

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

FERNANDO CABRERA, LUIS LEDESMA, :  
CARLOS RIVADENEIRA, LUIS TAPIA, :  
ROMULO VICUÑA, and WIDMAN VICUÑA, :

Plaintiffs, :

vs. : No. 3:05cv812(MRK)(WIG)

G.T. CONSTRUCTION, JONNY GONZALEZ, :  
and SEGUNDO VAZQUEZ, :

Defendants. :

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**RECOMMENDED RULING ON DAMAGES**

On February 9, 2006, the Honorable Mark R. Kravitz granted the Plaintiffs' Motion for Default Judgment as to Defendant Jonny Gonzalez, and then referred this matter to the Undersigned for a hearing on damages. On March 16, 2006, a hearing was held at which all six Plaintiffs, represented by counsel, testified through an interpreter. Also present was counsel for Defendant Segundo Vazquez.

Each Plaintiff testified that in late 2004 he had been hired by Jonny Gonzalez to perform certain construction work for which he was to be paid on either an hourly or weekly basis. Each testified that, despite repeated promises that this compensation would be paid, Defendant Gonzalez failed to pay him all of the compensation that was due and owing for the work that he performed. Each testified that he continued to work for Defendant Gonzalez because he was a fellow Equadorian and each believed he would eventually get paid. Additionally Plaintiffs Romulo and Widman Vicuña testified that Defendant Gonzalez misappropriated certain tools

that they had taken to the job site. The Court found Plaintiffs' testimony to be credible both with respect to the work performed and the money due and owing.

The Court recommends an award of damages to each Plaintiff against Defendant Gonzalez for the total amount of unpaid wages pursuant to the Connecticut wage statute, Conn. Gen. Stat. § 31-72.<sup>1</sup> See Butler v. Hartford Technical Institute, Inc., 243 Conn. 454, 457 (1997). This statute provides for an award of damages of twice the full amount of any unpaid wages, plus costs and attorney's fees. In order to recover double damages, there has to be a finding that the employer acted with "bad faith, arbitrariness or unreasonableness." Schoonmaker v. Lawrence Brunoli, Inc., 265 Conn. 210, 269 (2003). The Court finds that Defendant Gonzalez acted with bad faith based upon his pattern and practice of not paying wages that were due and owing, and

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<sup>1</sup> Plaintiffs urge the Court to award damages for unpaid wages under the treble damage provisions of Conn. Gen. Stat. § 52-564, Connecticut's civil theft statute. Plaintiffs cite to Conn. Gen. Stat. § 53a-119(14), the criminal larceny statute, which defines larceny as including a failure to pay the prevailing rate of wages. That statute applies only when the employer files a certified payroll, in accordance with § 31-53, which he knows is false, in violation of § 53a-157a, and fails to pay to an employee or employee welfare fund the amount attested to in the certified payroll with the intent to convert such amount to his own use or to the use of a third party. Conn. Gen. Stat. § 53a-119(14). Those circumstances are not present in this case. The Court has been unable to locate any Connecticut case involving a claim for unpaid wages in which the court awarded treble damages under § 52-564, and Plaintiffs have not provided the Court with any case authority that would support such an award. In Streater v. Maier, No. CV030473265S, 2004 WL 1489985, at \*6 (Conn. Super. June 16, 2004), the court declined to award treble damages under § 52-564 on the plaintiff's unpaid wages claim and noted that an award of treble damages is an "extraordinary statutory remedy."

Additionally, Plaintiffs have alleged other theories of liability, including breach of contract, unjust enrichment, quantum meruit, unpaid minimum wages under Connecticut's minimum wage law, Conn. Gen. Stat. § 31-68, and violations of the federal Fair Labor Standards Act, 29 U.S.C. § 216(b). Any recovery under these causes of action would be duplicative of the damages awarded under Conn. Gen. Stat. § 31-72. Plaintiffs may not recover more than once for the same injury. Therefore, the Court recommends an award of damages only under Conn. Gen. Stat. § 31-72.

based upon his repeated promises to Plaintiffs that they would be paid their back wages as an inducement for them to continue to work for him. See Petronella v. Venture Partners, Ltd., 60 Conn. App. 205, 215, cert.granted in part, 255 Conn. 909 (2000), appeal dismissed as improvidently granted, 258 Conn. 453 (2001). Such an award is in keeping with the remedial purpose of the wage laws. See Butler, 243 Conn. at 463.

