

Lauto v Michbi Doors, Inc.

2020 NY Slip Op 34176(U)

July 28, 2020

Supreme Court, Suffolk County

Docket Number: 624560/2019

Judge: John H. Rouse

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This opinion is uncorrected and not selected for official publication.

Index Number: 624560/2019

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART I2 - SUFFOLK COUNTY

PRESENT:

HON. JOHN H. ROUSE, ACTING J.S.C.

MOTION DATE: 03/09/2020

ADJ. DATE: 07/01/2020

MOT. SEQ. 001-MG

e-filed full participation

Anthony Lauto,

Plaintiff

-against-

Michbi Doors, Inc. and Michele Bianculli,

Defendants

**COUNTY CLERK
DIRECTIVE**

with

DECISION AND ORDER

TO:

SILVERMAN ACAMPORA, LLP
100 JERICHO QUADRANGLE, STE 300
JERICHO, NY 11753
516-479-6300

JACKSON LEWIS, P.C.
58 SOUTH SERVICE RD, SUITE 250
MELVILLE, NY 11747
631-247-4655

Upon the reading and filing: (1) Notice of Motion by Defendants for an order: Pursuant to Section 514(a) of Title I of ERISA granting Defendants' Pre-Answer Motion for Partial Dismissal of Plaintiff's Verified Complaint, dismissing Plaintiff's Second Cause of Action as preempted by ERISA; and For such other and further relief as the Court deems just and proper; (2) e-filed documents 1-18; it is:

ORDERED, that the Motion by Defendants for an order: Pursuant to Section 514(a) of Title I of ERISA granting Defendants' Pre-Answer Motion for Partial Dismissal of Plaintiff's Verified Complaint, dismissing Plaintiff's Second Cause of Action as preempted by ERISA is granted; and it is further

ORDERED, that the Suffolk County Clerk is directed to amend the caption to be as follows:

Anthony Lauto,

Plaintiff

-against-

Michbi Doors, Inc.,

Defendants

ORDERED, that Defendant is directed to serve notice of this decision, order and directive upon the Suffolk County Clerk as provided by CPLR § 8019(c)

See: <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.to.county.clerk.pdf>

ENTER

DECISION

Plaintiff brings this action for breach of contract. Plaintiff alleges that he was employed by Defendant and negotiated a contract of employment for the period from January 1, 2013 through December 31, 2018. Plaintiff further alleges that under the terms of this contract Defendant Michbi Doors, Inc. was to pay the premiums for his family health insurance. Defendant Michbi Doors, Inc. paid those premiums until September 30, 2014 when it began, without his consent, to deduct the premiums from his negotiated salary and advised him it could no longer afford to pay the medical premiums as had been negotiated. Plaintiff alleges the total improper deductions from his salary accumulated to \$39,588.20 until his employment was properly concluded under the terms of the contract. Plaintiff also advances these claims under New York Labor Law § 193.

Defendants move, pre-answer, pursuant to CPLR 3211 to dismiss the second cause of action upon its contention that New York Labor Law § 193 is preempted by ERISA § 514(a). Defendant offers authority for this position from U.S. Department of Labor Advisory Opinion 1994-27A.¹ This opinion provides:

“It is the position of the Department that, to the extent that Section 193 is interpreted to limit, prohibit, or regulate the funding of employee benefit plans covered by Title I of ERISA, including wage deductions to employee benefit plans covered by Title I of ERISA, it is preempted by section 514(a) of ERISA.”

¹ <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/1994-27a>

This opinion was cited with approval in Information Letter 12-04-2018.² This preemption is not to prevent the Plaintiff from obtaining redress, it provides that additional remedies, beyond the breach of contract cause of action, arise if at all under the substantive and procedural requirements of claims made under ERISA. Accordingly, Defendant's motion is granted, and the second cause of action based upon New York Labor Law § 193 is dismissed. The only cause of action against Michele Bianculli was based upon New York Labor Law § 193 and the caption will be amended to reflect the dismissal of the action as to her.

The foregoing shall constitute the decision and order of the court.

Dated: July 28, 2020

ENTER :



JOHN H. ROUSE

ACTING J.S.C.

NON-FINAL DISPOSITION

² <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/information-letters/12-04-2018>