

Ingvarsdottir v Bedi
2017 NY Slip Op 30825(U)
April 21, 2017
Supreme Court, New York County
Docket Number: 155571/2016
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. CAROL R. EDMEAD
J.S.C.

PRESENT: _____
Justice

PART 35

Index Number : 155571/2016
INGVARSDOTTIR, HELGA
vs
BEDI, VICKRAM A
Sequence Number : 003
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE 3/7/17
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). _____
Answering Affidavits — Exhibits _____	No(s). _____
Replying Affidavits _____	No(s). _____

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

Plaintiff Helga Ingvarsdottir (“plaintiff”) moves pursuant to CPLR 3212 for summary judgment against defendants Vickra M A. Bedi (“Bedi”) and Datalin K Computer Products, Inc. (“Datalink”) (collectively, defendants”).

Defendants cross move pursuant to CPLR 3211 to dismiss the complaint for failure to state a cause of action.

Factual Background

Plaintiff alleges that in February 2012, she filed a complaint with the Wage and Hour Division of the United States Department of Labor (“USDOL”) seeking unpaid wages, interest, and penalties against Datalink. On August 6, 2012, the Wage and Hour Division concluded its investigation and found that defendants were liable to plaintiff for \$237,066.06 in unpaid wages.

Both the plaintiff and defendants appealed this determination to the U.S. Department of Labor, Chief Administrative Law Judge. After conducting a trial, on August 4, 2014 U.S. Department of Labor Administrative Law Judge Lystra Harris (“ALJ Harris”) issued a Decision and Order holding the following: (1) plaintiff is owed \$341,693.03 in back wages; (2) such back wages are owed to plaintiff for the period of May 20, 2005, to May 15, 2011; (3) Bedi is individually and personally jointly liable to plaintiff along with Datalink; (4) defendants owe prejudgment compound interest on the accrued back wages to be calculated as provided by 26 U.S.C. sec. 6621; and (5) defendants owe post judgment interest calculated as provided by 26 U.S.C. sec. 6621 until satisfaction. The Decision and Order also found that plaintiff should have been paid wages at the following annual rates: (1) \$61,152 for the period of May 20, 2005, to May 15, 2008; and (2) \$59,717 for the period of May 16, 2008, to May 15, 2011.

Dated: _____, J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

FOR THE FOLLOWING REASON(S):

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

Defendants filed a petition for review of ALJ Harris' Decision and Order to the Administrative Review Board of the U.S. Department of Labor (the "ARB").

On February 29, 2016, the Administrative Review Board issued and served a Final Decision and Order affirming ALJ Harris' Decision and Order except for decreasing the wages to be paid by three (3) days (the "ARB Award").

Thereafter, plaintiff commenced this action by moving pursuant to CPLR 3213, which permits a plaintiff to serve with the "summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint," and obtain judgment on a judgment or other similar instrument. The Court denied summary judgment at that juncture, finding that plaintiff failed to establish "that the time [for defendant] to further challenge the Board's order is exhausted," such that "the Board's order was "incontestible under *Maldonado v. Man-Dell Food Stores*, for purposes of CPLR 3213 relief" (*see* order dated December 1, 2016, pages 2, 4).

Plaintiff now argues that summary judgment is warranted based on the ARB Award. Plaintiff maintains that the ARB Award constitutes the final agency action of the Department of Labor in her H-IB wage claim. Defendants have neither filed a petition for review nor obtained a stay of this Final Decision and Order. And, defendants cannot meet the standards necessary to obtain a stay in any event. Further, allowing defendants to avoid judgment merely because they might appeal the ARB Award would violate plaintiff's right to due process. In the absence of a stay order from the ARB or a federal district court, plaintiff's Award is immediately collectible, even if an appeal of the ARB award is pending or potentially possible. Thus, plaintiff is eligible for judgment in the amount of the award plus interest.

In opposition, defendants contend that they have not yet sought review of the ARB Award, but plan to do so. Further, the complaint fails to state any legal basis that permits plaintiff to domesticate the subject federal administrative Award, or enforce the Award since it was not issued by any "court." Plaintiff also fails to state how CPLR 3212 may be used to domesticate the Award. The Award is only eligible for domestication after judicial review has been completed or defaulted. And, plaintiff has no due process right to collect the Award in this forum, and plaintiff chose to seek an administrative order from an federal agency subject to a six-year statute of limitations review period, rather than sue for breach of contract. Therefore, plaintiff's second summary judgment motion should be denied, and the complaint dismissed.

