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RECENT CASE PROVIDES WAKE-UP CALL TO THE LODGING INDUSTRY: POTENTIAL LIABILITY OF INDIVIDUAL MANAGERS AND RELATED ENTITIES UNDER FLSA

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A recent decision by the United States District Court for the Middle District of Florida alerts individual managers, companies operating lodging properties, and related entities to potential liability under the Fair Labor Standards Act ("FLSA").

The Court issued the decision in the case of *Harry Partridge vs. Mosley Motel of St. Petersburg, Affordable Realty and Property Management, and Al Kadury*, which involves circumstances that may dismay and surprise some employers in the hospitality industry (and employers, generally). In that case, Al Kadury, manager of the extended-stay Mosley Motel, hired a homeless man, Harry Partridge, upon observing that he and his family were checking out of their charity-supplied motel room with no place to go.

The duties Kadury assigned to Partridge were to fix leaky toilets, clean pool filters, assist guests with room-moves, receive on-the-job training from another Mosley Motel employee, serve as a security guard, exterminate insects, and perform other miscellaneous maintenance tasks. Mosley Motel initially paid Partridge $100 weekly, but subsequently raised his wages to $150 weekly. It further compensated Partridge by allowing him and his family to occupy a motel room without incurring room charges.

Motel manager Kadury was not an officer, director, or shareholder of Mosley Motel. He did, however, supervise day-to-day operations of the motel, prepare weekly payroll, assign worker tasks, hire and fire workers, and set their work hours. He kept Partridge quite busy with such job duties, but did not keep records reflecting the hours Partridge worked and did not keep other employment records as required by law.

Kadury fired Partridge for physically fighting with his wife on hotel premises, pulling a gun on a motel guest, and repeated drunkenness. Partridge subsequently sued Mosely Motel, Kadury in his individual capacity, and a company that owned property on which Partridge claimed to have performed some job duties, Affordable Realty and Property Management ("Affordable Realty Management").

The record reflects that Mosley Motel is in foreclosure. Affordable Realty Management, by contrast, has substantial assets. Mosley Motel and Kadury deny that Partridge actually performed job duties on the property of Affordable Realty Management.

After discovery, all parties moved for summary judgement. The U.S. District Court for the Middle District of Florida, on January 6, 2016, granted Partridge's motion for partial summary judgment on the status of Mosley Motel and Kadury as employers covered by FLSA. The Court denied all of the defendants' motions for summary judgment, rejecting the argument that Kadury, as one who served neither as an officer, director, or shareholder of Mosley Motel, could not be regarded as employer of Partridge.

The Court held that both Mosely Motel and Kadury are employers under FLSA and that they cannot offset the value of the free motel room provided to Partridge to reduce their liability for unpaid wages because they failed to keep accurate pay records as required by FLSA. The Court denied Affordable Realty Management's motion for summary judgment in light of factual disputes regarding whether Partridge actually performed job duties on its premises.

The Court cited cases holding that an employee may have more than one employer for purposes of FLSA and that an individual manager may be treated as an employer under an "economic reality" test that considers whether he or she: (1) had the power to hire and fire employees; (2) supervised and controlled employee work schedules or conditions of employment; (3) determined the rate and method of payment; and (4) maintained employment records.

The test applied in *Partridge v. Mosley Motel* to assess the defendants' liability is not new. Also, the fact pattern of the case is not new: forbearance by a generous employer, misconduct by an employee, and a firing followed by FLSA lawsuit. *Partridge vs. Mosley Motel* vividly reminds employers in the lodging industry (and employers generally) of the operating risks associated with the "expansiveness" of FLSA's definition of "employer," i.e., "a person acting directly or indirectly in the interest of an employer in relation to an employee." 29 U.S.C. § 203(d).

Harry Partridge v. Mosley provides a wakeup call regarding the potential for individual managers and corporate affiliates to be held liable for an operating company's non-payment of overtime in accordance with FLSA.

For more information on this topic, please contact Frank Scruggs on the firm's Dispute Resolution Team.

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