all claims against him in his personal capacity. The motion is denied.

**BACKGROUND**

As set forth in the State's complaint, Mr. Klein is the president, treasurer, and a director of defendant Mermaid Transportation Company, Inc. (Compl. ¶ 3.) Mermaid employs drivers to transport its customers in passenger vans throughout Maine and to airports located in Manchester, New Hampshire, and Boston, Massachusetts. (Compl. ¶¶ 4-5.) In 2005, the State began receiving complaints from the defendants' employees about paychecks being returned for insufficient funds. (Compl. ¶ 22.) The employees also alleged that Mr. Klein or Mermaid would ask them not to cash their paychecks until a later date. (Compl. ¶ 22.) The State contacted Mr. Klein, but the problems persisted. (Compl. ¶ 23.)

In 2009, the State received an anonymous complaint alleging that the defendants were withholding overtime pay from employees who were entitled

to receive it. (Compl. ¶ 24.) The State responded by auditing Mermaid's payroll records for the periods of 2007, 2008, and 2009. (Compl. ¶ 25.) These audits revealed that twenty-seven employees were due overtime in the amount of \$45,392.45. (Compl. ¶ 25.) The State demanded that the defendants pay these back wages, but the defendants have not done so. (Compl. ¶ 26.)

The State filed a complaint against both Mermaid and Mr. Klein on July 7, 2010, alleging violations of Maine's wage and hour laws contained in title 26 of the Maine Revised Statutes. Mr. Klein has moved to dismiss the claims against him on the ground that the complaint fails to allege sufficient facts to hold him individually liable as an "employer" under the statutes.

#### DISCUSSION

On a motion to dismiss, the court examines "the complaint in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory." *Heber v. Lucerne-in-Maine Village Corp.*, 2000 ME 137, ¶ 7, 755 A.2d 1064, 1066 (quoting *McAfee v. Cole*, 637 A.2d 463, 465 (Me. 1994)). The term "employer" is not defined in Maine's wage and hour laws. *Dir. of Bureau of Labor Standards v. Cormier*, 527 A.2d 1297, 1299 (Me. 1987). Absent a definition, Mr. Klein contends that Mermaid's separate corporate existence precludes him from being an "employer" subject to the wage laws in this action.

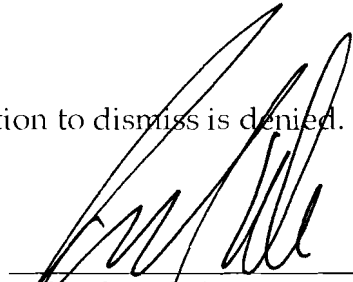
This argument is not persuasive for two reasons. First, the State's complaint does not allege that Mermaid employed all of the underpaid employees. Second, the Law Court has held that courts may look to economic realities underlying a situation when determining who is or is not an "employer" under the statutes. *Cormier*, 527 A.2d at 1299–1300. Instead, courts may consider

all relevant circumstances and balance a number of factors to reach beyond “formalistic labels or common law notions of employment relationships.” *Id.* at 1300. Placing substance over form “is consistent with the overall remedial nature of the minimum wage and overtime laws.” *Id.* The State’s complaint puts Mr. Klein on notice that he might held personally accountable as an employer for failing to issue paychecks in a timely manner and failing to pay employees overtime. The corporate form does not strictly limit who may be an “employer” in a given situation, and dismissing the claims against Mr. Klein at this early phase of litigation would be premature.

**The entry is:**

Defendant Stephen Klein’s motion to dismiss is denied.

DATE: February 23, 2011

  
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Roland A. Cole  
Justice, Superior Court

STATE OF MAINE ET AL VS STEPHEN KLEIN ET AL  
UTN:AOCSSr -2010-0068860

CASE #:PORSC-CV-2010-00327

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01 0000003232                    PERKINS, DAVID  
30 MILK STREET PO BOX 449 PORTLAND ME 04112-0449

<u>F</u>	<u>MERMAID TRANSPORTATION COMPANY INC</u>	<u>DEF</u>	<u>RTND</u>	<u>07/28/2010</u>
<u>F</u>	<u>STEPHEN KLEIN</u>	<u>DEF</u>	<u>RTND</u>	<u>07/28/2010</u>

02 0000007772                    WYMAN, ELIZABETH  
111 SEWALL STREET 6 STATE HOUSE STATION AUGUSTA ME 04333-0006

<u>F</u>	<u>STATE OF MAINE</u>	<u>PL</u>	<u>RTND</u>	<u>07/07/2010</u>
<u>F</u>	<u>BUREAU OF LABOR STANDARDS</u>	<u>PL</u>	<u>RTND</u>	<u>07/07/2010</u>