

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

ERIC COGDELL, individually and
on behalf of other similarly situated,

Plaintiff,

v.

FRAZEE CONSTRUCTION CO
INC., and DALE STEPHENS
FRAZEE, individually,

Defendants.

Case No.:

COMPLAINT & DEMAND FOR JURY TRIAL

Plaintiff, ERIC COGDELL, individually and on behalf of other similarly situated (hereinafter “Plaintiff”), by and through the undersigned attorney, sues the Defendants, FRAZEE CONSTRUCTION CO INC., and DALE STEPHENS FRAZEE, individually, (collectively referred to as “Defendants”), and alleges as follows:

INTRODUCTION

1. This is an action by the Plaintiff against his former employers for overtime wages pursuant to the Fair Labor Standards Act, as amended, 29

U.S.C. § 206 and 29 U.S.C. § 216(b) (the “FLSA”), and any other relief available.

2. This action is brought under the FLSA to recover from Defendants overtime compensation, liquidated damages, and reasonable attorneys’ fees and costs.

PARTIES

3. During Plaintiff’s employment with Defendants, he served as a laborer and performed related activities at their place of business located at 660 Bear Mountain Road, Ranger, Georgia 30734.

4. Defendant, FRAZEE CONSTRUCTION CO INC., is a Georgia Corporation which operates and conducts business in the City of Ranger, Gordon County, Georgia, and is therefore within the jurisdiction of this Court.

5. Defendant, DALE STEPHENS FRAZEE, is a corporate officer of, and exercised operational control over the activities of, corporate Defendant, FRAZEE CONSTRUCTION CO INC., and resides in the State of Georgia. This Court has personal jurisdiction over this Defendant because said Defendant is a resident of the State of Georgia.

JURISDICTION

6. This action arises under the FLSA, 29 U.S.C. §210, *et. seq.* The Court has jurisdiction over the FLSA claim pursuant to 29 U.S.C. § 206 and 29 U.S.C. § 216(b).

VENUE

7. The venue of this Court over this controversy is proper based upon the claim arising in the City of Ranger, Gordon County, Georgia.

FACTS

8. Defendant, DALE STEPHENS FRAZEE, is the corporate officer, owner and acting manager of corporate Defendant, FRAZEE CONSTRUCTION CO INC., with the power to: (1) hire and fire Plaintiff; (2) supervise and control Plaintiff's work schedule or conditions of employment; (3) determine Plaintiff's rate and method of payment; and (4) maintain employment records.

9. Defendants employed Plaintiff at their business located at 660 Bear Mountain Road, Ranger, Georgia 30734, within the relevant time period (2014 – 2017).¹

¹ All references to material times relevant to this action shall mean to encompass from 2014 through 2017.

10. Plaintiff worked for Defendants without being paid the correct overtime premium rate of time and one-half his regular rate of pay for all hours worked in excess of forty (40) hours within a work week.

11. Specifically, Defendants paid overtime hours worked in excess of forty (40) hours within a work week at the regular rate of pay for all hours.

12. Defendants paid Plaintiff and other laborers by a paycheck for any hours worked provided it was forty (40) or under.

13. If Plaintiff worked more than forty (40) hours in a week, Defendants paid Plaintiff by a separate check and called it “contract labor.”

14. Defendants paid Plaintiff and other laborers in this manner to purposefully avoid overtime pay.

15. Defendants each controlled and/or were responsible for the work of Plaintiff.

16. Plaintiff worked as a “laborer” for Defendants and performed related activities in Gordon County, Georgia.

17. In this capacity, Plaintiff was responsible for performing, including, but not limited to: (a) minor repairs, painting, and carpentry; (b) setting up scaffolding; (c) cutting and stacking cement blocks; and (d) usage

of construction material and equipment while building, repairing, or cleaning the building job site.

18. Plaintiff worked for the Defendants from approximately July 2016 – December 2016.

19. Plaintiff was initially paid \$13.00 per hour.

20. Plaintiff was not paid proper overtime wages for all hours worked on a weekly basis throughout his period of employment.

21. Despite working more than forty (40) hours per week, Plaintiff was not paid all compensation for hours worked over forty (40) hours within a work week during several weeks of employment.

22. Defendants were aware of the overtime hours worked.

23. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff are in the possession and custody of the Defendants.

COVERAGE

24. At all material times relevant to this action, Defendants were an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203 (s).

25. At all material times relevant to this action, Defendants made gross earnings of at least \$500,000 annually.

26. At all material times relevant to this action, Defendants accepted payments from customers based on credit cards issued by out-of-state banks, nationwide.

27. At all material times relevant to this action, Defendants routinely ordered materials, merchandise, products, and supplies from out-of-state vendors and/or entities (i.e., masonry, concrete, and stone material and supplies).

