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Ex-employees plan to sue Maui Sands

BY ANNIE ZELM

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PERKINS TWP.

After weeks of waiting for a paycheck that never came, Brian Jackson says he was forced to move back home with his parents and may lose his car.

Tired of living on little more than hope, Jackson, 30, and several of his former colleagues at Maui Sands Resort are fighting back.

The Sandusky resident and a handful of others plan to file a lawsuit against the resort's former owner, Scott Emerson, for unpaid wages.

Two Cleveland attorneys who are investigating the claim say there have most likely been violations of state and federal labor laws.

"This is a very common, garden-variety case of an employer failing to pay for the hours worked," said Jason Bristol of Cohen Rosenthal & Kramer, a firm that specializes in wage litigation and other civil matters. "The coverage issues and issues of corporate liability are also of the standard variety."

Bristol said such a lawsuit could proceed in several ways. If filed in federal court, it's considered a collective action lawsuit -- meaning former employees could choose to "opt in" and proceed as a group.

If the case includes violations of Ohio's overtime statute, they could file a state class-action lawsuit in which all employees are included unless they choose to opt out. A traditional class-action lawsuit generally involves 40 or more people, said Anthony Lazzaro, Bristol's co-counsel.

The closing of the Hawaiian-themed resort on Thanksgiving Day left nearly 100 people unemployed with no word on when they might be paid for several weeks of work.

Jackson, a maintenance worker who transferred from Kalahari Resort to Maui Sands with the promise of a competitive wage, said he's made numerous attempts to contact Emerson and has filed for unemployment.

But with his girlfriend expecting a child soon, the money can't come fast enough.

"Scott (Emerson) keeps dodging us," he said. "The hotel never gave us answers, and they're still



Register photo/[JASON WERLING](#)

Eric Schenk, left, and Brian Jackson have been left out in the cold without some of their pay from Maui Sands Resort in Perkins Township.

not giving us answers. (As the owner), he didn't know what he was getting into and made a lot of bad decisions -- but why punish everyone else for your mistakes?"

Bill Roeser, 61, who also worked in maintenance, said he was initially happy to land a job at Maui Sands and hoped it would be his last after being laid off from a smaller business about a year ago.

Now, he's out about \$2,000 and takes occasional substituting jobs while his wife, a Huron schoolteacher, carries the rest of the load.

Even when business lagged and times at the resort were tough, Roeser said he stuck it out and did the best he could.

"All the while, I thought I was doing (Emerson) a justice," he said. "Now he's doing me an injustice. For him to do that to me and everybody else that kept him afloat, I just feel was very, very low."

Roeser said he managed to reach Emerson by phone but received only vague excuses from him.

"I could just sense he was back-peddling," Roeser said. "He said he really couldn't do anything about (the paycheck) and was out of town anyway."

Ben Schmenk, 34, is still working with his bank to resolve a string of overdraft fees that occurred when his paycheck from Maui Sands was directly deposited into his account, then abruptly withdrawn without warning.

He moved to Milan from Avon Lake with his wife, a stay-at-home mother of two, when he started his job as chief engineer at Maui in March.

"We still haven't recuperated the costs of moving," Schmenk said. "It's been real stressful, to say the least."

To make matters worse, Schmenk was diagnosed with diabetes last month -- the same time he learned that his health insurance with the company had been terminated.

A quick call to Medical Mutual confirmed the insurance company terminated coverage for Maui Sands on Sept. 30 after the resort failed to pay premiums for several months, Schmenk said. Still, the resort continued to withdraw money from his checks each pay period.

Schmenk says he wonders where that money was going if it wasn't paying his health insurance. He's also concerned whether his income taxes were properly withdrawn so he won't owe money to the IRS later.

The former employees say they're hoping others in similar situations will join them as they fight to collect their money.

If a lawsuit is filed and is successful, Bristol said Emerson and his companies are required to pay reasonable attorney fees. Even if they lose, Bristol said the employees won't have to pay since he

typically takes such cases on a contingent basis.

Though they apparently have nothing to lose, they stand to gain plenty.

Bristol, whose firm has played a prominent role in several noteworthy verdicts and settlements in northeast Ohio -- including a landmark settlement for season ticket holders to the former Cleveland Browns when the franchise relocated, and a settlement for retirees from a major industrial corporation after their health benefits were reduced -- said his firm is typically successful in wage litigation cases.

If the employees sue and win, they are entitled to an equal amount in liquidated damages -- which means they would receive double the amount they're owed in a federal case and up to triple the amount in a state case.

Liquidation damages take into consideration losses that are difficult to determine, such as the cost of moving or losing one's vehicle.

"These laws have teeth," Bristol said. "People who violate them need to be aware of that."

Emerson didn't return calls for comment.

Those in a similar situation are encouraged to join the employees' efforts by e-mailing Ben Schmenk at mauiemployees@live.com or calling Brian Jackson at 419-503-0960.

EDITOR'S NOTE: This is a corrected phone number