

Bernarez v Alternate Staffing, Inc.
2018 NY Slip Op 30156(U)
January 25, 2018
Supreme Court, New York County
Docket Number: 150826/2017
Judge: Erika M. Edwards
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

LESLY MEJIA BERNAREZ, INGRID GARCIA,
and JORGE GONZALES, individually and on
behalf of all other persons similarly situated who
were employed by ALTERNATE STAFFING, INC.,

Index No.: 150826/2017

DECISION/ORDER

Motion Seq. 003

Plaintiffs,

-against-

ALTERNATE STAFFING, INC.,

Defendant.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion/ and Affidavits/Affirmations/ Memos of Law annexed	1
Opposition Affidavits/Affirmations and Memos of Law annexed	2
Reply Affidavits/Affirmations/Memos of Law annexed	3

ERIKA M. EDWARDS, J.:

Plaintiffs Lesly Mejia Bernarez (“Bernarez”), Ingrid Garcia (“Garcia”), and Jorge Gonzales (“Gonzales”), individually and on behalf of all other persons similarly situated who were employed by Alternate Staffing, Inc. (collectively “Plaintiffs”) brought this action against Defendant Alternate Staffing, Inc. (“Defendant”) as home health care workers seeking to recover unpaid wages and benefits for which they allege they were statutorily entitled to pursuant to New York Labor Law (“NYLL”) §§190, 650, 651 and 653, 12 New York Codes, Rules and Regulations (“NYCRR”) §§ 142-2.1, 2.2, 2.4, 2.10, 2.14 and 2.5(c), New York Public Health Law § 3614-c (“Wage Parity Act”), and New York City Administrative Code (“Admin. Code”) § 6-109. Plaintiffs’ claims include allegations that Defendants failed to properly pay wages and

benefits for Plaintiffs' work while they were assigned to 24-hour shifts to provide care for elderly and disabled clients while staying in their clients' homes; overtime for all hours worked over 40 hours/week; spread of hours compensation for shifts where they worked ten or more hours/day; mandatory training sessions; uniforms and supplies; and in accordance with the rates and benefits established by the Wage Parity Act and Admin. Code.

Defendant moves pre-Answer to dismiss Plaintiffs' amended complaint pursuant to CPLR 3211(a)(1) and (a)(7) because Plaintiffs' claims are preempted by the Labor Management Relations Act ("LMRA") § 301 and Employee Retirement Income Security Act of 1974 ("ERISA") or, in the alternative, because Plaintiffs failed to exhaust contractual grievance and arbitration provisions set forth in their Collective Bargaining Agreement (CBA). Plaintiffs oppose dismissal and argue in substance that their claims are solely based on Defendant's statutory violations which are independent of the CBA and do not require the court to interpret the terms of their labor contract.

For the reasons set forth herein, the court denies Defendant's motion to dismiss and finds that Plaintiffs' claims are not preempted by LMRA § 301 or ERISA and that Plaintiffs were not required to exhaust the grievance and arbitration provisions of the CBA.

Defendants argue in substance that Plaintiffs' claims for alleged violations of the provisions governing minimum wage, overtime pay, spread of hours, prompt payment, alleged impermissible de facto deductions, reimbursement for purchase of uniforms and laundering and training sessions are all preempted by LMRA § 301 because the 2009, 2012 and 2015 CBAs between Defendant and Plaintiffs' Union (Local 713, I.B.O.T.U. and I.U.J.A.T.) exclusively govern the parties' relationship. To determine Plaintiffs' claims, the court would be required to determine whether each worker was eligible for the alleged unpaid wages or benefits based on

several factors and then determine whether each worker properly received such wages and benefits by analyzing and interpreting several relevant provisions of the CBA in great detail. LMRA § 301 provides that claims that assert a violation of the CBA or that require interpretation of a CBA are preempted and Plaintiffs must first exhaust the grievance and arbitration procedures set forth in the CBA. Here, Plaintiffs failed to do so. Defendant also argues that Plaintiffs' claims are preempted by ERISA and must be dismissed to the extent they relate to or require the funding of ERISA-qualifying benefit plans.

Dismissal based on documentary evidence is warranted only where such evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law (CPLR 3211[a][1]; *Leon v Martinez*, 84 NY2d 83, 88 [1994]). Dismissal is proper where the documents relied upon definitively disposed of a plaintiff's claim (*Bronxville Knolls v Webster Town Ctr. Pshp.*, 634 NYS2d 62, 63 [1995]).

