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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT.
1684CV00572-BLS2

[redacted] HICKMAN and [redacted] D'AGOSTINO,
individually and on behalf of all others similarly situated

v.

RIVERSIDE PARK ENTERPRISES, INC.
d/b/a Six Flags New England, and [redacted] WINKLER

MEMORANDUM AND ORDER ON CROSS-MOTIONS FOR PARTIAL SUMMARY JUDGMENT

[redacted] Hickman and [redacted] D'Agostino work at the Six Flags New England amusement park. They claim that the park's owner, Riverside Park Enterprises, Inc., violated Massachusetts law by not paying overtime and for meal breaks. The court (Sanders, J.) certified a class as to overtime pay, for seasonal hourly workers employed since February 2013, but denied class certification as to meal break pay.

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The overtime claims turn primarily on whether and to what extent Riverside can claim the statutory exemption for amusement park employees. By law, amusement parks that operate their rides and other attractions for no more than 150 days during a year do not have to pay overtime wages. See G.L. c. 151, § 1A(20).

Plaintiffs and Defendants have each moved for partial summary judgment as to liability on the overtime claims.

Defendants are entitled to summary judgment in their favor as to hours worked during 2013, 2014, and 2016; the amusement park exemption applies because Riverside operated its attractions for no more than 150 days during those years.

But Plaintiffs are entitled to summary judgment in their favor, at least in substantial part, as to hours worked during 2015, 2017, and 2018, because Riverside operated its attractions for more than 150 days during each of those years. With respect to 2015, Defendants' argument that some days the Park was open should count only as "partial" days is unavailing. With respect to 2017 and 2018, although hours worked during the "Holiday in the Park" days in November and December fall within the seasonal exemption to the overtime statute, they still count as days that Riverside's facility was being operated as an amusement park.

1. Undisputed Material Facts. The following facts are not in dispute, at least for the purpose of resolving the cross-motions for partial summary judgment, as demonstrated in the evidentiary materials submitted by the parties or reasonable inferences that one could draw from those facts.

Riverside owns and operates Six Flags N.E. amusement park in Agawam, Massachusetts ("Six Flags N.E."). Co-defendant [redacted] Winkler has been President of Riverside throughout the relevant period.

During its regular operating season, Six Flags N.E. consists of a theme park and water park offering thrill rides, water rides (offered during the summer months only), games, shows, concessions, and other attractions. The regular season runs from April (when the park opens for the year) to around the end of October. The water rides generally open in late May on Memorial Day weekend and close for the year in early September on Labor Day. Riverside hires roughly 3,000 seasonal, hourly employees each year to work at Six Flags N.E. In addition, 110 to 115 hourly employees work for Riverside at this facility on a year-round basis performing mechanic and trade skill duties, to maintain the facility and keep it in good repair.

During 2017 and 2018, Six Flags N.E. was also open from late November to around the end of December for a second season that Riverside calls "Holiday in the Park." During that period the facility continues to function as an amusement park with thrill rides (but no water rides), games, shows, and other attractions. Weather permitting, sledding and ice skating are also available. And Riverside adds seasonally-themed entertainment, such as a Santa's Workshop and strolling carolers, as well as Christmas-related decorations.

The Massachusetts Department of Labor Standards granted seasonal exemptions from the overtime wage law, pursuant to G.L. c. 151, § 1A(9), for hours worked during the 2017 and 2018 Holiday in the Park periods.

The seasonal employees work at Six Flags N.E. at certain times when Riverside is not operating its amusement park attractions. Some of them work before the regular season doing maintenance, hiring and training employees, ordering and stocking supplies, and other tasks to prepare the park for opening. Some work on certain days during the regular season when the park is not open, doing maintenance,

training, and other activities not involving or related to operation of the park's attractions. In addition, some seasonal employees work at the facility after the park closes for the year, doing clean-up, housekeeping, and other tasks to close the facility at the end of its operating year.

During 2013, Six Flags N.E. was open to the public and generated attendance revenue by operating the amusement park's attractions for a total of 148 days.