In reply, plaintiff argues that defendant's attempt to recast her claim as one to convert a reviewable, non-New York administrative order into a New York judgment is incorrect, in that plaintiff relies entirely upon federal law for the judgment sought herein. And, the Court has concurrent jurisdiction to adjudicate claims based in federal law. The Administrative Procedures Act, 5 U.S.C. §§ 701, 702, and 705 explicitly limit defendants' ability to resist collection of the Award during the appellate period. Plaintiff's authority to collect her award during the period of appellate review, and thus her cause of action in this matter, is clearly provided by 5 U.S.C. § 705. And, to "give federal courts exclusive jurisdiction over a federal cause of action, Congress must, in an exercise of its powers under the Supremacy Clause, affirmatively divest state courts of their presumptively concurrent jurisdiction..." The Administrative Procedures Act affirmatively describes the jurisdiction of the federal courts but is completely silent on any role of the state courts in collection claims following issuance of a DOL or federal court award. Further, denial of a CPLR 3213 motion is without prejudice to a new summary judgment motion pursuant

to CPLR 3212 following joinder of the issue. And, rejection of the limitations on defendants' right to review as set forth in the Administrative Procedures Act and the case law would violate plaintiff's due process rights. Grant of defendants' motion would render all USDOL H-1B awards non-collectible in New York for six years after the close of administrative proceedings, and unpaid H-1B workers in this state would have no reason to pursue the USDOL administrative process.

In further support of its cross-motion, defendant points out that plaintiff admits that she is seeking to enforce the Award, and therefore, does not state a state court claim. And, federal courts have exclusive jurisdiction over actions arising under the Administrative Procedure Act.

Discussion

As a threshold procedural matter, plaintiff's motion for summary judgment pursuant to CPLR 3212 is not barred by her previous motion brought pursuant to CPLR 3213. CPLR 3213 provides that "When an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint."

Inasmuch as summary relief pursuant to CPLR 3213 is limited to an "instrument for the payment of money only" whereas summary relief pursuant to CPLR 3212 requires a searching of an entire record after the joinder of issue, it cannot be said that this Court's previous denial of plaintiff's motion under CPLR 3213 precludes or bears on the merits of plaintiff's instant motion under CPLR 3212.

As aptly stated by the Court of Appeals in *Weissman v. Sinorm Deli, Inc.*, 88 N.Y.2d 437, 669 N.E.2d 242, 646 N.Y.S.2d 308

Introduced more than three decades ago, CPLR 3213 was a procedural reform that, for the limited matters within its embrace, melded pleading and motion practice into one step, allowing a summary judgment motion to be made before issue was joined (compare, CPLR 3212). Its purpose was to provide quick relief on documentary claims so presumptively meritorious that "a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless" (1st Prelim Report of Advisory Comm. on Practice and Procedure, 1957 N.Y. Legis. Doc. No. 6[b], at 91). . . . CPLR 3213 begins with the seemingly straightforward—though stringent—requirement that the action be based on "an instrument for the payment of money only or a judgment."¹ The prototypical example of an instrument within the ambit of the statute is of course a negotiable instrument for the payment of money—an unconditional promise to pay a sum certain, signed by the maker and due on demand or at a definite time This Court last spoke to the threshold requirement in *Interman Indus. Prods., v. R.S.M. Electron Power*, 37 N.Y.2d 151, 154–155, 371 N.Y.S.2d 675, 332 N.E.2d 859, observing that cases within CPLR 3213 "have dealt primarily with some variety of commercial paper in which the party to be charged has formally and explicitly acknowledged an indebtedness."

"CPLR 3213 is intended to provide a speedy and effective means of securing a judgment on claims *presumptively* meritorious. In the actions to which it applies, "a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for

summary judgment is needless.” ... (emphasis added).

The presumptively meritorious nature of the ARB Award was absent for purposes of CPLR 3213 relief given that the potential of an appellate order that might disturb the Award existed.

Now that issue has been joined, and CPLR 3212 standards are invoked, the burden is upon plaintiff to establish the absence of issues of material fact and then, upon defendant to raise an issue of fact as to plaintiff’s showing.¹

However, before addressing whether plaintiff established, as a matter of law, the merits of her claim, the Court first determines whether the complaint states a cause of action, as raised by defendant’s cross-motion.

