

As published in: Verdict Search—Employment, a monthly publication that covers employment cases throughout the nation. Attorneys Frances Granquist and Maureen Burns were featured in a summary of the Rossi v. Kopec case:

## C O N N E C T I C U T

## N E W B R I T A I N

### EMPLOYMENT

**Wages and Hours — Contracts — Breach of Contract — Equitable Relief — Unjust Enrichment — State Statutes — Employment — Fair Labor Standards Act**

### Pltf said he worked 56 hours per week with no overtime pay

**Decision** Defense

**Case** Joseph Rossi v. Elizabeth Kopec, conservatrix for Susan Walker, and Bank of America, No. CV-065001480-S

**Court** New Britain Judicial District, Superior Court

**Judge** Henry S. Cohn

**Date** 2/19/2008

#### Plaintiff

##### Attorney(s)

Bruce E. Newman, Newman, Creed & Associates, Bristol, CT

#### Defense

##### Attorney(s)

Maureen E. Burns, The Pellegrino Law Firm, P.C., New Haven, CT (Elizabeth Kopec)

Frances B. Granquist, The Pellegrino Law Firm, P.C., New Haven, CT (Elizabeth Kopec)

#### Facts & Allegations

In 1999, plaintiff Joseph Rossi, a certified nurse's assistant, began providing home care services to Susan Walker. One of several people providing such services for the quadriplegic woman, Rossi earned \$15 per hour and typically worked the night shift. His duties included preparing meals, tending to Walker's personal care, cleaning her home, noting her temperature and weight, assisting with wheelchair transfers, and serving as a companion.

In 2005, Rossi was laid off, according to court documents.

Rossi said that he typically worked 56 hours per week, but he never received overtime pay of time and a half. He claimed that Elizabeth Kopec, the administrator of Walker's estate, owed him in excess of \$29,000 worth of unpaid overtime.

Rossi sued Kopec, asserting that her alleged failure to pay overtime violated labor statutes, that she breached a contract by failing to pay, and that she enjoyed unjust enrichment.

In an amended complaint, the plaintiff added Bank of America, successor of Fleet Private Banking Group, as a defendant. The bank was reportedly responsible for distributing pay to him and the other employees at the time of their employment. Rossi asserted violation of labor statutes and unjust enrichment claims against the Bank of America.

Kopec denied any violations or deprivation of pay to which Rossi was entitled. By way of special defense, she argued that he was not entitled to overtime pay, because he was a "companion employee" as defined by the Fair Labor Standards Act, 29 U.S.C. §§ 213(a)(1) and (15).

In addition, she contended that the Bank of America was not Rossi's employer, as defined by Connecticut statute, that she was the conservatrix of Walker and not Walker's estate, and that any damage award must be limited to overtime he worked within the last two years per the statute of limitations.

In a trial brief, Rossi argued that he did not fall under the federal definition of a "companion employee," due to the additional cleaning and other services he provided outside of his companionship services.

**Injuries/Damages**

Rossi sought monetary damages, plus litigation costs.

**Result**

In a bench trial, Judge Henry S. Cohn found for the defendants.

In his memorandum of decision, Judge Cohn found that Rossi's cause of action was subject to the provisions of the Fair Labor Standards Act, specifically § 213(a)(15).

Judge Cohn wrote: "the court has made factual findings that indicate that the plaintiff does not qualify for overtime under the federal statute or regulation."

The court found that the plaintiff's activities in caring for Walker qualified as companionship services; as a result, they were subject to the Fair Labor Standards Act overtime exemption.

The court also denied Rossi's unjust enrichment claims, noting that Kopec had surveyed local nursing homes and found the average rate of payment for certified nursing assistants was less than \$15 per hour. Consequently, Judge Cohn wrote that the plaintiff "was certainly not unjustly denied the wage that he had earned."

**Demand** None reported

**Offer** None reported

**Insurer(s)**

None reported

**Plaintiff**

**Expert(s)**

None reported

**Defense**

**Expert(s)**

None reported

**Post-Trial**

None reported

**Editor's Note**

2007 Thomson Reuters/West

**Plaintiff(s)**

**Demographics**

**Joseph Rossi**

**Age:** None reported

**Occupation:** Certified nurse's assistant

**Gender:** Male

**Married:** None reported

**Children:** None reported

**Written By** –Katie Pasek

F:\data\shared\users\GSC\Firm Business\Website\update feb 08\rossi v. kopec.doc