

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

DEPARTMENT OF LABOR, *ex rel.*, )  
WILLIAM M. CHASANOV, )  
 )  
Plaintiff, )  
 )  
v. ) C.A. No.: CPU4-09-8966  
 )  
JOHN F. BRADY, and )  
ANDRE M. BEAUREGARD, )  
 )  
Defendants. )

Submitted: February 19, 2010  
Decided: March 23, 2010

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**ORDER ON DEFENDANTS' MOTIONS TO DISMISS**

The Department of Labor, *ex rel.*, (“DOL”) and William M. Chasanov (“Chasanov”), bring this action against John F. Brady (“Brady”) individually and Andre M. Beauregard (“Beauregard”) individually and as a managing partner. Defendants Brady and Beauregard in this motion move, pursuant to Court of

Common Pleas *Civil Rule 12(b) (6)*, to dismiss this action on the basis Plaintiffs, the DOL and Chasanov, failed to state a claim upon which relief can be granted. Defendants argue the Delaware Wage Payment and Collection Act (“DWPC Act”), as codified at 19 *Del. C.* §1101 *et seq.*, does not impose liability on individual members and managers of a Limited Liability Company (“LLC”). Additionally, Defendants argue Plaintiff’s, 19 *Del. C.* §1108(1) claim is barred by the statute of limitations.

### **FACTS**

Brady, Beauregard and Chasanov were members of the law firm formally known as Brady, Beauregard & Chasanov, LLC (“the Law Firm”). The Office of Disciplinary Counsel of the Delaware Supreme Court issued an order requiring Chasanov to step-down as a member of the Law Firm. Chasanov’s role in the Law Firm changed but Chasanov continued to perform work on behalf of the Law Firm. Chasanov alleged he was due forty-five (45) percent of all fees he collected, however his pay was cut to forty (40) percent of all fees he collected beginning November 30, 2008.

The DOL, under by 19 *Del. C.* §105, brought this action on behalf of Chasanov pursuant to the DWPC Act to recover wages, statutory penalties, interest and attorney’s fees. The DOL claims: Chasanov was an employee of the Law Firm; the Law Firm failed to pay wages due to Chasanov in violation of 19 *Del. C.* §1102; that Brady and Beauregard are individually liable for wages due as officers, agents or managing agents of the Law Firm under 19 *Del. C.* §1101(b); and that the Law Firm

failed to notify Chasanov in writing, at the time of hiring, of the rate of pay and of the day, hour and place of payment, in violation of 19 *Del. C.* §1108(1).

Defendants filed this motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Court of Common Pleas *Civil Rule 12(b) (6)*. Brady and Beauregard argue that the DWPC Act does not impose individual liability on members and managers of an LLC. Brady and Beauregard claim that the Law Firm was all times relevant operating as an LLC; that the DWPC Act creates liability for officers and agents of a *corporation* that knowingly permit the *corporation* to violate the Act; that an LLC is not the same as a corporation and therefore, members and managers of an LLC are not individually liable under the DWPC Act. Defendants also allege the Section 1108 claim is barred by the statute of limitations under 10 *Del. C.* §8111. Brady further claims the complaint against him should be dismissed because he was not the managing member of the law firm and was not responsible for the payment of wages or the reduction in wages to Chasanov. The DOL opposes the motion to dismiss. A hearing on the motions was held on February 19, 2010 and the Court reserved decision.

### **STANDARD OF REVIEW**

On a motion to dismiss, the court “must determine whether it appears with reasonable certainty that, under any set of facts which could be proven to support the claim, the plaintiffs would be entitled to relief.”<sup>1</sup> This analysis is limited to the facts

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<sup>1</sup> *Mortgage Electronic Registration Systems, Inc. v. Haase and Flanagan*, 2006 WL 1454807, \*1 (Del. Super.) (quoting *Vanderbilt Income & Growth Assoc. L.L.C. v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 612 (Del. 1996)). The Court of Common Pleas follows the same standard of review in a motion to dismiss as the Delaware Superior Court.

alleged in the complaint which are taken as true and interpreted in the light most favorable to the non-moving party.<sup>2</sup>

## DISCUSSION

The DWPC Act was enacted by the General Assembly to provide for payment of wages and to enforce their collection.<sup>3</sup> The DWPC Act affords employees with a statutory cause of action to collect wages due from an employer.<sup>4</sup> Plaintiffs have not sued the Law Firm that allegedly failed to pay Chasanov's wages. Plaintiffs argue that Brady and Beauregard individually should be considered the employers of Chasanov. Plaintiffs attempt to hold Brady and Beauregard personally liable for the wages under 19 *Del. C.* §1101(b) which states: "the officers of a *corporation* and any agents having the management thereof who knowingly permit the *corporation* to violate this chapter shall be deemed to be the employers of the employees of the *corporation*."<sup>5</sup> Defendants argue the DWPC Act does not apply to members and managers of an LLC. Plaintiffs oppose Defendant's argument on the basis that it is premature, because they are unable to determine by whom Chasanov was employed. Thus the Court must decide the nature and form of entity of the employer and whether the DWPC Act creates potential liability for Defendants.

