

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

July 5, 2005

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RE: *Martinez v. Gastroenterology Associates*
C.A. No. 04C-06-018 (THG)

Date Submitted: May 20, 2005

Dear Counsel:

On July 30, 1997, Dr. Oscar J. Martinez (hereinafter "Dr. Martinez") executed an employment agreement in connection with his employment with Gastroenterology Associates, P.A. (hereinafter "GA"). Dr. Martinez began work on August 1, 1997 and remained a treating physician with GA until December 31, 1999, when he retired and terminated the employment agreement. On August 6, 2002, Dr. Martinez requested that his final compensation under the Agreement be paid to him. Later that month, GA informed Dr. Martinez that no final compensation was due to him.

On June 15, 2004, Dr. Martinez instituted this civil action against GA seeking the final compensation payment. In his pleadings, Dr. Martinez claims that the failure of GA to make this final payment constitutes a violation of the Delaware Wage Payment and Collection Act. The

Act requires final payment to be made within 180 days of a former employee's departure and the failure to make such payment may warrant the application of liquidated damages. Dr. Martinez also contends that the failure to pay his "termination payment" is a violation of Paragraph 16 of the employment agreement between the parties.

GA contends that Dr. Martinez has not timely filed this action for recovery of wages. According to the Act, claims for unpaid wages must be made within one year of the employer's failure to make payment. 10 *Del. C.* § 8111. GA requests that this Court grant summary judgment based on Dr. Martinez's failure to comply with the statute of limitations. For the following reasons, the motion is GRANTED.

Dr. Martinez argues that the one year statute of limitation requirement should not apply to this action because the payment he is seeking does not constitute wages or compensation as contemplated by the Act. Wages are defined as "compensation for labor or services rendered by an employee, whether the amount is fixed or determined on a time, task, piece, commission, or other basis of calculation." 19 *Del. C.* 1101 (a)(2). Dr. Martinez contends that the termination payment he seeks should not be considered wages because it is not compensation paid by his employer, but rather fees collected from the services he provided to patients. This argument seems to place professional pay, like doctor fees, in a category apart from conventional wages collected by employees. Dr. Martinez also contends that since the employment agreement classifies the final payment as "termination payment", then it should not be considered compensation, but a separate payment outlined by the employment contract. The Court is not persuaded by either of these arguments.

When Dr. Martinez agreed to become a member of GA's practice group, he agreed to the pay arrangement used by that office. That pay arrangement takes the fees paid by patients and insurers, filters them through the practice and pays the doctors a predetermined percentage. The fact that the fees originated from individuals instead of a company, or that the services Dr. Martinez provided are of a professional nature does not change their classification as wages. Because the payment Dr. Martinez is seeking is directly related to the fees paid by his patients for his services, the compensation will be considered wages and the Wage Act will apply. This is consistent with this Court's recent decision in Swier v. Del. Bay Surgical Servs., 2004 Del. Super. LEXIS 395 (Del. Super. Ct., 2004).

Second, the employment agreement sets forth the compensation arrangement that governs departures from the practice. The payments contemplated by Paragraph 16 (b) of the employment agreement are a percentage of the accounts that are paid which are attributable to Dr. Martinez's services. The arrangement recognizes that in the medical practice, billings for medical services rendered may take many months to be processed and paid. The fact that the employment agreement allows a practitioner to collect the money due for his services, despite the backlog in payment collections, does not remove the compensation from being considered wages. The monies that Dr. Martinez is attempting to collect are wages, despite their classification as termination pay under the agreement.

The parties agree that the employment agreement called for final compensation to be paid at the termination of an 18-month period following Dr. Martinez's employment. The parties agree that this date was June 30, 2001. Dr. Martinez filed this action on June 15, 2004. To bring

an action for wages under the Act, a claim must be raised within one year of the employer's failure to pay. 10 *Del. C.* § 8111. Therefore, the statute of limitations for a wage claim under the Act expired on June 30, 2002. Even considering Dr. Martinez's request for payment on August 6, 2002 as the applicable date for non-payment of wages, the valid filing period for the case expired on August 6, 2003. Dr. Martinez did not file this action until the following year.

Therefore, the action under the Wage Claim Act is barred by the applicable statute of limitations.

Dr. Martinez also filed a breach of contract claim arising out of GA's failure to comply with Paragraph 16 (b) of the employment agreement. He argues that pleading breach of contract in the alternative permits him to rely on a broader statute of limitations. Typically, breach of contract actions must be raised within three years of the alleged breach. However, because this claim involves the payment of wages, it is preempted by the statute of limitations required by the Wage Act. 10 *Del. C.* § 8111. Breach of contract actions based on the non-payment of wages must be raised within one year following the employer's failure to pay. *Id.*

In *Rich v. Zeneca, Inc.*, the Federal District Court of Delaware found that

10 *Del. C.* § 8111 and its one year statute of limitations for wage, salary and benefit claims should not be read as being so comprehensive as to bar all claims arising out of the employer-employee relationship. Rather 10 *Del. C.* § 8111 is directed to claims alleging a breach of a duty to pay wages, salary or overtime for work performed.

845 F. Supp. 162, 166 (D. Del. 1994). The one year statute of limitations applies to all claims based on the recovery of payment for services rendered. Therefore, even claims based entirely on contractual agreements and not on the provisions of the Wage Act are subject to the shorter

statute of limitations. *Compass v. American Mirrex Corp.*, 72 F. Supp. 2d 462, 467 (D. Del. 1999).

Dr. Martinez's claim is directed solely at recovering the wages he earned during his employment with GA. Therefore it is subject to the one year statute of limitations and time barred. For the foregoing reasons, the summary judgment is GRANTED.

Very truly yours,

T. Henley Graves

THG/jfg

oc: Prothonotary