

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DEAQUINO, RODOLFO :
REBOLLEDO et al., :
Plaintiffs, :
v. : Civil Action No. 2019 CA 003842 B
OMNI EXCAVATORS, INC. et al :
Defendants. :

ORDER

This matter comes before this Court upon consideration of Defendants’ Motion to Dismiss Count II of Plaintiffs’ Complaint¹, and Plaintiffs’ Consolidated Opposition to Defendants’ Three Motions to Dismiss Plaintiffs’ First Amended Complaint.

Background

On June 10, 2019, Plaintiffs filed a Complaint for Breach of Contract. On July 23, 2019, Plaintiffs filed an Amended Complaint as a matter of course. Count I of Plaintiffs’ Amended Complaint alleges that Defendants violated the D.C. Minimum Wage Revision Act (“DCMWA”) by knowingly failing to pay the required overtime wages 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 overtime wages. D.C. Code § 32-1301, *et seq.* All of the 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.

¹ Capitol Paving of D.C., Inc.’s Motion to Dismiss was filed on August 12, 2019 and Fort Myer Construction Corporation’s Motion to Dismiss was filed on August 13, 2019. Omni Excavators, Inc., Abotorab Rafi, and Manuel Machado Dias’ joined/incorporated by reference the Motion to Dismiss filed by Fort Myer Construction Corporation.

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 an employer shall pay all wages earned to his or her employees on regular paydays designated in advance by the employer and at least twice during each calendar month. D.C. Code § 32-1302. DCMWA states, in relevant part, “[n]o employer shall employ any employee for a workweek that is longer than 40 hours, unless the employee receives compensation for employment in excess of 40 hours at a rate not less than 1 1/2 times the regular

rate at which the employee is employed.” D.C. Code § 32-1003(c). DCWPCL’s definition of “wages” includes overtime premiums. D.C. Code § 32-1301(3).

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 and DCMWA is the exclusive remedy for plaintiffs who allege a right to be paid overtime wages under D.C. law. Plaintiffs counter that *Driscoll* is no longer good law because the DCWPCL has been amended three times since *Driscoll* was decided. *See* Pl. Opp. 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 Motions to Dismiss. *See* Pl. Opp.

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 at 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 Plaintiffs plead both a valid DCMWA and a valid DCWPCL claim. The Plaintiffs’ allegation that the Defendants never paid the Plaintiffs their overtime 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.

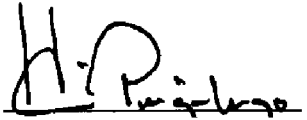
Accordingly, it is this 3rd day of September, 2019, hereby:

ORDERED that Defendants Capitol Paving of D.C. Inc.'s Motion to Dismiss Count II of Plaintiff's First Amended Complaint for Failure to State a Claim is **DENIED**; it is further

ORDERED that Defendant Fort Myer Construction Corporation's Motion to Dismiss Count II of Plaintiffs' First Amended Complaint is **DENIED**; it is further

ORDERED that Omni Excavators, Inc., Abotorab Rafi, and Manuel Machado Dias' Motion to Dismiss Count II of Plaintiffs' First Amended Complaint is **DENIED**.

IT IS SO ORDERED.


Judge Hiram Puig-Lugo
Signed in Chambers

Copies via CasefileXpress to all counsel of record.