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Westchester Quarterly Roundup: Notable Decisions of the Westchester County Federal and State Courts

Judge Briccetti Grants Plaintiff's Motion to Dismiss Defendants' Counterclaims in FLSA Case and Directs that Defendants Show Cause Why Sanctions Should Not be Imposed

In *Yong Biao Ji v. Aily Foot Relax Station, Inc.*, No. 19-cv-11881 (VSB), 2021 WL 431146 (S.D.N.Y. Feb. 8, 2021), the plaintiff brought a class and collective action pursuant to the Fair Labor Standards Act (FLSA) and state-law equivalents, alleging failure to pay employee masseuses minimum wage and overtime. The Court denied the defendants' subsequent motion to dismiss, concluding that the plaintiff had plausibly alleged its various claims. Following this dismissal, the defendants filed two subsequent letters and motions seeking the same relief as in the initial motion, both of which the Court denied as improper and meritless, but granted the defendants leave to file an amended answer. Upon the filing of its amended answer with purported affirmative defenses and counterclaims, the plaintiff moved to dismiss the counterclaims for failure to state a claim and for sanctions due to the defendants continued improper filings. In a decision illustrating the limits of the Court's patience for repeated, frivolous conduct, Judge Vincent Briccetti granted the motion to dismiss the defendants' counterclaims and directed the defendants to show cause why sanctions should not be imposed on them.

First, Judge Briccetti determined that the defendants' so-called affirmative defenses were just re-arguments masquerading as defenses. Including those "affirmative defenses" in the amended answer after the Court already denied the two previous motions to dismiss constituted an improper renewal of claims, and so the Court again denied the motion hidden in the amended answer.

Second, Judge Briccetti determined that the actions of the defense counsel "appear[ed] to violate Rule 11(b)(1) and 11(b)(2)." In finding sanctions would be proper, the Court took into consideration the following factors: 1) the conduct of continuously filing improper documents, in the face of direct warnings from the court, and including motions in an amended answer was willful; 2) the conduct clearly constituted a pattern, as the improper filings persisted even after warnings; and 3) the repetitive nature and disregard of the Court's orders wasted time and resources. Finding these factors weighed in favor of sanctions, the Court directed the defendants to file a letter explaining why sanctions should not be imposed in advance of a final ruling on the plaintiffs' sanctions motion.

Judge Karas Grants Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction in Telephone Consumer Protection Act Case

In *Bais Yaakov of Spring Valley v. Educational Testing Service*, No. 13-cv-4577 (KMK), 2021 WL 323262 (S.D.N.Y. Feb. 1, 2021), the plaintiff filed a complaint against the defendant for violation of the Telephone Consumer Protection Act (TCPA), alleging that

unsolicited fax advertisements were sent without proper opt-out notices. After the Court denied the plaintiffs' motion to certify the case as a class action, the defendant sought to dispose of the litigation by paying the named plaintiff $12,000 to cover its claimed damages and agreeing to take all necessary steps to prevent future TCPA violations. The defendant then filed a motion seeking 1) entry of judgment on the individual plaintiff's claim for monetary relief, 2) dismissal of the plaintiffs' claim for injunctive relief as moot or meritless, and 3) dismissal of the case for lack of subject matter jurisdiction. While Judge Kenneth Karas first determined that the plaintiff's claim for injunctive relief was not moot, since the defendant was "free to return to its former ways," the Court ultimately dismissed the case upon finding it was proper to enter judgment in favor of the plaintiff for $12,000, and then determining the plaintiff's injunctive relief claim was meritless. The Court then dismissed the case under Rule 12(b)(1).

Judge Karas first entered judgment for the plaintiff in the sum of $12,000, as requested by the defendant, over the plaintiff's objection, relying on the Second Circuit decision of Radha Geismann, M.D., P.C. v. ZocDoc, Inc., 909 F.3d 534 (2d Cir. 2018). In particular, the Court held the payment was sufficient because the plaintiff did not dispute that.

The Court then turned to the plaintiff's claim for injunctive relief. First, Judge Karas determined the request was not moot under the "voluntary compliance" rule, which states that where the defendant alleges that its voluntary action moots the case, the defendant bears the burden of showing that "it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." Here, the Court opined that even though the defendant demonstrated various ways in which it would reduce the unlawful faxes, it had not committed to a "binding agreement," and therefore was "free to return to its old ways." Judge Karas found, however, that the injunctive relief claim was meritless. The Court held that because the defendant undertook not to contact the plaintiff in the future, the plaintiff could not establish the "real and immediate threat of repeated injury" required to support its claim for a permanent injunction.

