

<b>Soto v MDB Dev. Corp.</b>
2013 NY Slip Op 32019(U)
August 26, 2013
Supreme Court, New York County
Docket Number: 154319/2012
Judge: Eileen A. Rakower
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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: **HON. EILEEN A. RAKOWER**  
*Justice*

PART 15

Index Number : 154319/2012  
SOTO, EDWIN M.  
vs  
MDB DEVELOPMENT CORPORATION  
Sequence Number : 002  
DISMISS ACTION

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s) 1, 2, 3

Answering Affidavits — Exhibits \_\_\_\_\_ No(s) 4

Replying Affidavits \_\_\_\_\_ No(s) 5

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 8/24/13

  
\_\_\_\_\_, J.S.C.

**HON. EILEEN A. RAKOWER**

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

-----X

EDWIN M. SOTO,

Index No.  
154319/2012

Plaintiff,

- against -

**DECISION  
and ORDER**

Mot. Seq. 002

MDB DEVELOPMENT CORPORATION and  
MICHAEL DEBELLAS,

Defendants.

-----X

HON. EILEEN A. RAKOWER, J.S.C.

This is an action for wrongful termination. Plaintiff Edwin M. Soto (“Plaintiff”) seeks to recover for retaliation allegedly committed by Defendants MDB Development Corp. (“MDB”) and Michael Debellas (collectively, “Defendants”).

As alleged in the Complaint, Plaintiff was employed by MDB from April 15, 2008 to June 13, 2012. Plaintiff alleges that he complained to MDB about not receiving a raise in 2011 and not receiving two weeks of vacation pay, pursuant to a collective bargaining agreement between MDB and a union of which Plaintiff is a member. He states that on June 13, 2012, in retaliation for his wages and vacation pay complaints, MDB fired him. Plaintiff’s complaint alleges that “Defendants and their agents violated the New York State Labor Law, 215 et seq. by retaliating against Plaintiff and terminating his employment due to his complaints to his employer about his proper wages not being paid.”

Defendants now move for an Order pursuant to CPLR §3211(a)(7) to dismiss the Complaint.

CPLR §3211 provides, in relevant part:

- (a) a party may move for judgment dismissing one or

more causes of action asserted against him on the ground that:

- (7) the pleading fails to state a cause of action; or

In determining whether dismissal is warranted for failure to state a cause of action, the court must “accept the facts alleged as true ... and determine simply whether the facts alleged fit within any cognizable legal theory.” (*People v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91[1st Dept. 2003]) (internal citations omitted) (*see* CPLR §3211[a][7]).

Section 215 of the New York State Labor Law states:

1. (a) No employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge threaten, penalize, or in any other manner discriminate or retaliate against any employee (i) because such employee has made a complaint to his or her employer...that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this chapter, or ... (ii) because such employer or person believes that such employee has made a complaint to his or her employer ...that the employer has violated any provision of this chapter.

“In order to state a claim under New York State Labor Law Section 215, a plaintiff must adequately plead that while employed by the defendant, he or she made a complaint about the employer’s violation of New York Labor Law and was terminated or otherwise penalized, discriminated against, or subjected to an adverse employment action as a result.” *Ting Yao Lin v. Hayashi II, Inc.*, 2009 WL 289653, \*7 (S.D.N.Y. 2009).

In their motion, Defendants contend that the Complaint should be dismissed because it fails to allege a specific violation of a provision of the Labor Law.

Accepting the allegations as true, Plaintiff has made out a claim under New York State Labor Law Section 215. Here, the Complaint states, “From 2011 through the end of his employment, Plaintiff called Mr. Rider’s office approximately twenty (20) times to complain about not receiving the increased wages that he was owed and that he had not received the two (2) weeks of vacation pay that he had earned. In response to Plaintiff’s multiple complaints that he was owed a raise for 2011 and two (2) weeks of vacation pay, Plaintiff was warned by Jonathan DeBellas, Plaintiff’s foreman, that he should not continue to make those calls.” The Complaint further

alleges that Plaintiff was fired as a direct result of his complaints regarding the nonpayment of wages. In Plaintiff's opposition papers, he specifies that he is claiming that Defendants violated Labor Law Sections 190 and 198-c by failing to pay the wages and vacation he alleges he was entitled to.

Wherefore it is hereby

ORDERED Defendants' motion to dismiss is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: 8/26/13

  
\_\_\_\_\_  
EILEEN A. RAKOWER, J.S.C.