During 2014, Riverside again operated the Six Flags N.E. amusement park attractions for a total of either 147 or 148 days. The park was open to the public and generated attendance revenue on 147 days. In addition, Riverside held a media day promotional event on May 15, 2014, to introduce a new ride called "the New England Sky Screamer" to the media and non-paying invited guests. On that day Riverside operated many of the Six Flags N.E. rides, though it did not operate any games, shows, or concessions and did not generate any attendance revenue. On three other days in May 2014, Riverside rented the Six Flag N.E. parking lots to a company that hosted a car show there; according to Riverside's Rule 30(b)(6) witness, during the car show the vender "brought in fancy high end vehicles, that a normal person would not own or operate," and allowed people to drive those vehicles for a fee. Riverside did not operate its amusement park attractions on the three days of that car show.

During 2015, Six Flags N.E. was open to the public and generated attendance revenue by operating the amusement park's attractions for a total of 152 days. On three of those days the park closed early due to inclement weather. On fourteen other days that year the park was open for fewer hours than normal for other reasons.

During 2016, Six Flags N.E. was open to the public and generated attendance revenue by operating the amusement park's attractions for a total of 150 days. In addition, Riverside held a promotional event on May 19, 2016, to introduce a new ride called the "Fireball" to the media and non-paying invited guests. Roughly 200 people attended. On that day Riverside operated the new Fireball ride, but did not operate any other rides, games, shows, or concessions, and did not generate any attendance revenue. On September 16, 2016, Riverside rented out the Six Flags N.E. property to an entity that hosted a road race for runners; Riverside did not operate its amusement park attractions that day. On September 30, 2016, a three member

television news crew filmed a segment regarding the Six Flags N.E. "Frightfest," which is a Halloween themed event. Though Riverside operated a few attractions during the filming, it did not otherwise operate any of its attractions that day.

During 2017, Six Flags N.E. was open to the public and Riverside generated attendance revenue by operating the amusement park's attractions for a total of 162 days. Riverside operated those attractions for 149 days during the 2017 regular season and for an additional 13 days during the 2017 Holiday in the Park season.

During 2018, Riverside generated attendance revenue by opening Six Flags N.E. to the public and operating the amusement park's attractions for a total of 165 days. It operated the park's attractions for 148 days during the regular season and for an additional 17 days during the 2017 Holiday in the Park season.

2. Analysis. Massachusetts employers must pay overtime, at a rate of one and one-half times the employee's regular hourly rate, to all non-exempt employees who work more than forty hours during any work week. See G.L. c. 151, § 1A. The statute includes twenty specific exemptions. *Id.* Any employer claiming the benefit of such an exemption has the burden of proving that the exemption applies. *Somers* v. *Converged Access, Inc.*, 454 Mass. 582, 591 n.12 (2009).

The Supreme Judicial Court has instructed that the overtime statute "must be broadly construed in light of its purpose," and that as a result the statutory exemptions must "be construed narrowly." *Arias-Villano* v. *Chang & Sons Enterprises, Inc.*, 481 Mass. 625, 628 (2019).

As noted above, the Massachusetts overtime statute does not apply to anyone who is employed "in an amusement park containing a permanent aggregation of amusement devices, games, shows, and other attractions operated during a period or accumulated periods not in excess of one hundred and fifty days in any one year." G.L. c. 151, § 1A(20).

This provision means what it says. See generally *Olmstead* v. *Department of Telecommunications and Cable*, 466 Mass. 582, 588 (2013) (courts should "give effect to a statute's 'plain and ordinary meaning' where the statute's words are clear") (quoting *Massachusetts Broken Stone Co.* v. *Town of Weston*, 430 Mass. 637, 640 (2000)); *Commonwealth* v. *Hanson H.*, 464 Mass. 807, 810 (2013) (statute must be

construed in accord with ordinary meaning of its words, considered in context of statute as a whole, to produce meaning that best reflects its apparent purpose).

Under § 1A(20), the owner of an amusement park does not have to pay overtime to its employees during any year when it operates its amusement park attractions on no more than 150 different days during the year. But if the owner operates the amusement park attractions on more than 150 different days during the year, then it must pay overtime for all hours that an employee works beyond 40 hours per week and that are not otherwise exempt from the overtime statute.