Upon entering judgment of $12,000 for the plaintiff and dismissing the injunctive relief claim as meritless, Judge Karas ultimately dismissed the case as moot under 12(b)(1).

Judge Seibel Denies Plaintiff's Motions for Emergency Injunctive Relief and Recusal Stemming from Allegations of Civil Rights Violations during a State-Court Criminal Proceeding

In *Weinstein v. Village of Briarcliff Manor, et al.*, No. 21-CV-1996 (CS), 2021 WL 1063763 (S.D.N.Y. Mar. 17, 2021), Judge Cathy Seibel denied the pro se plaintiff's motion for emergency injunctive relief and dismissed her alleged claims that the defendants violated her civil rights. The incident at issue involved an altercation that ensued after the plaintiff failed to comply with a mask mandate. The incident resulted in a court-ordered mental competency examination of the plaintiff and state-court criminal proceedings against her. The plaintiff claimed that her constitutional rights were violated and sought damages against the defendants, assistant district attorneys (ADA) and the recusal of Justice Howard T. Code, the state court justice overseeing the plaintiff's criminal proceeding. She also sought to enjoin the state-court action. Judge Seibel denied the plaintiff's motions and dismissed the claims against Justice Code and the ADAs.

The Court assessed the plaintiff's motion for emergency injunctive relief under Younger v. Harris, 401 U.S. 37 (1971) to determine whether circumstances existed "suggesting bad faith, harassment, or irreparable injury that is both serious and immediate." Here, Judge Seibel found the plaintiff's assertions of retaliation and conspiracy were conclusory and neither bad faith, harassment, nor irreparable injury were sufficiently alleged. The Court therefore refused to intervene in the ongoing state-court proceedings.

The Court then turned to the claims against Justice Code, which related to his adverse rulings against the plaintiff. Because Justice Code issued those rulings within his "judicial capacity," Judge Seibel dismissed those claims under the doctrine of judicial immunity and as frivolous. The Court similarly dismissed the plaintiff's claims against the ADA defendants under the doctrine of prosecutorial immunity, as their actions were also within the scope of their official duties.

In an abundance of caution, though, Judge Seibel dismissed plaintiff's claims without prejudice. It was not clear to the Court whether the plaintiff had been determined incompetent in a state court proceeding and thus whether she was entitled to have a guardian ad litem pursue her claims before they were foreclosed on the merits.

Judge Román Grants Defendants' Motion for Summary Judgment in Products Liability Claim

In *Jean M. Nemes and James Nemes v. Dick's Sporting Goods, Inc.*, No. 17-cv-1688 (NSR), 2021 WL 739032 (S.D.N.Y. Feb. 23, 2021), the plaintiffs filed strict liability, negligence, and breach of warranty claims, arising out of injuries Mrs. Nemes suffered when using a crossbow manufactured and sold by the defendants. The central issue in the case was whether the design of the crossbow's "finger guard" was defective. Following expert discovery and motion practice, the Court granted in part the defendant's Daubert motion to preclude the plaintiffs' expert testimony about any feasible alternative design to the "finger guard" of the crossbow. Based on that ruling, the defendants moved for summary judgment, arguing the plaintiffs could not sustain their claims absent expert testimony on alternative designs. The plaintiffs opposed the motion and argued they could prove their claims with lay testimony. Judge Nelson Román agreed with the defendants and granted the motion, dismissing the complaint in its entirety.

On the strict products liability claim, Judge Román determined the plaintiffs did not carry their burden to "present evidence that the product, as designed, was not reasonably safe because there was a substantial likelihood of harm and it was feasible to design the product in a safer manner." Relying on Second Circuit precedent, the Court concluded expert testimony was needed to establish the existence of an alternative design given the complexities of crossbow construction. As such, the Court granted summary judgment on this claim.

Similarly, the Court found in favor of the defendants on both the negligence and breach of warranty claims, hinging from the same holding that the plaintiffs failed to establish a feasible alternative design to the crossbow. Accordingly, the Court granted summary judgment and dismissed the case.

