STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 13, 2016)

WILLIAM CASPERSON, individually and on behalf of a class of persons similarly-situated,	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. PC-2014-6139**
	:	
AAA SOUTHERN NEW ENGLAND, JOHN DOE COMPANIES, 1 through 10, inclusive, and JOHN DOES, 1 through 10 inclusive,	:	
Defendants.	:	

DECISION

SILVERSTEIN, J. Before the Court for decision is Defendant AAA Southern New England's[1] (hereinafter, AAA) Motion for Judgment on the Pleadings on Plaintiff William Casperson's (hereinafter, Casperson) remaining count for unpaid wages in this putative class action suit. AAA asserts that the Court must find for it as there is no private cause of action under the statute that Casperson has invoked to support his claim for premium wages. This Court has jurisdiction pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

AAA is a Delaware corporation duly registered with the State of Rhode Island and maintains its principal place of business in the City of Providence. Additionally, AAA employs individuals in the State of Rhode Island and is engaged in the motor vehicle service industry,

[1] AAA Southern New England is now AAA Northeast.

providing "roadside assistance" services to its customers, including, but not limited to: towing, mechanical adjustments, vehicle fuel delivery, battery replacement, vehicle extrication, and lock-out services.

On October 19, 2009, AAA hired Casperson as a tow truck driver. During his tenure at AAA, he was required to work on Sundays on a weekly basis for at least eight hours per week. He earned $11.50 per hour and worked twenty-four hours per week, including Sundays and holidays. In June 2011, Casperson became a permanent, full-time flatbed driver for AAA. At that time, he earned $12.50 per hour and worked thirty-nine hours per week, including Sundays and holidays. AAA terminated Casperson on March 13, 2014, presumably for reasons unrelated to his work schedule.

On December 15, 2014, Casperson filed this action against AAA alleging: (I) violations of the Payment of Wages Act (hereinafter, the Wage Act); (II) violations of the Rhode Island Work on Holidays and Sundays Act (hereinafter, the Sunday Pay Act); and (III) unjust enrichment. AAA moved to dismiss the claims under Super. R. Civ. P. 12(b)(6), which this Court granted in part and denied in part on December 22, 2015. In its Decision, the Court dismissed Counts I and III of the Complaint, but denied AAA's motion as to Count II—the Sunday Pay Act claim.

On January 19, 2016, AAA filed its Answer and Affirmative Defenses to Casperson's Complaint, denying most of Casperson's allegations and raising various defenses. AAA now moves for a judgment on the pleadings under Super. R. Civ. P. 12(c), arguing the Sunday Pay Act does not provide a private cause of action for alleged unpaid premium pay wages. Naturally, Casperson opposes the motion. Therefore, the issue is whether Casperson may maintain this private action under the Sunday Pay Act.

II

Standard of Review

The criteria that the Court considers in deciding whether to grant a motion for judgment on the pleadings is well settled in this jurisdiction. "A Rule 12(c) motion for judgment on the pleadings provides a trial court with the means of disposing of a case early in the litigation process when the material facts are not in dispute after the pleadings have been closed and only questions of law remain to be decided." Haley v. Town of Lincoln, 611 A.2d 845, 847 (R.I. 1992). A Rule 12(c) motion "is the same as the standard applicable to a Rule 12(b)(6) motion to dismiss." Przygoda v. Clifford J. Deck, CPA, Inc., 2010 WL 1956239, at *2 (R.I. Super. May 12, 2010). "When ruling on a Rule 12(b)(6) motion, the trial justice must look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a [non-movant's] favor." R.I. Affiliate, ACLU v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989). Therefore, a court should only grant a Rule 12(c) motion when the moving party is able to demonstrate to a certainty that the non-moving party will not be entitled to relief under any set of facts that might be proved at trial. Haley, 611 A.2d at 847.

III

Discussion

1

Casperson's Erroneous Interpretation of the Sunday Pay Act

Casperson claims AAA violated the Sunday Pay Act by failing to pay him premium pay for work he performed on Sundays and holidays. See Compl. ¶¶ 41-46. In response, AAA argues the Sunday Pay Act does not provide Casperson with a private right of action to recover his alleged unpaid premium pay wages.