For clarification, plaintiff does not seek to “domesticate” the Award pursuant to CPLR Articles 53 (recognition of foreign country judgment) or 54 (enforcement of judgments entitled to full faith and credit, under which “foreign judgment” is defined as “any judgment, decree, or order of a court of the United States. . . .”) (Plaintiff’s Memorandum of Law in Reply and in Opposition to Defendant’s Cross-Motion to Dismiss, pp. 2-3). Instead, plaintiff seeks a judgment, relying solely on federal law, namely, Administrative Procedures Act, 5 U.S.C. §§ 701 – 706, which, according to plaintiff, this Court is empowered to apply and enforce (*id.*, p. 3).

As relevant herein, 5 U.S.C. §§ 702 provides:²

A person suffering legal wrong *because of agency action*, or adversely affected or aggrieved *by agency action* within the meaning of a relevant statute, is entitled to judicial review thereof. (Emphasis added).

Section 704 provides:

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.

Further, the scope of judicial review of agency action is set forth in Section 706, which

¹ It is well established that the proponent of a motion for summary judgment pursuant to CPLR 3212 must make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient “evidentiary proof in admissible form” to demonstrate the absence of any material issues of fact (*Madeline D’Anthony Enterprises, Inc. v Sokolowsky*, 101 AD3d 606, 957 NYS2d 88 [1st Dept 2012] *citing Alvarez v Prospect Hosp.*, 68 NY2d 320, 501 NE2d 572 [1986] *and Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

The burden then shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action (CPLR §3212 [b]; *Madeline D’Anthony Enterprises, Inc. v Sokolowsky*, 101 AD3d 606, 957 NYS2d 88 [1st Dept 2012]). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient (*Alvord and Swift v Steward M. Muller Constr. Co.*, 46 NY2d 276, 281-82, 413 NYS2d 309 [1978]; *Carroll v Radoniqi*, 105 AD3d 493, 963 NYS2d 97 [1st Dept 2013]).

² Section 701 provides definitions of terms in the Chapter, including but not limited to “agency,” which “means each authority of the Government of the United States,” with certain enumerated exceptions such as Congress and the courts of the United States.

Section 703 pertains to the “Form and venue of proceeding.” and section 705 permits the “agency” if “justice so requires,” to “postpone the effective date of action taken by it, pending judicial review.”

directs a "reviewing court" to either "compel agency action . . ." or "hold unlawful and set aside agency action . . ." found to be, for example, arbitrary or, capricious (5 USC 706 (2(a))

Thus, it is clear the Administrative Procedures Act, 5 USC 701, addresses solely actions performed by an agency as that term is defined thereunder, the review of such agency action, and to the extent necessary, compelling agency action or set aside such agency action upon certain findings. Plaintiff's instant complaint does not seek any of these forms of relief; plaintiff does not request that this Court review the Award, compel agency action, or hold any agency action unlawful. Plaintiff's complaint simply seeks to obtain a judgment based on agency action. Notwithstanding plaintiff's argument concerning this Court's purported jurisdiction to review the ARB Award, plaintiff does not seek review of the Award or any direction aimed at an agency.

Plaintiff's remaining arguments lack merit, and are insufficient to support her complaint.

In the absence of any legal basis for the complaint, the Complaint fails to state a cause of action and the Complaint is hereby dismissed. Consequently, summary judgment on the complaint is denied.

Conclusion

Based on the foregoing, it is hereby

ORDERED that plaintiff's motion pursuant to CPLR 3212 for summary judgment against defendants is denied; and it is further

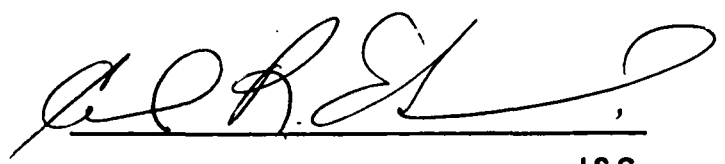
ORDERED that defendants' cross-motion pursuant to CPLR 3211 to dismiss the complaint for failure to state a cause of action is granted; and it is further

ORDERED that the Clerk may enter judgment accordingly; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry.

This constitutes the decision and order of the Court.

DATED: 4/21/17



HON. CAROL R. EDM EAD
J.S.C.

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