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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Barnes & Noble Can't Close Book On Wage-And-Hour Action

By **Jonathan Randles**

Law360, New York (July 18, 2014, 8:27 PM ET) -- A New York federal judge on Friday refused Barnes & Noble Inc.'s bid to sink a class action lawsuit alleging the bookseller stiffed its assistant store managers overtime pay, ruling that questions remain over whether the employees' job duties excluded them from federal overtime pay law.

U.S. District Judge John Koeltl denied Barnes & Noble's motion for summary judgment that could have dismissed the wage-and-hour lawsuit. Judge Koeltl said there is "genuine dispute" over whether the assistant store managers were properly classified as exempt from the overtime pay requirements of the Fair Labor Standards Act, suggesting that question should be decided by a jury.

The lawsuit was filed in 2013 and claims Barnes & Noble erroneously classified former assistant store managers as FLSA-exempt. The company claims the employees were properly excluded from the overtime pay requirements because their job duties fell under the FLSA's executive or administrative exemptions.

In support of its motion, Barnes & Noble relied upon the assistant store managers' official job duties as defined by the company. Those responsibilities, per the company's official guidelines, include overseeing "the entire store and staff when fulfilling the role of manager on duty," the ruling said.

The named plaintiffs in the lawsuit, three former Barnes & Noble assistant store managers, disputed the company's description of their job. While the plaintiffs said they did perform some management activities, they also performed more routine tasks that other employees performed like handling customer returns or working the cash register.

The plaintiffs also said they lacked the authority and discretion to perform managerial tasks.

Before 2005, Barnes & Noble classified all of its assistant store managers in every state as FLSA-exempt. But the company was sued in California for violating state labor law related to the payment of overtime.

That lawsuit led Barnes & Noble to reclassify its assistant managers in California as nonexempt — but employees in other states remained unchanged. The company ultimately changed its policy for employees in all states in 2010, the ruling said.

The development proved important to the plaintiffs. Barnes & Noble argued that the complaint was barred under the FLSA's two-year statute of limitations. The alleged FLSA violations ended on June 2010 but the lawsuit was not filed until January 2013, according

to the ruling.

However, the law extends the statute of limitations to three years if a violation of the FLSA was willful. Judge Koeltl said Barnes & Noble's failure to reclassify assistant store managers as nonexempt nationally, after having done so in California, "is at least some evidence that a jury could consider on the issue of willfulness."

Attorneys representing Barnes & Noble and the plaintiffs could not immediately be reached for comment Friday.

The plaintiffs are represented by Brian Schaffer, Frank Mazzaferro and Joseph Fitapelli of Fitapelli & Schaffer LLP.

Barnes & Noble is represented by Edward Cerasia II in and Brian Gershengorn of Ogletree Deakins Nash Smoak & Stewart PC.

The case Steven Trimer et al. v. Barnes & Noble Inc. et al., case number 1:13-cv-00579, in the U.S. District Court for the Southern District of New York.

--Editing by Rebecca Flanagan.

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