28. At all material times relevant to this action, Defendants had two (2) or more employees engaged in commerce, handling or otherwise working on materials that have been moved in or produced for commerce (i.e., masonry, concrete, and stone material and supplies).

29. At all material times relevant to this action, Plaintiff was individually engaged in commerce during his employment with Defendants, by working with a wide array of daily-delivered products and goods.

COLLECTIVE/CLASS ALLEGATIONS

30. Plaintiff and the class members performed the same or similar job duties as one another for Defendants in that they provided laboring and construction services.

31. Further, Plaintiff and the class members were subjected to the same pay provisions in that they were not compensated at time and one-half their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

32. Thus, the class members are owed overtime compensation for the same reasons as Plaintiff.

33. Defendants' failure to compensate employees for hours worked in excess of forty (40) hours in a workweek as required by the FLSA results from a policy or practice of failure to assure that laborers were paid for all overtime hours worked based on the Defendants' failure to credit the laborers with all hours worked.

34. This policy or practice was applicable to Plaintiff and the class members.

35. Application of this policy or practice does not depend on the personal circumstances of Plaintiff or those joining this lawsuit, rather the

same policies or practices which resulted in the non-payment of overtime to Plaintiff also apply to all class members.

36. Accordingly, the class members are properly defined as:

All hourly paid employees whom worked for Defendant, FRAZEE CONSTRUCTION CO INC., within the state of Georgia within the last three (3) years and whom were not compensated at time and one-half their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

37. The precise size and identity of the class should be ascertainable from the business records, tax records, and/or employee or personnel records of Defendants.

38. The exact number of members of each class can be determined by reviewing Defendants' records. Plaintiff, under information and belief, is informed there are numerous of eligible individuals in the defined class.

39. Defendants failed to keep accurate time and pay records for Plaintiff and all class members pursuant to 29 U.S.C. § 211(c) and 29 C.F.R. Part 516.

40. Defendants were aware of the requirements of the FLSA yet it acted willfully in failing to pay Plaintiff and the class members in accordance with the law.

41. Plaintiff has hired the undersigned law firm to represent him in this matter and is obligated to pay them reasonable attorneys' fees and costs if they prevail.

42. The claims under the FLSA may be pursued by others who opt-in to this case pursuant to 29 U.S.C. § 216(b).

43. A collective action suit, such as the underlying, is superior to other available means for fair and efficient adjudication of the lawsuit. The damages suffered by individual members of the class may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the class to individually seek redress for the wrongs done to them

COUNT I
RECOVERY OF OVERTIME COMPENSATION
AGAINST FRAZEE CONSTRUCTION CO INC.

44. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1 – 43 above.

45. Plaintiff is entitled to be paid time and one-half his regular rate of pay for each hour worked in excess of forty (40) hours per work week.

46. During Plaintiff's employment with Defendant, FRAZEE CONSTRUCTION CO INC., Plaintiff worked overtime hours but was not

paid time and one-half his regular rate of pay for the same during several weeks.

47. As a result of Defendant's, FRAZEE CONSTRUCTION CO INC., intentional, willful, and unlawful acts in refusing to pay Plaintiff time and one-half his regular rate of pay for each hour worked in excess of forty (40) hours per work week in one or more work weeks, Plaintiff has suffered damages plus incurring reasonable attorneys' fees and costs.

48. Defendant, FRAZEE CONSTRUCTION CO INC., neither maintained nor kept accurate time records as required by the FLSA for Plaintiff.

49. Also, Defendant, FRAZEE CONSTRUCTION CO INC., failed to post required FLSA informational listings as required by law.

50. As a result of Defendant's, FRAZEE CONSTRUCTION CO INC., willful violation of the FLSA, Plaintiff is entitled to liquidated damages.

COUNT II
RECOVERY OF OVERTIME COMPENSATION
AGAINST DALE STEPHENS FRAZEE

51. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1 – 43 above.

52. Defendant, DALE STEPHENS FRAZEE, is the Owner and President of FRAZEE CONSTRUCTION CO INC.

53. Defendant, DALE STEPHENS FRAZEE, is an Owner who acted with direct control over the work, pay, and job duties of Plaintiff.

54. Defendant, DALE STEPHENS FRAZEE, had the power to hire and fire Plaintiff.

55. Defendant, DALE STEPHENS FRAZEE, supervised and controlled Plaintiff's work schedule, job duties and responsibilities, and/or conditions of employment.

56. Defendant, DALE STEPHENS FRAZEE, determined Plaintiff's rate and method of payment.

57. Defendant, DALE STEPHENS FRAZEE, maintained employment records.

58. As such, Defendant, DALE STEPHENS FRAZEE, is charged with the responsibility for violations of Plaintiff's rights to overtime and resulting damages.

