

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chris Williams,

Plaintiff,

v.

applya Occupational Strategies, LLC, Felix
Mirando, Tom Baumgarten, and Andrew
Garnock,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2022-CP-23-06246

**ORDER GRANTING DEFENDANTS
APPLYA OCCUPATIONAL
STRATEGIES, LLC, FELIX MIRANDO,
AND THOMAS BAUMGARTEN'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

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Jun 12 2024

SC Court of Appeals

THIS MATTER came before the Court on January 8, 2024 on a Motion for Partial Summary Judgment filed by Defendants applya Occupational Strategies, LLC, Felix Mirando, and Tom Baumgarten. Upon consideration of the applicable law, the materials, the memoranda presented by the parties, and the arguments of the attorneys, this Court grants the Defendants' Motion for Partial Summary Judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The Defendants, applya Occupational Strategies, LLC, Felix Mirando, and Tom Baumgarten, filed a Motion for Partial Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as to the Plaintiff's cause of action for violation of the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10. Specifically, the Defendants sought an order from the Court limiting the potential damages recoverable pursuant to the South Carolina Payment of Wages Act (hereinafter "the Wage Payment Act") on the ground that there is no genuine issue of material fact and the Defendants are entitled to judgment as a matter of law.

Plaintiff Chris Williams (hereinafter “Williams” or “the Plaintiff”) is the former CEO of Defendant applya Occupational Strategies, LLC (hereinafter “applya”). Defendants Felix Mirando and Tom Baumgarten are shareholders and members of the Board of Directors of applya.

Williams and applya entered into an employment agreement (hereinafter “the agreement”) with an effective date of April 1, 2018. Section 6.2 of the agreement provided that Williams could be terminated for cause, with “cause” being defined in Section 1. The agreement likewise stated in Section 6.4(a) that should Williams’ employment be “terminated by the Board without Cause or by Employee with Good Reason, the Company shall upon such termination be required to continue to pay to Employee his salary, bonus pursuant to Section 3.2(a) hereof and all other benefits and perquisites hereunder for two years thereafter and to accelerate all unvested Options to vest.”¹

The Plaintiff filed a lawsuit against the Defendants for violation of the Wage Payment Act, S.C. Code Ann. § 41-10-10.² In Paragraph 32 of his Complaint, the Plaintiff contends that he is entitled to “all wages due to him under the Wage Act including, but not limited to, two (2) years of his annual salary and non-discretionary bonus” In their Answer, the Defendants denied the Wage Payment Act allegations and asserted that the Plaintiff is not entitled to any damages. Moreover, the Defendants denied that future wages and bonuses are recoverable pursuant to the Wage Payment Act.

¹ There is a factual dispute amongst the parties as to whether Williams was terminated with or without cause. That issue is not yet before this Court.

² The Plaintiff is also pursuing claims of breach of contract, breach of contract accompanied by fraudulent act, and piercing the corporate veil; however, those claims are not at issue in this motion.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 386, 365 S.E.2d 24 (1988). Although the burden is on the party seeking summary judgment, the non-moving party must make a showing sufficient to establish the existence of an element on which it will bear the ultimate burden of proof at trial; otherwise, the failure of proof concerning an essential element of the case necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986).

Once the moving party carries its initial burden, the “opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with specific facts showing that there is a genuine issue for trial.” Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (internal citation omitted). A party cannot rest on the mere allegations in his Complaint. Nor can a party “escape summary judgment on the mere hope that something may develop later at trial, or by remaining silent and later claiming additional facts supporting the cause of action.” Hammond v. Scott, 268 S.C. 137, 143, 232 S.E.2d 336, 339 (1977).

“The plain language of Rule 56(c), SCRCPP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial.” Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 579, 556 S.E.2d 732, 736

(Ct.App.2001); Baughman, 306 S.C. at 116, 410 S.E.2d at 545-546 (internal citation and quotation omitted). Furthermore, “[a] complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.” Baughman, 306 S.C. at 116, 410 S.E.2d at 546.

