

Patel v Maybank Kim Eng Sec. USA Inc.

2024 NY Slip Op 31652(U)

May 10, 2024

Supreme Court, New York County

Docket Number: Index No. 651062/2023

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

-----X

ANKIT PATEL,

Plaintiff,

- v -

MAYBANK KIM ENG SECURITIES USA INC.,

Defendant.

-----X

INDEX NO. 651062/2023

MOTION DATE 06/01/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26

were read on this motion to DISMISS.

LOUIS L. NOCK, J.S.C.

Plaintiff commenced this action seeking to recover unpaid severance pay pursuant to a severance agreement between the parties. Defendant now moves to dismiss the second cause of action of the amended complaint, for violations of Labor Law §§ 193 and 198, leaving unchallenged at this time the first cause of action for breach of contract. Upon the foregoing documents, the motion is granted, and the second cause of action is dismissed, in accordance with the following memorandum.

The initial employment agreement between the parties provides that plaintiff would serve as “Executive Director (IB4), Asian Equities” for defendant, at a salary of \$250,000.00, as well as sundry additional benefits (employment agreement, NYSCEF Doc. No. 17 at 1). At the time he was terminated, he was earning a yearly salary of \$252,492.00 (complaint, NYSCEF Doc. No. 1, ¶ 9). In his complaint, plaintiff states that the parties entered into a written severance

agreement,¹ which provided, among other things, that he would receive a one-time payment of five months of his base salary (*id.*, ¶ 13). On January 1, 2023, defendant paid plaintiff \$63,123.00, equivalent to three months' salary, leaving an unpaid balance \$42,082.00 (*id.*, ¶ 15). Patel states that defendant has refused demand for the unpaid balance.

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction” (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). “[The court] accept[s] the facts as alleged in the complaint as true, accord[ing] plaintiff the benefit of every possible favorable inference, and determin[ing] only whether the facts as alleged fit within any cognizable legal theory” (*id.* at 87-88). Ambiguous allegations must be resolved in plaintiff’s favor (*JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015]). “The motion must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] [internal citations omitted]). “[W]here ... the allegations consist of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, they are not entitled to such consideration” (*Ullmann v Norma Kamali, Inc.*, 207 AD2d 691, 692 [1st Dept 1994]).

Severance pay, as is sought here, is considered a wage supplement (Labor Law § 198-c [2]). Claims for such supplements may not be made under the Labor Law by “any person in a bona fide executive, administrative, or professional capacity whose earnings are in excess of one thousand three hundred dollars a week” (Labor Law § 198-c [3]; *Pachter v Bernard Hodes Group, Inc.*, 10 NY3d 609, 615 [2008] [“section 192(2) removes executives who earn more than \$600 per week from the requirement that wages be paid in cash to “any employee” and section

¹ The agreement itself is not in the record.

198–c (3) contains a similar exclusion relating to benefits and wage supplements”]; *Riggi v Charlie Rose Inc.*, 212 AD3d 486 [1st Dept 2023]). Plaintiff served as an Executive Director for plaintiff, and at the time of his termination was earning a yearly salary of \$252,492.00, or \$4,855.62 per week, well in excess of the statutory bar.

Plaintiff argues that this interpretation of the statute has either been abrogated by or is in conflict with certain amendments to the Labor Law that became effective in 2021. However, none of the amendments mention section 198-c’s bar on claims for wage supplements by executives, or alter the definition of wage supplements to exclude severance pay. “The repeal of a statute by implication is not favored by law, for when the legislature intends to repeal an act it usually says so expressly” (*Matter of City of Schenectady v New York State Pub. Empl. Relations Bd.*, 30 NY3d 109, 117 [2017]). “Generally, a statute is deemed impliedly repealed by another statute only if the two are in such conflict that it is impossible to give some effect to both” (*id.*). Here, no such conflict exists.

Accordingly, it is hereby

ORDERED that the motion to dismiss is granted and the second cause of action of the amended complaint is dismissed; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 1166, 111 Centre Street, New York, New York, on June 12, 2024, at 10:00 AM.

This constitutes the decision and order of the court.

ENTER:



<u>5/10/2024</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> OTHER
	<input type="checkbox"/>		<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/>		<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/>		<input type="checkbox"/> REFERENCE