Woodward v Millbrook Ventures LLC
2017 NY Slip Op 30075(U)
January 10, 2017
Supreme Court, New York County
Docket Number: 652052/2015
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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GREGORY C. WOODWARD,

Plaintiff,

- v -

MILLBROOK VENTURES LLC
(Dept. of State ID #2989961)
MILLBROOK VENTURES LLC
(Dept. of State ID #3678027)
STEPHEN A. GAROFALO
PEDRO TORRES, JR.,

Defendants.

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Index No.
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DECISION and ORDER

Mot. Seq. 002

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

Plaintiff, Gregory C. Woodward ("Woodward" or "Plaintiff"), brings this action to recover unpaid wages allegedly due from defendants, Millbrook Ventures LLC (Dept. of State ID #2989961), Millbrook Ventures LLC ("Millbrook Ventures"), (Dept. of State ID #3678027), Stephen A. Garofalo ("Garofalo"), Pedro Torres, Jr. ("Torres") (collectively, "Defendants").

Plaintiff commenced this action on June 10, 2015, by Summons and Complaint. Defendants interposed an answer to Plaintiff's complaint on July 14, 2015.

Plaintiff now seeks to amend the Complaint to assert Labor Law violations against individual defendants Garofalo and Torres, based on the same allegations made against Millbrook Ventures. Defendants oppose.

As alleged in the original complaint, Garofalo hired Plaintiff in an "executive capacity" to work on developing property that Garofalo owned in Amenia, Dutchess County, for use as a resort. Plaintiff was hired "to assist with creation of an investor package for the project, pursue private and institutional investors, and pursue a municipal bond offering." Garofalo and Torres created Millbrook Ventures "to market the project." On August 6, 2009, Plaintiff and Millbrook Ventures by its managing member signed an employment agreement; the agreement stated it was between plaintiff and Millbrook Ventures. The agreement provided that the agreement was effective on August 1, 2009, and was to end on August 1, 2010. The agreement stated that "Company agrees to pay Employee a salary at the rate of Two Hundred forty Thousand $240,000 Dollars US per annum, payable in twelve equal monthly installments of Twenty Thousand $20,000 on the first of each month." The agreement contained a rider that was also signed by Plaintiff and Millbrook Ventures by its authorized signatory on August 6, 2009. The rider stated that "the company shall pay a stipend to Employee for a period of three months starting August 1st 2009 at a rate of $20,000.00 per month as follows: $5,000.00 per month, with remaining $15,000.00 per month accruing to the benefit of Employee, to be paid to Employee at such time the company has raised any funds from equity which enables the company to draw funds out of escrow." Plaintiff alleges that he worked for an entire year starting August 1, 2009, was paid as his compensation $5,000 per month of the $20,000 owed to him for each of the 12 months commencing August 2009, and was never paid the $15,000 balance owed to him for any of the 12 months. Plaintiff further alleges that "[t]he failure to pay the plaintiff the $15,000 balance of the $20,000 for any of the said months was willful and deliberate." Plaintiff further alleges that "[t]he $15,000 per month that the rider stated that plaintiff was not to be immediately paid was an illegal deduction from wages under the New York Labor Law." Plaintiff claims he is therefore entitled to payment of $180,000 principal - the $15,000 times the 12 months that it was not paid - plus Labor Law liquidated damages of 25% of the $180,000 (as in effect prior to the amendment effective in 2011, increasing the penalty to 100%) plus Labor Law damages of attorney fees.

Based on these allegations, the first cause of action of the original complaint alleges that Millbrook Ventures violated Labor Law 193, "Deductions from wages;" the second cause of action alleges that Millbrook Ventures breached the rider of the parties' Agreement by failing to pay the $15,000 balance for each of the 12 months;

and the third cause of action alleges that Garofalo and Torres are personally and individually liable to Plaintiff because they did not disclose in their Agreement with Plaintiff that they were acting on behalf of Millbrook Ventures.

Here, Plaintiff seeks to amend the Complaint to add a fourth cause of action to assert Labor Law violations against individual defendants Garofalo and Torres. The proposed fourth cause of action alleges that Garofalo "made the decision to hire plaintiff" and Torres "signed plaintiff's employment agreement." It further alleges that they were employers of plaintiff under the Labor Law and "each had the power to hire and fire plaintiff," "each supervised the plaintiff and controlled plaintiff's work schedule and conditions of employment," "each determined the rate and method of payment of the plaintiff," and "each maintained employment records of the plaintiff." It further alleges that while Plaintiff worked at Millbrook Ventures, Garofalo and Torres were the only individuals in charge of hiring, firing, and terminating the employment of Millbrook Ventures' employees, "supervised and controlled all employee work schedules and conditions of employment," negotiated Plaintiff's employment agreement including the section for vacation days, "had told plaintiff the time of work that the workday started and when plaintiff was required to be at the Millbrook Ventures LLC office," "determined the plaintiff's rate of pay," "furnished plaintiff with his pay checks and tax documents, either individually or through the Millbrook Ventures LLC account," and no individuals at Millbrook Ventures other Garofalo and Torres maintained employment records.

Defendants oppose Plaintiff's motion to amend on the grounds that the new cause of action is barred by the equitable doctrine of laches, is time barred, and is without merit.

