

**Pierre v Mary Manning Walsh Nursing Home Co.,  
Inc.**

2014 NY Slip Op 30090(U)

January 13, 2014

Sup Ct, New York County

Docket Number: 100143/2010

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

ANGELA PIERRE, PAULA ALEXANDER, NELDA BATOLO, CATHERINE BUFFALANO, YUNG-KUO CHAO, MERYLE CHAPARRO, DONNA DAVIS, GEORGE DUAH, ELLEN DUNCAN, ROWENA EGUIA, LISA HAYES, MARY HUGHES, MARILYN JACKSON, DARLY LEGAGNEUR, KATHLEEN MCGUINESS, ELLEN MEJIA, BEATRICE QUARTY, ERLINDA RASHID, MAUREEN ROBINSON, LUTICTA ROMULO, MARGARET STAUNTON, MARIETA TRIANES, SONIA VALCOS, SEVILLA VILAR, THELMA VILLANEUVA, MARTA VILLARREAL, NELLY YANES and ROMA ZELKAS,

Index No.: 100143/2010

Motion Date: 03/19/13

Motion Seq. No.: 002

Petitioners,

for a Judgment Compelling Arbitration under Article 75 of the Civil Practice Law and Rules

- v -

MARY MANNING WALSH NURSING HOME CO., INC., and ARCHCARE,

Respondents.

The following papers, numbered 1 to 2 were read on this motion to dismiss the petition

- Notice of Petition/Order to Show Cause - Affidavits - Exhibits
- Notice of Cross Motion/Answering Affidavits - Exhibits
- Replying Affidavits - Exhibits

**UNFILED JUDGMENT**  
 PAPERS NUMBERED  
 This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Cross-Motion:  Yes  No

Upon the foregoing papers,

In this action, plaintiffs allege a violation of section 198 of the New York Labor Law, breach of contract and seek damages and a declaratory judgment. Plaintiffs move for summary judgment in their favor, and defendants cross-move for summary judgment

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
 Check if appropriate:  DO NOT POST  REFERENCE

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

dismissing the complaint.

Plaintiff Angela Pierre (Pierre) was a Registered Nurse who was formerly employed by defendant Mary Manning Walsh Nursing Home Co., Inc. (MMW) from October 24, 1973 until her retirement, effective September 5, 2009. The remaining plaintiffs are currently employed by MMW as Registered Nurses, Licensed Nurses, Pharmacy Technicians, Registered Dieticians, Secretaries and Occupational Therapists.

MMW is a nursing home located at 1339 York Avenue, New York, New York. Defendant Archcare is a health care organization affiliated with the Archdiocese of New York, which sponsors, operates and maintains MMW.

Defendants agreed to pay plaintiffs a pension benefit as part of plaintiffs' compensation.

Plaintiffs were participants in two retirement plans, the Archdiocesan Pension Plan (APP) and a supplemental plan, the Mary Manning Walsh Home Retirement Income Plan (MMW Plan).

The MMW Plan provides that an employee's pension benefit is fully vested, or cannot be forfeited, after five years of "credited service." A "Participant" in the MMW Plan is defined as "any employee covered by the Plan". The MMW Plan defines Employee as "any lay employee in the employ of the Employer excluding employees who are covered by another plan providing retirement benefits which is maintained by reason of a collective bargaining agreement, or who are covered by another Qualified Pension Plan to which the Employer contributes other than the Archdiocesan Pension Plan and persons who regulate their own working schedule." "Credited service" is defined as "that portion of a Participant's service which is included for purposes of determining the amount of his accrued retirement income." Service is defined as "the period of continuous service with the Employer".

In a memorandum of agreement (Union Agreement), dated July 2, 2008, MMW and 1199 SEIU United Healthcare Workers East (Union) agreed that, effective January 1, 2009, MMW would contribute on plaintiffs' behalf to the 1199 SEIU Health Care Employees Pension Fund (Union Plan). Therefore, as of January 1, 2009, Plaintiffs were no longer participants in the MMW Plan.

