SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

ADONIS CALIX, *et al.*

Plaintiffs,

v.

PRESTIGE BUILDING COMPANY, LLC, *et al.*

Defendants.

Case No. 2020 CA 000729 B
Judge Robert R. Rigsby

ORDER

Plaintiffs bring this action against Defendants Prestige Building Company, LLC, V&V Construction, Inc., and Carlos Alberto Vicente, for unpaid wages based on the District of Columbia's Wage Payment and Collection Law ("DCWPCL"), D.C. Code § 32-1301, *et. seq.* Defendants' moved to dismiss on July 16, 2020 for failure to state a claim, arguing that Plaintiff's claims are not based on the DCWPCL, but in fact founded on the Davis-Bacon Act (the "Act"), 40 U.S.C. § 3141 et. seq., which does not contain a private right of action. Plaintiff filed an Opposition on September 11, 2020, and Defendants filed a Reply on September 28, 2020. For the reasons that follow, the Court will **Deny** Defendants' motion to dismiss.

The Plaintiffs in this matter, Adonis Calix and Jose Nunez allege that they were each hired and promised to be paid as ironworkers during the construction of the South Capitol Multifamily housing Project (SCMHP) located at 4001 South Capitol Street SW, Washington, D.C. 20032. Compl. ¶¶ 1, 32-33. The SCMHP was financed by the District of Columbia, through the District of Columbia Housing Finance Agency (DCHFA). Compl. ¶ 18. As a construction contract in excess of $2,000 of which the District of Columbia is a party, the Davis-

Bacon Act requires that workers performing construction on the SCMHP be paid by reference to a "prevailing rates" standard set by the Department of Labor for the type of work performed. Compl. ¶ 17. Plaintiffs allege that the prevailing rate that they should have been paid was $51.78 (31.15 wages + 20.63 cash value of fringe benefits). Compl. ¶ 31. Plaintiffs further allege that they were in fact paid $47.03 for 5 out of every 8 hours they worked, and $29.94 for 3 out of every 8 hours they worked, which is lower than the prevailing rate for ironworkers. Compl. ¶ 30. On January 30, 2020 Plaintiffs filed a Complaint seeking to recover unpaid wages. Plaintiffs allege that Defendants failed or refused to pay them as promised under the prevailing rate standard set by the Department of Labor as promised by Defendants. *Id.* at ¶¶ 33, 50-56. Plaintiffs seek, among other relief, a judgment for the difference between the wages paid and the wages owed, liquidated damages, interest, attorney's fees, and court costs.

STANDARD

A motion to dismiss pursuant to Rule 12(b)(6) challenges the legal sufficiency of a Complaint. *See Luna v. A.E. Eng'g Servs., LLC*, 938 A.2d 744, 748 (D.C. 2007). A plaintiff's Complaint must contain a short and plain statement of the claim for relief, such that the complaint "puts the defendant on notice of the claim against him." *Sarete, Inc. v. 1344 U St. Ltd. P'Ship*, 871 A.2d 480, 497 (D.C. 2005); *see* Super. Ct. R. Civ. P. 8(a). A Complaint must, at a minimum, contain a short and plain statement of the claim showing that the plaintiff is entitled to relief. Super. Ct. Civ. R. 8(a)(2).

When considering a motion to dismiss, the Court must accept as true all of the allegations put forth in the Complaint, and construe all facts and inferences in favor of the non-moving party. *See Murray v. Wells Fargo Home Mort.,* 953 A.2d 308, 316 (D.C. 2008). Dismissal for failure to state a claim upon which relief can be granted is warranted only when it appears beyond doubt that

the plaintiff can prove no set of facts in support of his claim. *See id.* However, the allegations in the complaint must be sufficient to "raise a right to relief above a speculative level." *Clampitt v. Am. Univ.*, 957 A.2d 23, 29 (D.C. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Additionally, the Complaint must provide more than mere labels and legal conclusions couched as fact. *See Grayson v. AT&T Corp.*, 980 A.2d 1137, 1144 (D.C. 2009). The complaint need not include "detailed factual allegations," but must include "more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Mazza v. House Craft, LLC*, 18 A.3d 786, 790 (D.C. 2011).

ANALYSIS

The Davis-Bacon Act requires that all laborers and mechanics working on federally funded construction projects be paid at or above the prevailing wage in the locality where the work is performed. 40 U.S.C. § 3142. The Secretary of Labor ("Secretary") has promulgated extensive regulations regarding the Act and its enforcement. *United States ex rel. Bradbury v. TLT Constr. Corp.*, 138 F. Supp. 2d 237, 240 (D.R.I. 2001), citing 29 C.F.R. §§ 1, 3, 5-7. Each contract entered into under the Act must stipulate that the contractor must pay wages established by the Secretary. 40 U.S.C. § 3142(c)(1); *See* 20 C.F.R. § 5.5. The contract must also provide that if the contractor fails to pay the minimum wages specified in the contract, the government's contracting office can withhold so much of the accrued payments as may be necessary to pay the laborers and mechanics the difference between the contact wages and those actually paid. 40 U.S.C. § 3142(c)(3). Under the Act "[i]f the accrued payments withheld under the terms of the contract are insufficient to reimburse" the laborers and mechanics for the wages owed, those "laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or

materials." *Id.* § 3144(a)(2). "But, this purely financial remedy is available only after there has been an administrative determination that some money is owed and that insufficient funds have been withheld to compensate the affected laborer." *Bradbury*, 138 F. Supp. 2d at 241. There has been no administrative determination in this case.