When considering Defendants' motion to dismiss Plaintiffs' amended complaint for failure to state a cause of action, pursuant to CPLR 3211(a)(7), the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the Plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). The court should not consider whether the plaintiff has simply stated a cause of action, but rather whether the plaintiff actually has one (*Amaro v Gani Realty Corp.*, 60 AD3d 491, 492 [1st Dept 2009]). Normally, a court should not be concerned with the ultimate merits of the case (*Anguita v Koch*, 179 AD2d 454, 457, 579 NYS2d 335 [1st Dept 1992]). However, these considerations do not apply to allegations consisting of bare legal conclusions as well as factual claims which are flatly

contradicted by documentary evidence (*Simkin v Blank*, 19 NY3d 46, 52, 945 NYS2d 222, [2012]).

LMRA § 301 was meant to develop a uniform federal common law to govern disputes arising out of labor contracts and to prevent the risk of inconsistent state court rulings on similar terms in labor agreements (*Livadas v Bradshaw*, 512 US 107, 122-123 [1994]). LMRA § 301 preempts not only claims alleging that a party has violated a provision of a CBA, but also state-law actions that require interpretation or substantial analysis of the terms of a CBA (*Severin v Project OHR, Inc.*, 2011 US Dist LEXIS 99839 [SDNY 2011]). Preemption would be warranted under LMRA § 301 if Plaintiffs' claims alleged that 1) Defendant violated the CBA, 2) a CBA provision violated state law, or 3) a relevant CBA provision is ambiguous (*Kaye v Orange Reg'l Med. Ctr.*, 975 F Supp 2d 412, 424 [SDNY 2013] [citations omitted]).

Based on the facts alleged in Plaintiffs' amended complaint, the court denies Defendant's motion to dismiss and finds that Plaintiffs' claims are not preempted by LMRA § 301 or ERISA. Defendant failed to demonstrate that dismissal is warranted as a matter of law based on Plaintiffs' failure to state a cause of action or on documentary evidence. The documents submitted do not utterly refute Plaintiff's factual allegations, nor conclusively establish a defense as a matter of law.

Plaintiffs' amended complaint did not allege that Defendant violated the CBA, that a term of the CBA violated state law, or that a CBA term relevant to Plaintiffs' claims was ambiguous. Plaintiffs' claims are solely based on Defendant's alleged statutory violations and such statutory rights and obligations are independent of the rights and obligations set forth in the CBA (*see Lai Chan v Chinese-American Planning Council Home Attendant Program, Inc.*, 50 Misc. 3d 201, 206-207 [Sup Ct, NY County 2015] [citation omitted]).

The court is persuaded by many of the cases cited by Plaintiffs. However, the facts in *Vera*, cited by both parties, are distinguished from the facts in our case because the *Vera* court determined that the plaintiff's claims were preempted by LMRA § 301 because the court was required to interpret a provision in the CBA since plaintiff's complaint alleged that the term in the CBA violated a common law rule and state Labor Law statute (*Vera v Saks & Co.*, 335 F3d 109, 115-116 [2d Cir 2003]).

Here, the court is not required to interpret a CBA provision to determine the outcome of Plaintiffs' claims. Preemption is not required simply because resolving a dispute regarding the parties' rights and obligations under the CBA and state law require the court to address the same set of facts or because Defendant's defenses are based on LMRA § 301. Additionally, simply because the court may need to refer to or consult with the terms of a CBA to determine the merits of Plaintiffs' claims does not amount to the court being required to interpret ambiguous terms of the CBA. Therefore, preemption is not warranted. As such, Plaintiffs are not required to use the arbitration and grievance resolution provisions set forth in the CBA.

Finally, the court is not persuaded by Defendant's arguments regarding Plaintiffs' claims being preempted by ERISA to the extent they relate to or require the funding of ERISA-qualifying benefit plans. Plaintiffs' claims under the Wage Parity Act and Admin. Code do not require that benefits be paid through an ERISA-qualifying plan and Plaintiffs do not allege that Defendants violated contributions to such plans.

Therefore, the court denies Defendant's motion to dismiss Plaintiffs' amended complaint and denies the remainder of the relief requested that was not expressly granted herein.

Accordingly, it is hereby

ORDERED that the court denies Defendant Alternate Staffing, Inc.'s motion to dismiss Plaintiffs' amended complaint with prejudice and without costs; and it is further

ORDERED that Defendant Alternate Staffing, Inc. must serve and file an Answer to Plaintiffs' amended complaint on or before February 15, 2018; and it is further

ORDERED that the parties must appear for a preliminary conference on May 3, 2018, at 9:30 a.m., in Part 47, Room 320, 80 Centre Street, New York, New York.

Date: January 25, 2018



HON. ERIKA M. EDWARDS