Plaintiffs state that in late 2008, MMW advised plaintiffs that it was reducing their accrued vested benefit from the MMW Plan, that their benefits were frozen as of December 31, 2007, and that plaintiffs would not accrue any benefits based on service after that date. After January 1, 2009, plaintiffs' benefit from the MMW Plan would be offset by the benefit provided by the Union Plan.

Upon her retirement, Pierre was not credited for the year she worked for MMW between January 1 and December 31, 2008, which reduced her earnings. Furthermore, her earnings derived from benefits from the Union Plan were reduced by MMW. Plaintiffs contend that this action is a violation of state statute, section 198 of Labor Law, in which employees have a right to recover their full wages. They argue that once funds are vested, such benefits cannot be forfeited by an employer. Plaintiffs also assert that the freeze and offset violated the terms of the MMW Plan until the time that they were no longer qualified as Participants in that Plan. Although only Pierre has retired as of this time, the other plaintiffs have been advised that the freeze and offset applies to their pension benefits. Thus, plaintiffs assert that all of their claims are ripe for adjudication.

Upon moving for summary judgment on a previous motion before this court, plaintiffs sought compensatory damages for Pierre in the amount equal to the reductions to her benefits, and a judgment declaring that defendants' refusal to credit plaintiffs'

service for 2008, and the reduction of plaintiffs' vested benefit by the amount received from the Union Plan, were violations of the Plan and are illegal.

Defendants opposed the original motion and cross-moved for summary judgment for dismissal. Their grounds for dismissal were the following: the plain language of the MMW Plan and other related documents indicated that, with respect to the integration of the APA Plan, the MMW Plan and the Union Plan, there was a legal rationale for a freeze and an offset; plaintiffs were precluded from litigating this issue as union members due to the arbitration provision in the Union Agreement and/or section 301 of the Labor-Management Relations Act ("LMRA"); and the claims of all plaintiffs, except Pierre, were premature and subject to dismissal.

In reply, plaintiffs argued that the freeze and offset were invalid under the Union Agreement and contrary to the terms of the MMW Plan. They argued that the subject pension claims were not covered by the collective bargaining agreement and not subject to the arbitration provision in that agreement. They also argued that the claims were not subject to preemption under LMRA Section 301 and were sufficiently ripe for a declaratory judgment.

By Order dated April 14, 2011 ("the Order"), this court found that the Union Agreement covered the particular pension issues in this action and that the parties were subject to the arbitration provision of the Union Agreement. Thus, the Order denied plaintiffs' motion for summary judgment, and granted the cross motion for summary judgment on the ground that the parties were bound to pursue arbitration rather than litigation.

On appeal, the Appellate Division, First Department, modified the Order and denied the cross motion and remanded this case to this court (see 93 AD3d 541 [1st Dept 2012]). The

Appellate Division held that though the plaintiffs' Union Agreement (i.e., the July 2, 2008 memorandum of agreement), incorporated the collective bargaining agreement that pertained to other employees of MMW by reference, the plaintiffs' Union Agreement was separate and apart from such collective bargaining agreement that pertained to other MMW workers. Only the separate collective bargaining agreement, which related to that different bargaining unit of employees from plaintiffs group, contained an arbitration provision. The Appellate Division concluded that as the Union Agreement that concerned the plaintiffs contained no express arbitration clause<sup>1</sup>, plaintiffs were not compelled to arbitrate under such agreement, and could litigate this matter.

Plaintiffs move for summary judgment based upon the decision of the Appellate Division, claiming that by examining the merits of this action, the court must agree with their argument that defendant employer's effort to freeze and offset pension benefits is a violation of the pension agreement and statutory law. Plaintiffs argue that the pension plan is clear about the status of vested pension benefits. Plaintiffs claim that MMW's efforts to modify vested benefits must conform to agreed-to provisions of their Union Agreement, and that the purported freeze or offset is invalid and unenforceable under Labor Law § 198(3). They contend that there is no written agreement to alter benefits in the Union Agreement, and any that alleged oral agreement would be a violation of the parole evidence rule, the statute of frauds and the MMW Plan. They urge that the effort to offset vested benefits is a violation of the MMW Plan, and therefore a breach of their contractual rights.