2.1. 2013 and 2014. Riverside qualified for the amusement park exemption in 2013 and 2014 because it operated the Six Flags N.E. attractions for fewer than 150 days in each of those calendar years. That is true even assuming that the one-day media event to promote the new Sky Screamer ride in May 2014 should count as a day when Riverside was operating the park's attractions.

The fact that full-time and some seasonal employees worked at Six Flags N.E. on other days when none of the park's attractions were in operation is of no moment. Whether the statutory exemption for amusement parks applies turns on how many days the amusement park attractions are operated each year, not on how many days employees work at the facility each year. See *Jeffrey* v. *Sarasota White Sox, Inc.*, 64 F.3d 590, 596–597 (11th Cir. 1995) (construing and granting summary judgment based on similar exemption under the federal Fair Labor Standards Act (the "FLSA"), 29 U.S.C. § 213(a)(3), for an "amusement or recreational establishment" that "does not operate for more than seven months in any calendar year); *Marshall* v. *N.H. Jockey Club, Inc.*, 562 F.2d 1323, 1326–1327 & 1331 n.4 (1st Cir. 1977) (same); see also *Goodrow* v. *Lane Bryant, Inc.*, 432 Mass. 165, 170 (2000) (federal law interpreting similarly-worded provisions of FLSA is instructive but not binding when construing Massachusetts overtime statute).

The three days in May 2014 when Riverside rented out the Six Flags N.E. parking lots for a car show are similarly irrelevant. It is undisputed that Riverside did not operate any of the amusement park attractions during those three days. As a result those days do not count against the 150 day cap established in the statutory

amusement park exemption. That some Riverside employees worked at Six Flags N.E. on those days is beside the point. *Id.*

2.2. 2015. Riverside cannot meet its burden of showing that it can apply the amusement park exemption in 2015. It is undisputed that the park was open to the public and Riverside operated the Six Flags N.E. attractions on 152 different days that year. Since Riverside operated its amusement park for more than 150 days in 2015, it does not qualify for the amusement park exemption for that year.

Riverside is not entitled to ignore any of those days, or to count them as partial days, because some days that year the park was open for fewer hours than on other days. The statutory exemption says nothing about counting hours, or treating shorter days as less than a calendar day. The Court may not read into the statute a provision that the Legislature did not see fit to put there. *Provencal* v. *Commonwealth Health Ins. Connector Auth.*, 456 Mass. 506, 516 (2010). Reading the amusement park exemption narrowly, as the Court must, any calendar day when Riverside operated the Six Flags N.E. amusement park attractions counts as a day for the purpose of applying the amusement park exemption.

2.3. 2016. Riverside opened the park and operated the Six Flags N.E. attractions for exactly 150 days during 2016. It therefore qualifies for the amusement park exemption for that year.

Use of the Six Flag N.E. site for a one-day road race does not count in this calculus, because Riverside did not operate any of the park's attractions that day.

The two days that Riverside invited in the media for promotional purposes in 2016 do not count either. On one of those days, Riverside let media and invited guests try out the new "Fireball" ride, but did not operate any of the park's other rides and did not operate any games, shows, concessions, or other non-ride attractions. One the other day, Riverside operated some of its "Frightfest" attractions for a limited time so that a three-person television crew could film a story. Neither of those very limited uses of part of the facilities constitutes operation of the park's "amusement devices, games, shows, and other attractions" within the meaning of G.L. c. 151, § 1A(20).

2.4. 2017 and 2018. Riverside employees are not entitled to overtime for days they worked during the short Holiday in the Park seasons in 2017 and 2018,

because the Department of Labor Standards determined that the so-called "seasonal exemption" applies. But the days that Six Flags N.E. was open during Holiday in the Park still count for the purposes of determining whether Riverside can claim the separate amusement park exemption for those years. As a result, the park attractions were operated for more than 150 days during both of those years, and Riverside must pay overtime for hours worked outside of the Holiday in the Park periods.