Actions seeking damages under the Wage Payment Act are actions of law; therefore, the question of damages for which Williams can seek recovery is appropriate for summary judgment. McCall v. IKON, 380 S.C. 649, 657, 670 S.E.2d 695, 700 (2008).

ANALYSIS AND CONCLUSIONS OF LAW

The Plaintiff asserts that he is entitled to damages pursuant to the Wage Payment Act, including two years of his annual salary and non-discretionary bonus. The genesis of his damages claim is the language of Section 6.4(a) of the Agreement; specifically, that should Williams be “terminated by the Board without Cause or by Employee with Good Reason, the Company shall upon such termination be required to continue to pay to Employee his salary, bonus pursuant to Section 3.2(a) hereof . . . for two years thereafter.” Assuming that Williams has an actionable claim under the statute, which is admitted by the Defendants for purposes of this motion only, Williams is unable to recover as damages two years of his annual salary and non-discretionary bonus as those are prospective wages which are not recoverable under the Wage Payment Act.

S.C. Code Ann. § 41-10-10 defines wages as follows: “Wages” means all amounts at which *labor rendered is recompensed*, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract.” S.C. Code Ann. § 41-10-10(2) (emphasis ours). The purpose of the Wage Payment Act is “to protect employees from the unjustified and willful retention of wages by the

employer.” Rice v. Multimedia, Inc., 318 S.C. 95, 98, 456 S.E.2d 381, 383 (1995). However, this protection only applies to wages earned for labor rendered, not prospective wages. Mathis v. Brown & Brown of South Carolina, Inc., 389 S.C. 299, 318, 698 S.E.2d 771, 783 (2010).

In Mathis, the Supreme Court explicitly considered whether the Wage Payment Act applied to prospective wages. The Plaintiff sued his employer for breach of contract and violation of the Wage Payment Act after he was terminated prior to the expiration of his two-year contract of employment. The trial court found for the Plaintiff and awarded damages under the Wage Payment Act for the difference between his reduced wages and the contracted-for compensation, “plus the wages he would have earned for the remaining term of the contract.” Id. at 307. The Defendants appealed, arguing, amongst other things, that the trial court erred in awarding as damages the wages that he would have earned for the balance of the contract term. The Supreme Court agreed, reversing the lower court, finding that the past tense of the statutory language “labor rendered” in S.C. Code Ann. § 41-10-10 “suggests services provided in the past. The word ‘recompensed’ too suggests that payment is for labor already completed.” Id. at 318. The Court continued, “Based on the plain language of the statutes in the Payment of Wages Act, the Act does not apply to prospective wages.” Id. While prospective or “post-termination” earnings may be awarded as damages for breach of contract, they do not constitute “wages,” and, thus, are not recoverable under the Wage Payment Act. Id. at 319.

Relying upon Section 6.4(a) of the Agreement, Williams contends that he may recover his salary and bonus for two years after termination as damages under the Wage Payment Act. This Court disagrees. The contract language is instructive, as it states, “the Company shall upon such termination be required to continue to pay to Employee his salary . . . for two years thereafter.” This unambiguous language evidences that the payment of two years of salary and bonuses post-

termination are not wages for labor rendered and willfully retained by the employer; instead, they are unearned prospective or future wages which are not recoverable under the Wage Payment Act. In reaching this conclusion, the Court contends that while the language in Section 41-10-10 et. seq. (the “Act”) may be subject to another interpretation, the Court believes that it is questionable as to whether the General Assembly intended for the Act to apply to the facts in this case. To the contrary, the Court believes the purpose of the Act is to pay wages for services rendered in the past and not the future, and the wages sought here are for future wages not covered by the Act. As such, the Court determines as a matter of law that the Plaintiff is unable to seek these specific damages under his claim for violation of the Wage Payment Act, and instead, can only seek recovery of wages for labor rendered, if any.

For the reasons set forth above, the Defendants’ Motion for Partial Summary Judgment is **GRANTED.**

AND IT IS SO ORDERED.

Hon. G.D. Morgan, Jr.

January __, 2024

Greenville, South Carolina



Greenville Common Pleas

Case Caption: Chris Williams vs. Applya Occupational Strategies LLC , defendant,
et al
Case Number: 2022CP2306246
Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.