

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MARINA MONTIEL, *et al.*, :
Plaintiffs, :
 :
v. : Civil Action No. 2018 CA 006550 B
 : Judge Hiram Puig-Lugo
MAKRO SERVICES, INC., *et al.*, :
Defendants. :

ORDER

This matter comes before this Court upon consideration of Defendants’ Motion to Dismiss Count II of Plaintiffs’ Complaint with Prejudice (“Def. Mot.”), filed on October 15, 2018, and Plaintiffs’ Opposition to Defendants’ Motion to Dismiss Count II of Plaintiffs’ Complaint with Prejudice (“Pl. Opp.”), filed on November 16, 2018.

Background

Plaintiffs filed a Complaint for Breach of Contract on September 13, 2018. Count I of Plaintiffs’ Complaint alleges that Defendants violated the D.C. Minimum Wage Revision Act (“DCMWA”) by knowingly failing to pay the required minimum wage to one or more Plaintiffs. D.C. Code § 32-1001, *et seq.* Count II of Plaintiffs’ Complaint alleges that Defendants violated the D.C. Wage Payment and Collection Law (“DCWPCL”) by knowingly failing to timely pay Plaintiffs all wages due, including minimum wages. D.C. Code § 32-1301, *et seq.* Defendants filed a Motion to Dismiss Count II of Plaintiffs’ Complaint on the grounds that DCMWA is the Plaintiffs’ exclusive remedy. *See generally* Def. Mot.

Legal Standard

To survive a Motion to Dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543-44 (D.C. 2011); *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79

(2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). Dismissal of a Complaint for failure to state a claim upon which relief can be granted should only be awarded if “it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *See* Super. Ct. Civ. R. 12(b)(6); *Fingerhut v. Children’s Nat’l Med. Ctr.*, 738 A.2d 799, 803 (D.C. 1999).

When considering a Motion to Dismiss, a Court must “construe the facts on the face of the Complaint in the light most favorable to the non-moving party, and accept as true the allegations in the Complaint.” *Fred Ezra Co. v. Pedas*, 682 A.2d 173, 174 (D.C. 1996). A Court should not dismiss a Complaint merely because it “doubts that a Plaintiff will prevail on a claim.” *See Duncan v. Children’s Nat’l Med. Ctr.*, 702 A.2d 207, 210 (D.C. 1997). However, the Court need not accept inferences if such inferences are unsupported by the facts set out in the Complaint. *See Kowal v. MCI Comm. Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994). Nor must the Court accept legal conclusions cast in the form of factual allegations. *Id.*

Analysis

DCWPCL requires that “[w]henver an employer discharges an employee, the employer shall pay the employee’s wages earned not later than the working day following such discharge.” D.C. Code § 32-1303(1). DCMWA states, in relevant part,

“[t]he minimum hourly wage required to be paid to an employee by an employer shall be as of:

- (i) July 1, 2016: \$11.50;
- (ii) July 1, 2017: \$12.50;
- (iii) July 1, 2018: \$13.25;
- (iv) July 1, 2019: \$14.00; and
- (v) July 1, 2020: \$15.00.”

D.C. Code § 32-1003(5)(A).

Defendant asserts that under *Driscoll v. George Washington Univ.*, 938 F.Supp. 2d 19 (D.D.C. 2013), Plaintiffs' Count II claims must be dismissed because Count I and Count II are comprised of the same set of facts. Plaintiffs counter that *Driscoll* is no longer good law because the DCWPCL has been amended three times since *Driscoll* was decided. *See* Pl. Opp. at 2. Similarly, Plaintiffs point out that in *Wilson v. On the Rise Enterprises, LLC*, 305 F. Supp. 3d 5 (D.D.C. 2018), the District Court for the District of Columbia explicitly rejected the line of argument that the Defendants presented in their Motion to Dismiss. *See* Pl. Opp. at 4.

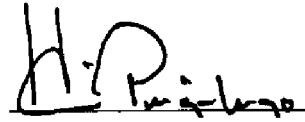
Indeed, the Defendants do not dispute that the Plaintiff earned less than the required minimum wage nor that the Plaintiffs' were not timely paid, but instead argue that DCMWA provides the exclusive remedy for a plaintiff who alleges a right to be paid minimum wages under D.C. law. *See generally* Def. Mot. However, the District Court for the District of Columbia held that DCWPCL "governs not only the timing of wage payments, but also the amount of wages that must be paid." *See Wilson*, 305 F. Supp. 3d 5, 19. The District Court elaborated by explaining, "[t]hat the [DCWPL] governs *when* wages must be paid does not mean that the statute does not also govern *what* wages must be paid. After all, an employer fails to pay "all wages earned," D.C. Code § 32-1302, by failing to pay either by the required date or the full amount due." *Id.* "Whether a claim under the [DCMWA] also might lie against the defendants simply has no bearing on whether the plaintiff has a claim under the [DCWPL]." *Id.*

Therefore, even accepting the Defendants' erroneous contention that Count II of Plaintiffs' Complaint must be dismissed because it relies on the same set of facts as Count I, the Plaintiff pleads both a valid DCMWA and a valid DCWPCL claim. The Plaintiffs' allegation that the Defendants never paid the Plaintiffs their minimum wages due under DCMWA, logically and necessarily encompasses an allegation that the Defendants also did not pay the Plaintiffs

their wages due by the required date under DCWPCL. The Plaintiffs have thus pled sufficient facts to state a claim of violations of both the DCMWA and the DCWPCL.

Accordingly, it is this 26th day of November, 2018, hereby:

ORDERED that Defendants' Motion to Dismiss is **DENIED**.

A handwritten signature in black ink, appearing to read 'H. Puig-Lugo', written over a horizontal line.

Honorable Hiram Puig-Lugo
Signed in Chambers

Copies via CasefileXpress to:
All counsel of record.