Plaintiffs stated at oral argument that there is an issue regarding the entity of the employer. DOL argues that this motion should be denied, to give the parties an

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<sup>2</sup> *Id.*

<sup>3</sup> *Rypac Packaging Mach., Inc. v. Coakley*, 2000 WL 567895, \*13 (Del. Super.)(citing *State of Delaware v. Planet Insurance Co.*, 321 A.2d 128, 133 (Del. Super. 1974)).

<sup>4</sup> 19 *Del. C.* §1102.

<sup>5</sup> 19 *Del. C.* §1101(b) (*emphasis added*).

opportunity to conduct discovery and determine the employer's entity. However, in the complaint, Plaintiffs specifically refer to the employer as: "Brady, Beauregard and Chasanov, LLC." Additionally, Brady submitted, as "exhibit A," in his motion to dismiss, a copy of the Division of Corporations "Entity Details" for Brady, Beauregard & Chasanov, LLC. The Entity Details specify that the "entity kind" is a Limited Liability Company. Thus, Plaintiff's claim that there is an issue regarding the employer's entity type is contradicted by the allegations in the complaint and by Brady's "exhibit A." This contradiction leads the Court to conclude that plaintiff's claim is not reasonably supported by the facts for which they can recover on the merits.

Next, the Court must decide whether the members and managers of a Limited Liability Company can be held personally liable under the DWPC Act. The applicable section of the DWPC Act refers to the officers and agents of a *corporation*.<sup>6</sup> "It is well settled that statutory language is to be given its plain meaning and that when a statute is clear and unambiguous there is no need for statutory interpretation."<sup>7</sup> If there is no reasonable doubt as to the meaning of the words used, the statute is unambiguous, then the Court's role is limited to an application of the literal meaning of the words.<sup>8</sup> The statute is unambiguous. According to 21 *Del. C.* §1101(b), officers and agents of a *corporation* who knowingly permit the *corporation* to violate the DWPC Act are deemed to be the employers of the employees. Section

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<sup>6</sup> 19 *Del. C.* §1101(b).

<sup>7</sup> *State v. Skinner*, 632 A.2d 82, 85 (Del. 1993).

<sup>8</sup> *Zimmerman v. State*, 628 A.2d 62, 68 (Del. 1993).

1101(b) does not refer to LLC's. LLC's are different from corporations.<sup>9</sup> The legislature passed the LLC Act in 1992.<sup>10</sup> The DWPC Act was last amended in 1995.<sup>11</sup> The Delaware legislature has had ample opportunity to include LLC's within the purview of the statute and has not done so. In this instance, I find that Section 1101(b) does not have application to the facts. Moreover, 6 *Del. C.* § 18-303 which permits the creation of LLC and the regulation thereof, provides:

Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt[.]

Thus, the statute makes clear that the debt and obligations of a LLC is not that of the members or managers. If I were to conclude otherwise, it would be in direct contradiction of the express language of the statute. Accordingly, defendants Brady and Beauregard individually are not employers for purposes of Section 1101(b) of the DWPC Act. It is not necessary for the Court to address the issue of whether the Section 1108 claim is barred by the statute of limitations because the Court concludes that the DWPC Act does not give Plaintiffs a basis for recovery.

Accordingly, I conclude that the complaint failed to set forth any set of facts which, if proven, would support a claim which relief can be granted. For the foregoing reasons, Defendants' Motion to Dismiss is GRANTED.

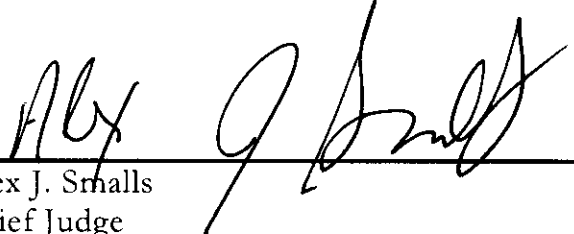
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<sup>9</sup> *Haley v. Talcott*, 864 A.2d 86, 96 (Del.Ch. 2004).

<sup>10</sup> 6 *Del. C.* §18-101 et. seq..

<sup>11</sup> Section 1101 was enacted in 1965 by 55 *Del. Laws*, c. 19. It was last amended by 70 *Del. Laws*, c. 103 in 1995.

SO ORDERED this 23<sup>rd</sup> day of March 2010.

  
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Alex J. Smalls  
Chief Judge

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