Under the DCWPCL, employers are required to pay all wages earned by employees on regular paydays. D.C. Code § 32.1302. "Wages" means all monies owed after lawful deductions, including fringe benefits paid in case and other remuneration promised or owed pursuant to District or federal law. D.C. Code § 32-1301(3). Employers are required to pay employees all back wages upon termination of employment, regardless of cause. *See generally* D.C. Code § 32-1303.

Here, Plaintiffs allege that they were employees of Defendant V&V Construction until November 21, 2019. Compl. ¶¶ 20, 21. Throughout their time with V&V on the SCMHP, Defendants were allegedly hired and employed as ironworkers who are customarily paid $51.78 per hour in combined wages and fringe benefits under the prevailing rate. Compl. ¶ 29-33. Plaintiffs allege that they were underpaid based on the prevailing wage. Compl. ¶¶ 30, 34. Furthermore, Plaintiffs allege that Defendant's failed to pay them time and a half for hours worked over 40 per week. Compl. ¶ 35.

Defendants argue that the Davis-Bacon Act does not provide a private right of action where an employer allegedly fails to pay the prevailing wage rates under the Act, and that Plaintiffs may not make an end run around the Davis Bacon Act by bringing a claim for unpaid prevailing wages under the DCWPCL. Although the District of Columbia Court of Appeals has not addressed this issue, the majority of courts that have considered this issue have concluded that there is no private right of action under 40 U.S.C. s. 3142, the section of Davis-Bacon act at issue here. *See e.g.*, *Ibrahim v. Mid-Atlantic Air of DC, LLC*, 802 F. Supp. 2d 73, 76 (D.D.C.

2011), quoting Bradbury, 138 F. Supp. 2d at 240 (collecting cases). However, Plaintiffs argue that whether the Davis Bacon Act contains a private right of action is irrelevant because they do not bring this claim under the Davis-Bacon Act but instead under D.C. law for unpaid wages, the DCWPCL. *See* Compl. ¶¶ 48-56. The Court agrees.

Although the District of Columbia Court of Appeals has not decided the issue of whether the Davis Bacon Act preempts and forecloses a cause of action under the DCWPCL, the United States District Court for the District of Columbia has recently taken up the issue and held that the Davis Bacon Act does not foreclose claims for unpaid wages under District of Columbia law. *See Garcia v. Skanska USA building, Inc.*, 324 F.Supp.3d 76, 80 (D.D.C. 2018) (holding that that "the [Davis Bacon Act] does not foreclose causes of action under . . . state (or, as in this case, District) law, at least where a plaintiff does not challenge the Department of Labor's classification or wage-setting decisions."). The Court finds *Garcia* persuasive and will follow it here. *See* Id. at 81-83 (articulating why the Davis Bacon Act does not foreclose claims under the DCWPCL).

In *Garcia*, plaintiff carpenter brought Federal Fair Labor Standards Act, 29 U.S.C. § 207 *et. seq.*, the DCWPCL and the D.C. Minimum Wage Act claims for "work on various public buildings in the District of Columbia." The Plaintiff's claims were: failure to pay overtime wages in violation of the Fair Labor Standards Act; failure to pay overtime wages in violation of the D.C. Minimum Wage Act; and failure to pay all wages due, including wages and fringe benefits, under the DCWPCL. One of the Plaintiffs alleged that his employers "agreed to hire and pay him as a carpenter," which plaintiff understood to mean that "he would be paid at least the legal prevailing wage for a carpenter." *Id.* at 78. The employers moved to dismiss, arguing that the "Davis-Bacon Act forecloses any cause of action" under the DCWPCL and related

statutes. *Id.* at 77. The Court denied the Motion, noting that "no matter how DOL would classify the plaintiffs' correct wage rate, they are entitled to the wage rate that they were promised upon being hired and that they reasonably expected applied over the duration of their work." Id at 84-85.

Here, as in Garcia, Plaintiffs contend that their employers agreed to hire and pay them "as "[ironworkers]" and "understood that they would be paid at least the legal prevailing wage for [ironworkers]" but failed to do so. *Id.* 78. Compl. ¶¶ 30-34. The DCWPCL itself, not the Davis Bacon Act, provides the cause of action by allowing employees to sue for wages that they were "promised." *See* D.C. Code 32-1301(3); *see also* D.C. Code 32-1305 ("In enforcing the provisions of this chapter, the remuneration promised by an employer to an employee shall be presumed to be at least the amount required by federal law, including federal law requiring the payment of prevailing wages, or by District law.") That defendants referenced the DBA rate in making a promise will be relevant to the factfinder, who must determine the precise content of the promise, but it does not speak to the merits of the DCWPCL claim. Because Plaintiffs have stated a claim under the DCWPCL, Defendants' Motion to Dismiss is denied.

CONCLUSION

Accordingly, based on the foregoing and based on the entire record herein, it is this the 9th day of October, 2020, hereby

ORDERED; that Defendant's Motion to Dismiss is **DENIED,**

SO ORDERED.

Robert R. Rigsby

Robert R. Rigsby, Associate Judge
Superior Court of the District of Columbia

Copies to:
Counsel of record via CasefileXpress