CPLR § 3025 permits a party to amend or supplement its pleading "by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." (CPLR § 3025[b]). Pursuant to CPLR § 3025(b), such "leave shall be freely given upon such terms as may be just including the granting of costs and continuances." (CPLR § 3025[b]; *Konrad v. 136 East 64th Street Corp.*, 246 A.D.2d 324, 325 [1st Dep't 1998]). In addition, CPLR § 1003 permits parties to be to be added "at any stage of the action by leave of court". (CPLR § 1003).

Leave to amend a pleading must be denied where the proposed amendment is plainly lacking in merit. (*See Bd. of Managers of Gramercy Park Habitat Condo. v.*

Zucker, 190 A.D.2d 636 [1st Dept. 1993]). Thus, "[w]here no cause of action is stated, leave to amend will be denied." (*Konrad v. 136 E. 64th St. Corp.*, 246 A.D.2d 324, 325 [1st Dep't 1998]).

Pursuant to CPLR § 203(f), "[a] claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading." (CPLR § 203[f]). In a case where a proposed new defendant is already a party to the action, with "notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended complaint", (CPLR § 203[f]), the three-step inquiry typically used to determine whether claims asserted in an amended pleading "relate back" to a prior pleading, (*see, e.g.*, *Buran v. Coupal*, 87 N.Y.2d 173, 178 [1995]), does not apply. (*US Bank N.A. v. Gestetner*, 103 A.D.3d 962, 964 [3d Dep't 2013]).

Section 193 of the NYLL precludes "employers" from making "any deduction" from the "wages" of an "employee", unless the deduction is required by law or regulation, or specifically authorized by the employee for the employee's benefit. (Labor Law § 193[1][a]-[b]; *Hudacs v. Frito-Lay, Inc.*, 90 N.Y.2d 342, 347 [1997]). For purposes of this statute, "'[e]mployee' means any person employed for hire by an employer in any employment", and the term "employer" "includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service." (Labor Law §§ 190[2]-[3]). In addition, the NYLL defines "wages" to mean:

> [T]he earnings of an employee for labor or services rendered, regardless of whether the amount of earnings is determined on a time, piece, commission or other basis. The term 'wages' also includes benefits or wage supplements as defined in section one hundred ninety-eight-c of this article, except for the purposes of sections one hundred ninety-one and one hundred ninety-two of this article.

(NYLL § 190[1]). Section 198(1-a) of the Labor Law permits attorney's fees and additional liquidated damages where an "employee" prevails in any action instituted in the courts upon a "wage" claim. (NYLL § 198[1-a]). Although there is no private right of action against corporate officers for violations of Article 6 of the Labor Law,

(*Bonito v. Avalon Partners, Inc.*, 106 A.D.3d 625, 625-26 [1st Dep't 2013] [citations omitted]), a plaintiff is not precluded from asserting Labor Law claims against an individual officer in his capacity as an employer, rather than as a corporate officer. (*Id.*).

"[A]n employee is someone who works for another subject to substantial control, not only over the results produced but also over the means used to produce the results. A person who works for another subject to less extensive control is an independent contractor." (*Gonzalez v. Personal Touch Moving, Inc.*, 2016 WL 3144081 [N.Y.Sup. January 1, 2016], *3). "The critical inquiry in determining whether an employment relationship exists pertains to the degree of control exercised by the purported employer over the results produced or the means used to achieve the results." (*Id.*). "Factors relevant to assessing control include: (1) whether the worker worked at his own convenience or was on a fixed schedule; (2) whether the worker was free to engage in other employment; (3) the degree of skill and independent initiative required of the job; (4) whether the worker was on the employer's payroll and/or received employee benefits; and (5) whether the worker was required to wear a company uniform, follow company procedures, attend mandatory meetings, sign in and out of the office, and coordinate vacation time with a supervisor." (*Id.*).

Plaintiff's proposed fourth cause of action seeks to amend the complaint to add a direct claim against Garofalo and Torres, for making an unauthorized deduction from his wages in violation of Section 193. The proposed fourth cause of action is not plainly lacking in merit, nor will allowing the amendment prejudice the parties as discovery is still in its early stages. Lastly, the proposed claim is not time barred pursuant to CPLR 203(f). Plaintiff's proposed cause of action is based on the same allegations asserted in Plaintiff's first cause of action of its original complaint as against Millbrook Ventures, Garofalo and Torres were already parties to this action, and the original pleading gave notice of the transactions or occurrences to be proved pursuant to the amended pleading. There is no allegation that the claim against Millbrook Ventures was time barred when the action was brought.

Accordingly, in light of CPLR § 3025(b)'s directive that leave to amend be freely given, Plaintiff's amended verified complaint in the proposed form annexed to Plaintiff's moving papers is accepted and Plaintiff is permitted to amend the complaint to add the proposed fourth cause of action against Garofalo and Torres.

Wherefore, it is hereby,

ORDERED that Plaintiff's motion is granted; and it is further

ORDERED that the summons and amended verified complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this Order with a notice of entry thereof and Defendants shall serve an answer to the amended pleading twenty days thereafter.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: January 10, 2017

EILEEN A. RAKOWER, J.S.C

HON. EILEEN A. RAKOWER