Judge Halpern Grants in Part Defendant's Motion to Dismiss Breach of Contract and Fraud in the Inducement Claims

In *Somnia, Inc. v. Change Healthcare Technology Enabled Service, Inc.*, 19-cv-08983, 2021 WL 639529 (S.D.N.Y. Feb. 16, 2021), the plaintiff, a nationwide provider of anesthesia services, entered into an agreement with the defendant for the outsourcing of certain administrative and billing services. When the defendant failed to perform satisfactorily, the plaintiff sued for breach of contract, including breach of the implied covenant of good faith and fair dealing, and fraud in the inducement. The defendant moved to dismiss, arguing the breach of the implied covenant and fraud claims were duplicative of the breach of contract claim, and the plaintiff had not alleged contract damages with specificity. Judge Philip Halpern agreed with the defendant, in part, and dismissed most of the breach of covenant of good faith and fair dealing claim and the fraud claim in its entirety as duplicative. The Court denied the motion insofar as the plaintiff alleged the defendant breached the implied covenant of good faith by diverting the plaintiff's customers, and further held damages were pled sufficiently.

The plaintiff alleged that the defendant breached the implied covenant of good faith and fair dealing by "1) hiding its noncompliance with the [contract]; 2) failing to fulfill its obligations under the [contract]; 3) billing for claims that could not be

collected; and 4) poaching clients." In dismissing the first three allegations, the Court determined they were "intrinsically tied to the damages allegedly resulting from a breach of the contract," and so duplicative. However, with respect to the poaching claim, the Court held those allegations were distinct from the breach of contract claim. Finding the contract was about providing administrative services, the Court concluded that a claim for stealing clients would breach an implied covenant of the contract rather than an express provision. In addition, the Court held the plaintiff sufficiently pled damages, noting a general claim for damages is acceptable under New York law.

Finally, Judge Halpern dismissed the plaintiff's fraud in the inducement claim as duplicative of the breach of contract claims, as the only issues pled were those included within the contract itself. In particular, the defendant's request for proposal submission, which contained the representations on which the plaintiff relied in selecting the defendant, was incorporated into the contract by reference. Accordingly, the plaintiff did not carry its burden of "demonstrat[ing] a legal duty separate from the duty to perform under the contract."

Justice Walsh Denies Defendants' Motion to Dismiss under CPLR 3211(a)(1) and 3211(a)(7), Determining Plaintiffs Sufficiently Alleged Breach of Contract Claims to Withstand Dismissal

In *Armentano v. Armentano*, 70 Misc.3d 1215(A) (N.Y. Sup. Ct., West. Cty. 2021), Justice Gretchen Walsh, of the Westchester Commercial Division, denied the defendants' motion to dismiss the plaintiffs' breach of contract claims stemming from share transfers of a multi-generational family propane gas company. The defendants moved to dismiss all causes of action pursuant to CPLR 3211(a)(1) and 3211(a)(7), arguing the operative agreements only applied to certain types of share transfers and the transfers at issue did not fall under the agreements. In support of their motion, the defendants relied on their own affidavits, a stock transfer ledger, underlying agreements, and other documents. In denying the defendants' motion to dismiss, Justice Walsh relied on the four corners of the contract itself (as opposed to affidavits and characterization of contract terms in the pleadings), to hold the plaintiffs' claims were sufficient to state a cause of action.

In analyzing the motion to dismiss under CPLR 3211(a)(1), the Court clarified that "the documentary evidence that forms the basis of the defense must be such that it resolves all factual issues as a matter of law . . . and to qualify as 'documentary,' the evidence . . . must be unambiguous and undeniable . . . ." The Court further detailed that affidavits are typically construed not to be documentary, and where, as here, the parties' claims turn on provisions of a contract, the unambiguous provisions of the contract will control. Therefore, in denying the defendants' motion to dismiss under CPLR 3211(a)(1), the Court relied on the unambiguous terms of the relevant contracts, rather than the defendants' supporting documents and affidavits construing such, to determine that the plaintiffs' claims were not "utterly refuted" and thus not dismissed.

Similarly, Justice Walsh denied the defendants' motion for dismissal under CPLR 3211(a)(7), relying on New York's liberal pleading standards, which look to whether "any discernible cause of action cognizable at law" is identified within the four corners of the complaint. Applying that standard, the Court held the plaintiffs adequately pled their causes of action and so survived the motion to dismiss.