2018 WL 2418567
Only the Westlaw citation is currently available.
United States District Court, E.D. Virginia,
Alexandria Division.

R. Alexander ACOSTA, U.S.
Secretary of Labor, Plaintiff,
v.
JM OSAKA, INC., et al., Defendants.

Civil Action No. 1:17cv559
|
Signed 03/12/2018

Attorneys and Law Firms

Ali Abed Beydoun, US Department of Labor, Arlington, VA, for Plaintiff.

Mary Jeanne Craine Lombardo, Eduardo Samual Garcia Rodriguez, Stein Sperling Bennett De Jong Driscoll PC, Rockville, MD, for Defendants.

ORDER

T. S. Ellis, III, United States District Judge

***1** In this Fair Labor Standards Act [1] case, the Secretary of Labor (the "Secretary"), as authorized by statute, has brought this action on behalf of certain employees against (i) two Japanese restaurants, and (ii) the individual owners of the restaurants. At issue is defendants' motion for partial summary judgment seeking:

> (i) dismissal of the damages claims against the individual owners of the restaurants on the ground that the individual defendants' liability for damages was discharged via the order of the bankruptcy court, and
>
> (ii) dismissal of claims originating before April 17, 2014 on the ground that the tolling agreement covering claims from before that date was invalid.

1 29 U.S.C. § 216.

The matter has been fully briefed and argued and is now ripe for disposition.

I.

The Secretary has brought this FLSA action on behalf of approximately 58 employees of the Osaka Japanese Restaurant and Murusaki Japanese Restaurant. These 58 employees were employed as Sushi chefs, cooks, and tipped employees including wait staff.

There are four remaining defendants [2] in this action: (i) the two corporations that own the restaurants, JM Osaka, Inc. and IK Murusaki, Inc., and (ii) the two individuals who jointly own and are the corporate officers of the restaurant corporations, In Ky Kim and Jeong Mi Yeo.

2 The Secretary also sued the manager of the two restaurants, Hoyung Ju, who was dismissed from the case on the ground that he was not an "employer" within the meaning of the FLSA. *See Acosta v. JM Osaka Inc.*, 270 F. Supp. 3d 907 (E.D. Va. 2017).

The Secretary's investigation of defendants began in 2013. In 2016, the Secretary and defendants entered a tolling agreement which tolled the statute of limitations beginning on June 16, 2013. The tolling agreement was signed by Jeong Mi Yeo. Both individual defendants signed a second tolling agreement on April 13, 2017.

Following completion of the investigation, the Secretary, on May 16, 2017, filed a complaint alleging that from May 25, 2013 through April 13, 2017, defendants failed to compensate their employees in accordance with the FLSA because defendants paid wages below the federal minimum wage and did not pay workers for overtime.

On July 7, 2017, the two individual defendants filed for bankruptcy. Shortly after entry of the automatic stay pursuant to 11 U.S.C. § 362, the Secretary moved to lift the stay pursuant to the police power exception to the automatic stay provisions. On September 15, 2017, an Order issued lifting the automatic stay, and the litigation then continued against the individual defendants. *See Acosta v. JM Osaka Inc.*, No. 1:17–cv–559 (E.D. Va. Sept. 15, 2017) (Order). On October 24, 2017, the bankruptcy court entered an order discharging the debts of the individual defendants, including the money owed in this litigation.

The individual defendants have now moved for summary judgment on two grounds: (i) that the Secretary is barred

from recovering damages from the individual defendants by virtue of the bankruptcy court's discharge order, and (ii) that the tolling agreement entered between the Secretary and the defendants was invalid, and accordingly claims arising from acts before April 17, 2014 should be dismissed as time-barred.

II.

***2** Analysis of defendants' argument that their discharge in bankruptcy bars the Secretary from recovering damages in this action properly begins with the terms of the bankruptcy code. [3] A discharge of a debt in bankruptcy "voids any judgment at any time obtained" with respect to the discharged debts and "operates as an injunction against ... the continuation of an action" to collect the debt. 11 U.S.C. § 524. Section 523 provides for a number of exceptions to discharge, including a debt which is "a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss[.]" 11 U.S.C. § 523(a)(7). Whether a judgment payable to the government is exempt from discharge depends on whether the judgment is imposed for compensatory reasons or to punish wrongdoing. *Kelly v. Robinson*, 479 U.S. 36, 51–52 (1986). [4] If a judgment awards damages as punishment, then the debt arising from the judgment is non-dischargeable. *Id.* In *Kelly* itself, the Supreme Court held that restitution imposed as part of a criminal sanction qualified as a non-dischargeable penalty under § 523(a)(7) because the restitution is assessed to serve "the penal and rehabilitative interests of the State[,]" not to compensate victims. *Id.* at 53.

3 Neither party cited the applicable provisions of the bankruptcy code in their briefing on this issue. Instead, both parties relied on language in an earlier order in this case addressing the question whether the automatic stay provisions of the bankruptcy code were applicable to this case. *See Acosta v. JM Osaka Inc.*, No. 1:17–cv–559 (E.D. Va. Sept. 15, 2017) (Order). Because defendants' motion for summary judgment presents a distinct issue, namely whether a discharge in bankruptcy terminates a defendant's obligation to pay money owed to the government pursuant to the FLSA, citation to the earlier order addressing the automatic stay provisions are inapposite and unhelpful.

