

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES CROWE : CIVIL ACTION
: :
v. : :
: :
GERLING GLOBAL REINSURANCE : NO. 99-6521
CORPORATION OF AMERICA : :

MEMORANDUM AND ORDER

McLaughlin, J.

October 3, 2000

The plaintiff has brought a two-count complaint against his former employer, Gerling Global Reinsurance Corporation of America (“Gerling”), contending that the defendant breached its employment agreement with him when it refused to pay him a “stay bonus” and certain severance payments. Count I alleges breach of contract and Count II alleges violation of Section 198 of the New York Labor Law. The defendant has moved to dismiss Count II of the complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. I will grant the motion.

According to the complaint, the plaintiff entered into a contract of employment on March 17, 1998 with Constitution Reinsurance Corporation (“Constitution”).¹ The employment contract provides for a “stay bonus” to be paid upon a change of control of the company, if the

¹ “A motion to dismiss pursuant to Rule 12(b)(6) may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief.” In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997) (citing Bartholomew v. Fischl, 782 F.2d 1148, 1152 (3d Cir. 1986)).

plaintiff is employed by Constitution at the time. One third of the stay bonus is to be paid at the time of the change of control, and the remaining two thirds are to be paid one year after the change of control. Similarly, the contract provides for a severance payment if, within one year following a change in control, the employment is terminated without “cause” by Constitution or for “good reason” by the plaintiff. In addition, a second severance payment is payable if, despite the plaintiff’s best efforts, he is unable to secure new employment within six months following the date of termination. Constitution merged with Gerling in October of 1998. The plaintiff was terminated from employment with Gerling on January 5, 1999.

In Count I, the plaintiff contends that he is entitled to receive the second installment of the stay bonus because Constitution employed him on the date that Gerling assumed control of Constitution. Additionally, he contends that he is due a second severance payment because he failed to obtain new employment within the requisite time period.

In Count II, the plaintiff contends that, pursuant to Section 198 of the New York Labor Law, he is entitled to reasonable attorney’s fees if he is successful on his claims for the stay bonus and severance, and to liquidated damages if the Court finds that the defendant’s failure to make these payments was “willful.”

The defendant has moved to dismiss Count II on the following grounds: (1) the plaintiff has failed to plead a substantive violation of the New York Labor Law; (2) as a former key management employee of Gerling, the plaintiff is outside the protection of the New York Labor Law; and (3) a stay bonus does not constitute “wages” within the meaning of the New York Labor Law. The language of the New York statute and caselaw interpreting that statute support the defendant’s arguments.

Section 198(1-a) of the New York Labor Law, upon which the plaintiff's claim is based, provides that:

in any action instituted upon a wage claim by an employee . . . the court shall allow such employee reasonable attorney's fees and, upon finding that the employer's failure to pay the wage required by this article was willful, an additional amount as liquidated damages equal to twenty-five percent of the total amount of the wages found to be due.

See N.Y. LABOR LAW § 198(1-a) (McKinney 1986 & Supp. 1997). Section 198 does not give a substantive cause of action to a litigant. It sets forth the remedies available in “actions for wage claims founded on the substantive provisions of Labor Law article 6.” Gottlieb v. Kenneth D. Laub & Co., 626 N.E.2d 29 (N.Y. 1993). In Gottlieb, the plaintiff alleged “only a common-law contract cause of action and a second cause of action for a ‘violation of Labor Law section 198’” Id. at 31. The plaintiff did not allege a violation of the provisions of article 6. The Court of Appeals dismissed his Section 198 claim, reasoning that the New York legislature intended that section to apply only when a plaintiff has brought a “wage claim” under a separate statutory provision in article 6. See id. at 32-33.

In this case, as in Gottlieb, the plaintiff has not brought a wage claim under the provisions of article 6. Accordingly, he cannot pursue the statutory remedies available for such a claim.

Gottlieb also supports the second ground of the defendant's motion. In Gottlieb, the Court of Appeals recognized that the Labor Law does not apply to “employees serving in an executive, managerial or administrative capacity.” Id. at 32. See also N.Y. LABOR LAW § 190(4)-(7) (McKinney 1986); Alter v. Bogoricin, No. 97 Civ. 0662, 1997 WL 691332, at *13 (S.D.N.Y. Nov. 6, 1997); Cohen v. Fox-Knapp, Inc., 640 N.Y.S.2d 554, 555 (N.Y. App. Div. 1996). The contract that forms the basis of the plaintiff's complaint, and which is attached thereto, states that it is for the

benefit of “key management personnel.” The plaintiff’s annual salary of over \$160,000 supports that characterization of his position. As a “key management” employee, the plaintiff cannot take advantage of Section 198.

The plaintiff’s Section 198 claim with respect to a stay bonus also must fail, as Section 198 covers only claims relating to “wages.” That term is defined in Section 190 as “the earnings of an employee for labor or services rendered, regardless of whether the amount of earnings is determined on a time, piece, commission or other basis.” N.Y. LABOR LAW § 190(1) (McKinney 1986). Incentive compensation based on factors falling outside the scope of the employee’s actual work, such as stay bonuses, are not “wages” within the meaning of Section 190, and thus fall outside the scope of Section 198. See, e.g., Dean Witter Reynolds, Inc. v. Ross, 429 N.Y.S.2d 653, 658 (N.Y. App. Div. 1980); Magness v. Human Resource Servs., Inc., 555 N.Y.S.2d 347, 349 (N.Y. App. Div. 1990); International Paper Co. v. Suwyn, 978 F. Supp. 506, 514 (S.D.N.Y. 1997); Samuels v. Crimmins Contracting Co., No. 91 Civ. 6657, 1993 WL 36168, at *7 (S.D.N.Y. Feb. 9, 1993).

An Order follows.

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ORDER

AND NOW, this day of October, 2000, upon consideration of the Defendant's Motion for Partial Dismissal of the Complaint and the Plaintiff's Response thereto, it is hereby ORDERED that the Motion is GRANTED. The Second Count of Plaintiff's Complaint is dismissed for failure to state a claim upon which relief may be granted.

BY THE COURT:

MARY A. McLAUGHLIN, J.