The Sunday Pay Act requires employers to pay employees at least one and one-half (1 ½) times the normal rate of pay for the work provided. G.L. 1956 § 25-3-3(a). At present, the current minimum rate of pay is $12.50 per hour. G.L. 1956 § 28-12-3(h). Thus, the Sunday Pay Act requires a minimum pay rate of $18.75 per hour. The Sunday Pay Act also prohibits employers from penalizing employees if they refuse to work on Sundays. Sec. 25-3-3(a)(1). Various exceptions to the Sunday Pay Act exist for different types of employers. See §§ 25-3-3(b)-(e).

In arguing that the Sunday Pay Act provides him with a private right of action, Casperson relies heavily on § 25-3-9, titled "Employee's remedies," which states:

> "Every employee who is discharged, disciplined, or discriminated against by any employer in violation of the provisions of this chapter shall be entitled to maintain a civil action in a court of competent jurisdiction. If judgment is rendered in the employee's favor, he or she shall be entitled to reinstatement and double the amount of back pay and allowances lost as a result of the discharge, discipline, or discrimination, together with interest on the amount at the rate provided by law, attorneys fees, and costs and expenses of the action."

Casperson argues that this language—specifically, "in violation of the provisions of this chapter"—in connection with the Sunday Pay Act's requirement of increased pay for employees working on Sundays and holidays means he has a private right of action under the Sunday Pay Act. In other words, Casperson argues the Sunday Pay Act provides him with two avenues of relief when violations of the Sunday Pay Act occur: by filing a complaint with the Department of Labor and Training (hereinafter, the DLT) or by bringing a lawsuit against AAA.

However, Casperson's interpretation of the section is overly broad. While § 25-3-9 provides for a private cause of action, it is limited to instances where the employee is "discharged, disciplined, or discriminated against by any employer . . ." See § 25-3-9. It is an anti-retaliation and anti-discrimination provision by providing a plaintiff with a second avenue of

redress; namely, the courts, when that plaintiff is reprimanded for refusing to work on Sundays and holidays. When coupled with § 25-3-3(a)(1)'s prohibition on punishing employees for their refusal to work on Sundays and holidays, it becomes clear that § 25-3-9 is an enforcement mechanism, providing an additional avenue of relief for a plaintiff who is chastised for acting on his legal right to refuse to work on Sundays and holidays.

But, when an employee is not "discharged, disciplined, or discriminated against by any employer" and remains undercompensated for working on Sundays and holidays, that plaintiff's recourse is with the DLT. See § 28-14-20(a) ("All claims for wages may be filed with the director [of Labor and Training] . . .").

While there is no explicit section stating such violations are to be reported to the DLT, § 25-3-5 states that "[a]ll notices given and hearings conducted by the director, and all appeals from any order or determination of the director, shall be governed by the provisions of chapter 35 of title 42." G.L. 1956 § 42-35-15.1, in turn, requires appeals from decisions by administrative agencies of the state or its officers to be taken to the superior court or district court as necessary. Consequently, it is clear that when an employee is undercompensated, but not reprimanded, that employee's recourse is with the DLT. Only when that employee is "discharged, disciplined, or discriminated against by any employer" for violations of the Sunday Pay Act will the second avenue of redress, with the courts, become available.

The Court is supported in its conclusion by both the opinion of the Federal District Court in the District of Rhode Island and the General Assembly. In 2009, Chief Judge Smith held, in Hauser v. R.I. Dep't of Corr., that the Minimum Wage Act did not provide for a private right of action because the General Assembly did not intend it to do so. 640 F. Supp. 2d 143, 145 (D.R.I. 2009). Absent any indication that a private right of action was what the legislature

intended, Chief Judge Smith stated "[t]here can be little doubt that had the General Assembly deemed it appropriate or necessary to afford employees a private right of action against employers to enforce the minimum wage law, it would have expressly done so." Id. at 146.

In response, the General Assembly amended the Wage Act and the Minimum Wage Act in 2012 by providing for a private right of action for violations of either statute. See § 28-14-19.2. However, violations of the Sunday Pay Act were not amended. Compare § 28-14-19.2 with § 25-3-9. Consequently, "[a]s a general rule, [a court] will not read into a statute a requirement that the drafters omitted." Commerce Park Assocs. 1, LLC v. Houle, 87 A.3d 1061, 1067 (R.I. 2014); see also Transamerica Mortg. Advisors, Inc. v. Lewis, 444 U.S. 11, 19 (1979) ("[I]t is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it.").