Additionally, the Court finds that an award of prejudgment interest at the statutory rate of ten percent (10%) is warranted. The allowance of prejudgment interest under Conn. Gen. Stat. § 37-3a is a matter committed to the sound discretion of the court. See Metcalfe v. Talarski, 213 Conn. 145, 160 (1989). Whether to award prejudgment interest turns on whether the detention of the money was wrongful under the circumstances. See Spearhead Construction Corp. v. Bianco, 39 Conn. App. 122, 134-35, cert. denied, 235 Conn. 928 (1995); Lawrence v. New Hampshire Insurance Co., 29 Conn. App. 484, 498, cert. denied, 224 Conn. 923 (1992). Here, Defendant Gonzalez wrongfully withheld wages due and owing to these Plaintiffs and, therefore, an award of prejudgment interest running from the date that the wages were withheld is appropriate.<sup>2</sup> Accordingly, the Court recommends an award of prejudgment interest from the date the wages were not paid<sup>3</sup> until the date judgment enters.

Thus, the Court recommends the following damage award for each named Plaintiff against Defendant Gonzalez:

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<sup>2</sup> Prejudgment interest is awarded only on the unpaid wages, not the additional double damages awarded pursuant to Conn. Gen. Stat. § 31-72.

<sup>3</sup> To avoid the need to make separate prejudgment interest calculations for every week that the Plaintiff worked but was not paid, the Court has used the approximate date that Plaintiff last worked for Defendant Gonzalez, at which time all of the unpaid wages were due.

Fernando Cabrera:

Unpaid wages: \$800  
§ 31-72 Doubling: \$800  
10% Prejudgment Interest on Unpaid Wages of \$800 from 2/1/2005

Luis Ledesma:

Unpaid wages: \$900  
§ 31-72 Doubling: \$900  
10% Prejudgment Interest on Unpaid Wages of \$900 from 12/1/2004

Carlos Rivadeneria:

Unpaid wages: \$1,900  
§ 31-72 Doubling: \$1,900  
10% Prejudgment Interest on Unpaid Wages of \$1,900 from 2/1/2005

Luis Tapia:

Unpaid wages: \$2,480  
§ 31-72 Doubling: \$2,480  
10% Prejudgment Interest on Unpaid Wages of \$2,480 from 11/25/2004

Romulo Vicuña:

Unpaid wages: \$11,400  
§ 31-72 Doubling: \$11,400  
10% Prejudgment Interest on Unpaid Wages of \$11,400 from 2/1/2005

Widman Vicuña:

Unpaid wages: \$13,020  
§ 31-72 Doubling: \$13,020  
10% Prejudgment Interest on Unpaid Wages of \$13,020 from 1/22/2005

Additionally, the Court awards Romulo Vicuña \$500 and Widman Vicuña \$1,000 for their tools that were misappropriated by Defendant Gonzalez. Although Plaintiffs have sought treble damages under Conn. Gen. Stat. § 52-564, the civil theft statute, the Court declines to award treble damages. Plaintiffs proved a conversion of their tools by Defendant Gonzalez, not a

theft. See New England Slate v. Stankowski, No. CV 94 0140796, 1995 WL 128218 (Conn. Super. Mar. 14, 1995). The word “steal” in § 52-564 is synonymous with “larceny” in Conn. Gen. Stat. § 53a-119, which requires a specific intent on the part of the defendant to deprive another of his property. See Lawson v. Whitey’s Frame Shop, 42 Conn. App. 599, 606 (1996), aff’d in part and rev’d in part on other grounds, 241 Conn. 678 (1997). While Plaintiffs proved that their tools were never returned, they did not prove that Defendant Gonzalez acted with the intent to deprive them of their property.

The Court further recommends that each Plaintiff be awarded attorney’s fees and costs and instructs Plaintiffs’ counsel to submit a motion for attorney’s fees and costs within twenty (20) days of the date of this recommended ruling. Any such request should be broken down by Plaintiff.

The parties are advised that any objections to this recommended ruling must be filed with the Clerk of the Court within ten (10) days of the receipt of this order. Failure to object within ten (10) days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; D. Conn. L. Civ. R. 72 for Magistrate Judges; FDIC v. Hillcrest Assocs., 66 F.3d 566, 569 (2d Cir. 1995).

SO ORDERED, this 27th day of March, 2006, at Bridgeport, Connecticut.

/s/ William I. Garfinkel  
William I. Garfinkel,  
United States Magistrate Judge