

Family Dollar Dodges Manager's Pa. Overtime Class Action

By **David McAfee**

Law360, Los Angeles (January 31, 2014, 5:03 PM ET) -- A Pennsylvania federal judge on Thursday tossed a putative class action brought against Family Dollar Stores Inc. by a former store manager who said the company failed to pay him for overtime hours, holding that the plaintiff was exempt because of his management responsibilities.

U.S. District Judge Lawrence F. Stengel granted summary judgment in favor of Family Dollar and against named plaintiff Albert Itterly, who brought the suit in 2008 under the Pennsylvania Minimum Wage Act. The judge sided with Family Dollar, which had argued that Itterly was exempt from the overtime provisions of the PMWA because of his executive responsibilities.

“Under the facts of this case, the defendants meet the burden of proving that the plaintiff’s primary duty was management of the store,” Judge Stengel wrote in the memorandum accompanying his order for summary judgment. “A reasonable jury could not find that the plaintiff falls outside of the executive exemption and therefore be entitled to overtime under the PMWA.”

On Friday, attorneys for Itterly filed a notice of appeal to the Third Circuit, seeking to reverse the summary judgment.

The judge’s Thursday order is a win for Family Dollar in the long-running dispute in which Itterly sought to represent other store managers who weren’t paid overtime. Judge Stengel accepted the the company’s arguments that Itterly was primarily a manager and that he regularly directed the work of two or more employees.

The summary judgment comes just two months after 14 Pennsylvania residents who worked as Family Dollar store managers filed a **similar suit**, accusing the retailer of denying them overtime wages. They said that their jobs involved the same nonmanagerial responsibilities that hourly employees took on, but that they often worked as much as 80 hours per week without receiving any overtime.

Itterly filed suit in March 2008, alleging that Family Dollar and its subsidiary Family Dollar Stores of Pennsylvania Inc. broke the law when they didn’t compensate him for overtime hours worked between July 21, 2007, and Nov. 24, 2007. Itterly, who worked an average of 63 hours per week and was paid a \$930 weekly salary, said he was misclassified as an exempt employee under the PMWA, and therefore didn’t receive proper overtime payment.

But, according to Judge Stengel, there are 21 similar cases against Family Dollar in the Western District

of North Carolina, each of which were each decided on summary judgment favoring the company. In each case, the store manager plaintiffs made very similar allegations under similar circumstances, according to the judge.

"In each circumstance, the court granted the defendant's motion for summary judgment," Judge Stengel wrote. "There have been no compelling reasons presented that would justify ruling differently in this case."

Joel M. Cohn of Akin Gump Strauss Hauer & Feld LLP, counsel to Family Dollar, said the company was very pleased with the judgment.

"The ruling is fully consistent with the multiple summary judgment rulings in the Family Dollar MDL proceeding in North Carolina," Cohn told Law360 on Friday. "The company continues to believe its store managers are properly classified under state and federal law."

Representatives for Itterly didn't immediately return requests for comment Friday.

Itterly is represented by Mark J. Gottesfeld of Winebrake & Santillo LLC.

Family Dollar is represented by John A. Ybarra, Shanthi V. Gaur and Kristine Grady Derewicz of Littler Mendelson PC and Joel M. Cohn of Akin Gump Strauss Hauer & Feld LLP.

The case is Albert Itterly v. Family Dollar Stores Inc. et al., case number 5:08-cv-01266, in the United States District Court for the Eastern District of Pennsylvania.

--Additional reporting by Dan Packer.