4 The Supreme Court reached a contrary result with respect to Chapter 13 bankruptcy and the dischargeability of restitution obligations imposed as a condition of probation, holding that those restitution obligations *were* dischargeable. *See Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552 (1990). That holding, however, was overruled by Congress which amended the Bankruptcy Code to include a provision excepting from discharge under Title 13 any debt for restitution included in a sentence on the debtor's conviction of a crime. *See* 11 U.S.C. § 1328(a)(3). Because defendants here proceeded under Title 7, neither *Pennsylvania Dept. of Public Welfare* nor Congress' decision to overturn that decision are directly relevant to this case.

Neither party cited any published decision, nor has any decision been found, applying § 523(a)(7) to damages claims under the FLSA. The closest controlling case in the Fourth Circuit – *U.S. Dep't of Housing & Urban Development v. Cost Control Marketing & Sales Management of Virginia, Inc.*, 64 F.3d 920, 928 (1995) – construed *Kelly* to apply to a civil disgorgement judgment payable to the Department of Housing and Urban Development ("HUD"). There, the Fourth Circuit reasoned that "so long as the government's interest in enforcing a debt is *penal*, it makes no difference that injured persons may thereby receive compensation for pecuniary loss." *Id.* Accordingly, the Fourth Circuit interpreted the disgorgement as primarily punitive, more akin to a traffic fine than a civil suit seeking compensation for harm to the government. *Id.* As a result, the Fourth Circuit held that the damages claim was exempt from discharge under § 523(a)(7).

The question in this case, then, is whether the Secretary's claim for "unpaid minimum wage and overtime compensation" and "liquidated damages" seeks (i) payment of a debt which is a "fine, penalty, or forfeiture payable to and for the benefit of a governmental unit[,]" and hence not dischargeable pursuant to § 523(a)(7, or (ii) payment of a debt which is compensatory and hence dischargeable in bankruptcy.).

The Secretary's damages action for "unpaid minimum wage and overtime compensation" is undoubtedly compensatory in purpose, as the Secretary seeks those damages to compensate victims of defendants' alleged underpayment of wages. Unlike *Cost Control*, where HUD collected a fine that had no relation to the amount

of harm to victims, here the Secretary seeks a money judgment in the amount of the harm of the victims. Thus, the Secretary's interest in enforcing this particular debt is compensatory, whereas the interest of HUD in *Cost Control* was primarily penal, with only the incidental effect of resulting in some compensation for victims. Accordingly, the Secretary's claims for unpaid wages are not subject to § 523(a)(7)'s exception to discharge, and the Secretary cannot proceed to judgment on those claims against the individual defendants.

***3** The Secretary's claim for "liquidated damages" also serves a compensatory rather than penal purpose. This somewhat counterintuitive result follows from the Supreme Court's decision in *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707 (1945). As the Supreme Court there explained "the liquidated damage provision is not penal in its nature but constitutes compensation for the retention of a workman's pay which might result in damages too obscure or difficult of proof for estimate other than by liquidated damages." *Id.; see also Roy v. Cnty. Of Lexington, S.C.*, 141 F.3d 533, 548 (4th Cir. 1998) (holding that liquidated damages for FLSA violations are compensatory rather than punitive in nature). Thus, a liquidated damages award pursuant to the FLSA is not meant to punish the alleged wrongdoer, but is instead meant to "insure restoration of the worker to th[e] minimum standard of well-being." *Brooklyn Sav. Bank*, 324 U.S. at 707. Accordingly, the liquidated damages award sought by the Secretary serves a compensatory purpose, not a penal purpose, and as such the Secretary's claim for liquidated damages is dischargeable in bankruptcy because the claim does not fall within § 523(a)(7)'s exception for fines, penalties, and forfeitures payable to the government.

III.

Defendants also argue that claims of alleged FLSA violations arising before April 17, 2014 should be dismissed because the claims fall outside the FLSA's two year statute of limitations for non-willful violations. *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 135 (1988) ("Ordinary violations of the FLSA are subject to the general 2-year statute of limitations. To obtain the benefit of the 3-year exception, the Secretary must prove that the employer's conduct was willful."). Federal statutes of limitations can be tolled by agreement of the parties to a dispute. *Hemeshoff v. Hartford Life & Acc. Inc. Co.*, 134 S. Ct. 604. 610 (2013). As the Supreme Court has recognized, when inte1preting contracts tolling or altering a limitations period. " 'contractual limitations provisions ordinarily should be enforced as written[.]" ' *Id.* at 611.

Neither party cited any relevant case law or facts in the record with respect to defendants' statute of limitations argument. Defendants argue that certain claims in the Secretary's complaint are barred because they are not within the period set forth in the tolling agreement between the parties. That claim is contradicted by the existence of a second. earlier tolling agreement covering the earlier claims in the Secretary's complaint. *See* Pl. Ex. A. Defendants argue, without a citation to any record evidence, that the individual owner who signed that earlier tolling agreement did not speak English or understand what he was signing, and therefore could not consent to tolling. Defendants' bare assertion, standing alone, cannot satisfy the burden for summary judgment with respect to defendants' argument that the tolling agreement was invalid. *See Celotex Corp. v. Catrett*, 477 U.S. 317. 331 (1986) (holding that movants for summary judgment "must support [their] motion with credible evidence ... that would entitle it to a directed verdict if not controverted at trial."). Thus, defendants' motion for summary judgment on the Secretary's earlier claims must fail.

Accordingly. for the reasons stated above, and for good cause shown,

It is hereby **ORDERED** that defendants' motion for summary judgment is **GRANTED IN PART** and **DENIED IN PART**. It is **GRANTED** with respect to the Secretary's damages claims against the individual defendants and it is **DENIED** in all other respects.

The Clerk is directed to send a copy of this Order to all counsel of record.

All Citations

Slip Copy, 2018 WL 2418567

End of Document