2.4.1. Applying the Seasonal Exemption. Riverside is not required to pay overtime for hours worked during its short "Holiday in the Park" seasons in 2017 and 2018. The Department found that work performed at that time fell within the scope of the "seasonal exemption" to the overtime statute. Those rulings are entitled to deference.

The Massachusetts overtime statute does not apply to anyone employed "in a business or specified operation of the business which is carried on during a period or accumulated periods not in excess of one hundred and twenty days in any year, and determined by the commissioner to be seasonal in nature." G.L. c. 151A, § 1A(9). In this context the "commissioner" is the director of the Department of Labor Standards, which is the successor to the former Department of Labor. *Id.* § 2.

Since the Department is charged by statute with applying the seasonal exemption, and determining whether particular business operations are seasonal in nature, the Court must defer to the Department's opinion regarding application of this provision so long as it is reasonable and consistent with the statutory language. See *Sullivan* v. *Sleepy's LLC*, 482 Mass. 227, 238 (2019) (deferring to Department's interpretation of overtime statute); *Niles* v. *Huntington Controls, Inc.*, 92 Mass. App. Ct. 15, 22 (2017) (Superior Court committed reversible error "in failing to give deference to the department's opinion letters" regarding application of prevailing wage law).

The Department reasonably determined that Riverside's operation of Six Flags N.E. during the short Holiday in the Park seasons in 2017 and 2018 fell within the seasonal exemption to the overtime statute.

2.4.1. Applying the Amusement Park Exemption. Nonetheless, the days during Holiday in the Park when Riverside operated the Six Flags N.E.

amusement park attractions all count for the purpose of applying the separate amusement park exemption in G.L. c. 151, § 1A(20).

The Court must apply the statute as written, and also must construe and apply the amusement park exemption narrowly. That provision exempts amusement park operations from the overtime statute for a given calendar if and only if the park's attractions are operated for no more than 150 days during that year. It does not say days when operation of an amusement park qualify for the seasonal exemption should be disregarded when totaling up operating days for the purpose of applying the separate amusement park exemption.

It is undisputed that Riverside operated essentially all of the Six Flags N.E. attractions other than its water rides during the Holiday in the Park seasons. Since Riverside operated the amusement park attractions at those times, all of those days count in applying the amusement park exemption.

Counting the Holiday in the Parking days, Riverside operated its amusement park attractions for a total of 162 days in 2017 and 165 days in 2018. Riverside therefore may not claim the amusement park exemption for either of those years.

2.5. Personal Liability. John Winkler is and at all relevant times was Riverside's president. He is therefore personally liable, jointly and severally with Riverside, for Riverside's non-payment of overtime wages in violation of the Massachusetts Wage Act. See G.L. c. 149, § 148 (president and treasurer of corporation, and any other officer or agent "having the management of such corporation," is deemed to be employer for purposes of Wage Act); *Cook* v. *Patient Edu, LLC*, 465 Mass. 548, 553 (2013) ("This provision in effect imposes liability on the president and treasurer of a corporate employer, as well as on an officer or agent of the corporation who 'controls, directs, and participates to a substantial degree in formulating and determining policy of a corporation.' ") (quoting *Wiedmann* v. *The Bradford Group, Inc.*, 444 Mass. 698, 711 (2005)).

ORDER

The parties' cross-motions for partial summary judgment as to liability on the overtime claims in Counts I and II of Plaintiffs' complaint are ALLOWED IN PART and DENIED IN PART. Defendants are not liable for failing to pay overtime on hours

worked during 2013, 2014, or 2016, or on hours worked during the "Holiday in the Park" days in 2017 and 2018; Plaintiffs' motion is DENIED and Defendants' motion is ALLOWED as to that part of the overtime claims. However, Defendants are liable for not paying overtime earned on hours worked during 2015, 2017, and 2018, with the exception of hours worked during 2017 and 2018 "Holiday in the Park" days; Plaintiffs' motion is ALLOWED and Defendant's motion is DENIED as to that part of these claims.

A Final Pre-Trial Conference will be held on September 4, 2019 at 2:00 p.m.

Kenneth W. Salinger
Justice of the Superior Court

20 June 2019