Here, nowhere in Casperson's Complaint does he state that he was "discharged, disciplined, or discriminated against" by AAA for his refusal to work Sundays or holidays. Actually, quite the opposite occurred because, according to the Complaint, Casperson worked Sundays and holidays without objection. Had Casperson refused to work those days and AAA reprimanded him for it, he would have a right of action in this Court. Because he did not refuse and was not reprimanded, his remedy does not lie with this Court. Chief Judge Smith's statement is directly on point—"[t]here can be little doubt that had the General Assembly deemed it appropriate or necessary to afford employees a private right of action against employers to enforce the [Sunday Pay Act], it would have expressly done so." Hauser, 640 F. Supp. 2d at 145. A private right of action does not lie under the facts at bar. However, that is not to say that the General Assembly could not amend the Sunday Pay Act so as to create such a right of action.

2

Casperson's Erroneous Interpretation of this Court's Jurisdiction

Casperson alternatively argues that since this Court explicitly ruled that it had jurisdiction over his claim, it has acknowledged that Casperson has a right to pursue a private right of action to recover unpaid Sunday and holiday pay.

Under § 8-2-14, this Court has

> "exclusive original jurisdiction of all other actions at law in which the amount in controversy shall exceed the sum of ten thousand dollars ($10,000); and shall also have concurrent original jurisdiction with the district court in all other actions at law in which the amount in controversy exceeds the sum of five thousand dollars ($5,000) and does not exceed ten thousand dollars ($10,000)[.]"

Casperson's Complaint falls into this category, as previously decided in this case. See Decision of Dec. 22, 2015 at 8-9. However, because his Complaint alleges violations of the Sunday Pay Act, this Court turns to that statute. Noticeably, unlike the Wage Act or Minimum Wage Act, which confer jurisdiction on this Court for violations of either statute, the Sunday Pay Act only confers jurisdiction on this Court when one specific provision of the Sunday Pay Act is violated. Compare § 28-14-19.2 with § 25-3-9. "Because subject-matter jurisdiction is an indispensable ingredient of any judicial proceeding, it can be raised by the court sua sponte." Sidell v. Sidell, 18 A.3d 499, 504 (R.I. 2011). And, "whenever it appears that the court has no jurisdiction the court of its own motion should stop the proceedings." In re Estate of Speight, 739 A.2d 229, 231 (R.I. 1999) (quoting David v. David, 47 R.I. 304, 306, 132 A. 879, 880 (1926)).

Undertaking that analysis here, it becomes clear that § 25-3-9 of the Sunday Pay Act confers jurisdiction on this Court only when the plaintiff is "discharged, disciplined, or

discriminated against" by his or her employer for his or her refusal to work Sundays or holidays. Only then will this Court have jurisdiction over the matter. Complaints about violations of the Sunday Pay Act are to be heard elsewhere, not here.

In the present case, because Casperson has not alleged he was "discharged, disciplined, or discriminated against" because of his refusals to work Sundays and holidays—assuming he refused to work those days—this Court lacks jurisdiction, and therefore, must stop its proceedings. See In re Estate of Griggs, Nos. KP 2005-949, KP 2005-950, KP 2005-951, 2006 WL 3720309, at *9 (R.I. Super. Dec. 12, 2006) (granting defendant's motion to dismiss when the Court lacked jurisdiction over plaintiff's claims).

IV

Conclusion

After carefully considering the arguments that the parties advanced in their papers and at oral argument, and after a review of the applicable case law and authority on the issues presented herein, this Court grants AAA's Motion for Judgment on the Pleadings for Casperson's remaining count of his Complaint.

Counsel for the prevailing party shall submit an appropriate order consistent with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Casperson v. AAA Southern New England, et al.**
CASE NO:	**PC-2014-6139**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 13, 2016**
JUSTICE/MAGISTRATE:	**Silverstein, J.**

ATTORNEYS:

For Plaintiff:	**V. Edward Formisano, Esq.**
For Defendant:	**Brendan J. Lowd, Esq.** **Christina L. Lewis, Esq.**