WHEREFORE, Plaintiff, ERIC COGDELL, individually and on behalf of other similarly situated demands judgment against FRAZEE CONSTRUCTION CO INC., and DALE STEPHENS FRAZEE,

individually, for the payment of all unpaid wages, overtime hours at time and one-half the regular rate of pay for the hours worked by them for which Defendants did not properly compensate them, liquidated damages, reasonable attorneys' fees and costs incurred in this action, and any and all further relief this Court determines to be just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

/s/ Carlos V. Leach

Carlos V. Leach, Esq.

Ga. Bar No.: 488443

Fla. Bar No.: 540021

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Attorneys for Plaintiff(s)

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

ERIC COGDELL, individually and on behalf of other similarly situated,

DEFENDANT(S)

FRAZEE CONSTRUCTION CO INC., and DALE STEPHENS FRAZEE, individually,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Clayton County (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Gordon County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Carlos V. Leach, Esq., MORGAN & MORGAN, P.A., 191 Peachtree Street, N.E., Suite 4200, P.O. Box 57007 Atlanta, GA 30343-1007; Tel: (404) 965-8811; Fax: (404) 965-8812; Email: CLeach@forthepeople.com

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF, 2 U.S. GOVERNMENT DEFENDANT, 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY), 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- PLF DEF 1 1 CITIZEN OF THIS STATE, 2 2 CITIZEN OF ANOTHER STATE, 3 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY, 4 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE, 5 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE, 6 6 FOREIGN NATION

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING, 2 REMOVED FROM STATE COURT, 3 REMANDED FROM APPELLATE COURT, 4 REINSTATED OR REOPENED, 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District), 6 MULTIDISTRICT LITIGATION - TRANSFER, 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT, 8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

29 U.S.C. § 216(b) , unpaid overtime wages

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties. 2. Unusually large number of claims or defenses. 3. Factual issues are exceptionally complex. 4. Greater than normal volume of evidence. 5. Extended discovery period is needed. 6. Problems locating or preserving evidence. 7. Pending parallel investigations or actions by government. 8. Multiple use of experts. 9. Need for discovery outside United States boundaries. 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP) JUDGE MAG. JUDGE (Referral) NATURE OF SUIT CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
120 MARINE
130 MILLER ACT
140 NEGOTIABLE INSTRUMENT
151 MEDICARE ACT
160 STOCKHOLDERS' SUITS
190 OTHER CONTRACT
195 CONTRACT PRODUCT LIABILITY
196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
220 FORECLOSURE
230 RENT LEASE & EJECTMENT
240 TORTS TO LAND
245 TORT PRODUCT LIABILITY
290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
315 AIRPLANE PRODUCT LIABILITY
320 ASSAULT, LIBEL & SLANDER
330 FEDERAL EMPLOYERS' LIABILITY
340 MARINE
345 MARINE PRODUCT LIABILITY
350 MOTOR VEHICLE
355 MOTOR VEHICLE PRODUCT LIABILITY
360 OTHER PERSONAL INJURY
362 PERSONAL INJURY - MEDICAL MALPRACTICE
365 PERSONAL INJURY - PRODUCT LIABILITY
367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
371 TRUTH IN LENDING
380 OTHER PERSONAL PROPERTY DAMAGE
385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
441 VOTING
442 EMPLOYMENT
443 HOUSING/ ACCOMMODATIONS
444 WELFARE
445 AMERICANS with DISABILITIES - Employment
446 AMERICANS with DISABILITIES - Other
448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
510 MOTIONS TO VACATE SENTENCE
530 HABEAS CORPUS
535 HABEAS CORPUS DEATH PENALTY
540 MANDAMUS & OTHER
550 CIVIL RIGHTS - Filed Pro se
555 PRISON CONDITION(S) - Filed Pro se
560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
720 LABOR/MGMT. RELATIONS
740 RAILWAY LABOR ACT
751 FAMILY and MEDICAL LEAVE ACT
790 OTHER LABOR LITIGATION
791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
862 BLACK LUNG (923)
863 DIWC (405(g))
863 DIWW (405(g))
864 SSDI TITLE XVI
865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
376 Qui Tam 31 USC 3729(a)
400 STATE REAPPORTIONMENT
430 BANKS AND BANKING
450 COMMERCE/ICC RATES/ETC.
460 DEPORTATION
470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
480 CONSUMER CREDIT
490 CABLE/SATELLITE TV
890 OTHER STATUTORY ACTIONS
891 AGRICULTURAL ACTS
893 ENVIRONMENTAL MATTERS
895 FREEDOM OF INFORMATION ACT
899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI TRUST
850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ Unknown

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE DOCKET NO.

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. , WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

Handwritten signature of attorney of record

March 6, 2017

SIGNATURE OF ATTORNEY OF RECORD

DATE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Frazee Construction Co., Owner Hit with FLSA Class Action](#)
