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## Dancers Get FLSA Trial After Judge Rules Them Employees

By **Braden Campbell**

Law360, New York (April 21, 2016, 4:01 PM ET) -- A jury will decide how much money an Ohio nightclub owes two former dancers it mislabeled as independent contractors after an Ohio federal judge on Wednesday ruled them employees, saying their case dovetails with numerous other federal cases in which dancers were deemed as such under the Fair Labor Standards Act.

Granting a motion for summary judgment, U.S. District Judge Patricia A. Gaughan said The Brass Pole exerted control over dancers Brandi Lester and Samantha Stottlemire akin to that what an employer holds over its employees, ruling the facts weigh strongly in the dancers' favor in the courts' six-prong test for assessing employment situations under the federal labor statute and a similar Ohio law.

"Though the parties disagree as to some of the underlying facts, a reasonable jury could only conclude that the totality of the circumstances shows that plaintiffs were economically dependent on defendants," Judge Gaughan said. "Thus, while defendants labeled the plaintiffs independent contractors, as a matter of economic reality, plaintiffs were employees of The Brass Pole."

Lester and Stottlemire filed suit in May against The Brass Pole, also known as Agment Bar and Grill, and owner Harley Rowe, claiming he classified them as independent contractors to save money on his tax bills while relying on and controlling them as an employer does his employees. Among other things, Lester and Stottlemire claim they were prohibited from working at other clubs during the periods they danced at The Brass Pole and were subject to an extensive set of rules that dictated their dress and behavior on the premises.

Rowe claimed the rules were more guidelines and that the policy on dancing at other clubs was not enforced, among other defenses, but Judge Gaughan said the facts were far more persuasive for the dancers' arguments.

While she conceded neither side prevailed as to the permanency of their relationship, Judge Gaughan said the dancers easily satisfied the other five prongs for establishing employee status. She said the dancers did not need a "high degree of skill" like that required of independent contractors, they spent little on job-related equipment, their management and technical skills little afforded them greater profits and that they operated largely at the behest of Rowe despite some control over their own work.

Judge Gaughan was particularly terse in examining the extent to which the plaintiffs' services were integral to the business, the last prong, saying in a single paragraph that Rowe failed to show the bar offered significant attractions aside from its dancers.

"Defendants have offered no evidence as to how exotic dancers were not an integral part of

a bar doing business as 'The Brass Pole' and where exotic dancers performed at the club every night that it was open," Gaughan said. "No reasonable juror could conclude that customers primarily came to the club for its other offerings, which included beer, liquor and frozen burgers from Sam's Club."

Judge Gaughan also noted a "clear majority" of federal courts that have heard FLSA suits involving exotic dancers have deemed them employees, citing a dozen cases dating back to the early '90s. She did not provide analysis.

An attorney for the dancers, David J. Steiner of The Lazzaro Law Firm LLC, told Law360 he was pleased Judge Gaughan saw his clients' plight as other judges had.

"Exotic dancers are often misclassified under the law, and this ruling is another example of why that's not correct," Steiner said.

He said he will seek about \$80,000 combined for Lester and Stottlemire plus fees at trial.

The club's attorney, H. Louis Sirkin of Santen & Hughes, said his client plans to appeal the decision.

Rowe is represented by H. Louis Sirkin of Santen & Hughes.

The dancers are represented by David J. Steiner and Anthony J. Lazzaro of The Lazzaro Law Firm LLC.

The case is Brandi Lester et al. v. Agment LLC et al, case number 1:15-CV-00886, in the U.S. District Court for the Northern District of Ohio.

--Editing by Bruce Goldman.

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