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<sup>1</sup>Defendants, in their papers before this court, have asserted that this argument about a separate agreement was raised by plaintiffs' counsel for the first time on appeal. However, defendants never moved for any relief from the Appellate Division decision.

Defendants oppose the motion and cross-move for summary judgment for the second time. They state that the freeze and offset were permitted in the Union Agreement, and that the Union assented to these measures. Defendants argue that the Union is a proper party to represent plaintiff and is plaintiffs' exclusive and authorized collective bargaining representative. Defendants continue to aver that the pension dispute is exclusive subject of binding arbitration, notwithstanding the Appellate Division ruling, and is subject to preemption under federal labor law.

Defendants assert that the parol evidence rule and the statute of frauds do not preclude the enforcement of the freeze. According to them, the parole evidence rule is not applicable where, as here, there is no fully integrated agreement that contains all the essential terms of the contract. Defendants argue that there was no integrated agreement since plaintiffs' Union Agreement was preliminary, and executed in anticipation of a further agreement which would finalize its terms. Defendants also contend that the rule is inapplicable where there is no issue of a false claim, perjury or infirmity of memory. Defendants state that likewise the statute of frauds is inapplicable where there is no issue of fraud, deception, mistake or perjury. Even if applicable, they claim that dismissal based on the statute of frauds would be premature in the absence of discovery.

Alternatively, defendants request a stay of proceedings in this action pending resolution of a grievance process initiated by MMW. Defendants also argue that the Union is a necessary party to this action, and that the Union should be joined before summary judgment is granted.

In response to post submission letters from both sides, the court heard further oral argument on the herein motions on March 19, 2013. At such oral argument, the parties informed the court



that an arbitration demand was served by MMW upon the Union, a non-party to this action, concerning the issues before this court, and an award was issued following such arbitration. The parties consented to the consideration of the award in this court's deliberations on the motions at bar.<sup>2</sup>

MMW and the Union, a non-party to this action, agreed to arbitrate the matter of the freeze and the offset. Specifically, they sought a determination as to whether MMW had violated plaintiffs' Union Agreement when it sought the freeze and the offset of the aforesaid pension benefits.

First, in his opinion, the arbitrator decided that plaintiffs' dispute was subject to the arbitration provision of the collective bargaining agreement. While the Union Agreement executed by plaintiffs did not expressly contain an arbitration provision, the arbitrator noted that the Union Agreement provided the following: "Except as specifically modified herein, all terms of the existing MMW agreement shall apply." The arbitrator held that the applicable MMW agreement was the collective bargaining agreement executed by the Union as representative of the other MMW employees, finding that the Union was subsequently certified to represent the unit of employees that include the plaintiffs at bar. He observed that the plaintiffs in this pending litigation were a group of approximately 30 of the 90 employees in the bargaining unit- not the Union, the party to the arbitration. He noted that plaintiffs' counsel had been invited by Union counsel to participate in the arbitration, but did not attend.

Next, the arbitrator examined the Union negotiations, which resulted in the integration of the pension plans. He concluded

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<sup>2</sup> MMW sought confirmation of the award in the United States District Court, Southern District of New York. The award was confirmed without opposition by order dated April 30, 2013. Judgment pursuant to such order was entered on May 9, 2013.



that sufficient evidence showed that the parties involved, the Union and MMW, had agreed to the freeze and offset. He found that the parties agreed that the only way to reach an agreement that provided the wage and benefit package the Union sought was to suspend or freeze contributions to the MMW Plan for the year 2008, and to delay employer contributions to the Union Plan until January 1, 2009. The arbitrator determined that the freeze and offset generated some funds for MMW, enabling it to afford to agree to the improvements specified in the Union Agreement. Moreover, he found that the MMW Plan explicitly provided for an offset under the integrated structure of the existing pension plans.

In his award, the arbitrator held that MMW did not violate the Union Agreement when it sought and effected the freeze and offset of the pension benefits of its employees.

During the further oral argument, plaintiffs' response to the award was that the arbitrator interpreted the Union Agreement but not the MMW Plan, so the award is not relevant to their claim and the relief sought in this action. However, the arbitrator did interpret the MMW Plan in his determination, holding that such plan, as amended, allowed for an offset of the pension benefits.

This court, mindful of the possible preclusive effect of the federal judgment that has confirmed the award (see Gomez v Brill Sec, Inc, 95 AD3d 32 [2012]), is still bound by the ruling of the Appellate Division, even if it has taken a position contrary to the award of the arbitrator. The Appellate Division concluded that plaintiffs are not confined to arbitration pursuant to the collective bargaining agreement, and can sue here as individual employees based on the MMW Plan, despite their union membership.

Plaintiffs cite two provisions in their pension plan that they contend are significant with respect to their vested pension

benefits. They are as follows:

"Inalienability of Pensions or Benefits. The right of any Employee, either before or after retirement, or of any beneficiary of such Employee, to receive or have applied to his use any payment from the Fund becoming due under the provisions of this Plan shall not be alienated, assigned, pledged, sold, transferred, anticipated, disposed of or encumbered in any way" Section 13.8 (E).

"The Sponsor (MMW) reserves the right to amend or modify the Plan in whole or in part from time to time by written resolution adopted by the Pension Committee of the Plan Sponsor. No such action shall adversely affect the accrued benefits of Participants, provided, however, that the Sponsor may make any amendment or modification (of retroactive effect, if necessary) to establish and maintain the Plan's qualification under Section 401 (a) of the Internal Revenue Code." Section 14.1

Plaintiffs argue that MMW violated the terms of the pension plan by implementing the freeze and offset. MMW's defenses, that it had acted as a result of an agreement with the Union, and such negotiations resulted in an improved pension position for employees after the certification of the Union, are alleged to be unavailing as a matter of law.

As the arbitrator found in his determination, there was an amendment in the MMW Plan, which provides as follows: "Effective July 1, 2004, ... Section 2.1 (M) and Section 4.1 were amended to credit transferred employees with Service at various other CHCS organizations and provide for an offset for benefits under the other CHCS organization's qualified defined benefit plan." The arbitrator further stated that the offset of the benefits from the MMW Plan, effective January 1, 2009, was in conjunction with the transfer of the employees from the earlier pension plans to the Union Plan.

The court finds that with respect to the offset, MMW had authority to implement such offset based on amendments to

plaintiffs' then existing pension plan. However, it is not the case that the pension plan, in its current form, provided MMW with the authority to impose a freeze on pension benefits. There is no express provision in the agreement providing such authority.

In analyzing the documents related to the pension benefits, the court finds that the offset of such benefits was authorized pursuant to plaintiffs' pension plan, but not the one-year freeze. MMW does not assert, for example, that the freeze was necessary in order for plaintiffs' pension plan to meet qualifications under the Internal Revenue Code.

Plaintiffs' motion for summary judgment will be granted to the extent that MMW's refusal to credit plaintiffs' services with respect to the aforesaid freeze was a violation of the MMW Plan. Plaintiff Pierre, the retired employee is also entitled to compensatory damages equal to benefits denied her during the period of the freeze. Defendants' cross motion for summary judgment shall be granted to the extent that MMW's offset of pension benefits was not a violation of the MMW Plan.

Accordingly, it is

ORDERED that the motion for summary judgment is granted in part; and it is further

ORDERED, ADJUDGED AND DECLARED that defendant Mary Manning Walsh Nursing Home Co. Inc.'s refusal to credit plaintiffs' services with respect to the one year freeze of pension benefits was a violation of the pension plan; and it is further

ORDERED that plaintiff Angela Pierre is entitled to compensatory damages equal to benefits denied her during the period of the freeze; and it is further

ORDERED that the cross motion for summary judgment is granted in part; and it is further

ORDERED, ADJUDGED AND DECLARED that defendant Mary Manning

Walsh Nursing Home Co. Inc's decision to offset plaintiffs' pension benefits was not a violation of plaintiffs' pension plan.

This decision constitutes the order of the court.

Dated: January 13, 2014

ENTER:

*Debra A. James*  
J.S.C.

**DEBRA A. JAMES**

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).