No. 23-CV-0781

DISTRICT OF COLUMBIA COURT OF APPEALS

ALEXANDER ZAJAC

Appellant

v.

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP

Appellee

On Appeal from the Superior Court of the District of Columbia – Civil Division

BRIEF OF APPELLANT ZAJAC

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ESTABLISHMENT OF THIS COURT'S JURISDICTION

This appeal is from the Superior Court's Order dated July 25, 2023, dismissing Appellant's Original Complaint, and the Superior Court's Order dated September 19, 2023, denying Appellant leave to file his Proposed Amended Complaint. Both Orders dispose of Appellant's claims in their entirety.

STATEMENT OF ISSUES

1. Whether Appellant included sufficient facts in his Original Complaint to state a claim upon which relief can be granted.

2. Whether the Superior Court abused its discretion in denying Appellant leave to amend after dismissing Appellant's Original Complaint.

STATEMENT OF THE CASE

Appellee is one of the largest intellectual property law firms in the country. Appellee lured Appellant into employment with promises of productivity bonuses and law school tuition benefits. This case is about whether Appellee may renege on those promises.

In particular, Appellee promised Appellant a mandatory productivity bonus calculated based on hours billed. Appellee paid out according to this schedule in both 2018 and 2019 but refused to pay Appellant in 2020 after Appellant began work at a different law firm. Additionally, Appellee promised Appellant full law school tuition benefits but subsequently paid out partial benefits from 2017 through 2019. The question here is whether Appellee may unilaterally withhold bonuses and other remuneration and thus break oral and written promises made to Appellant.

Appellant filed suit in Superior Court against Appellee for wage theft under the District of Columbia Wage Payment Law ("DCWPL") and for breach of contract. On July 25, 2023, the Superior Court granted Appellee's Motion to Dismiss and instructed Appellant to file any motion

for leave to amend by August 1, 2023. Appellant filed his Motion for Leave to Amend and included the Proposed Amended Complaint that recites additional conversations in which Appellee's representatives promised mandatory productivity bonuses and full law school tuition benefits. On September 19, 2023, the Superior Court denied Appellant's Motion for Leave to Amend.

STATEMENT OF FACTS

Appellant enrolled at Georgetown University Law Center in 2015. After one year as a full-time law student, Appellant received an offer of employment from Appellee. Am. Compl. at ¶ 13 (App'x at AP26); *see also* Compl., Ex. A (App'x at AP16). Accepting Appellee's offer would have meant more time enrolled in law school because Appellant would have to become a part-time law student. Additionally, Appellant would be working at least 30 hours per week in addition to being a law student. Am. Compl. at ¶ 18 (App'x at AP27). However, Appellant was convinced to accept employment for two reasons. First, Appellant was told that any hours billed more than 30 per week would result in a mandatory productivity bonus. Am. Compl. at ¶¶ 15-18 (App'x at AP27). Second, Appellant was promised benefits in the amount of 100% of the cost of tuition at Georgetown University Law Center. Am. Compl. at ¶¶ 28-36 (App'x at AP28-30); *see also* Compl., Ex. A (App'x at AP16). Therefore, Appellant accepted Appellee's offer of employment.

During Appellant's time in law school, Appellee paid productivity bonuses according to the promised schedule. Am. Compl. at ¶¶ 19-20 (App'x at AP27). However, when Appellant departed for employment at another law firm, Appellee withheld the productivity bonus that was due to Appellant for hours billed in fiscal year 2019. Am. Compl. at ¶¶ 23-27 (App'x at AP28). In particular, Appellant was due $40,000 for billing 200 hours over Appellant's requirement. *Id.*

Additionally, Appellee failed to account for income tax on Appellant's tuition benefits and thus deprived Appellant of at least $33,789.14 in tuition benefits from 2017 through 2019. Am. Compl. at ¶ 40 (App'x at AP30). Appellee represented that these benefits would be fixed on numerous occasions but failed to do so. Am. Compl. at ¶¶ 37-38 (App'x at AP30). Therefore, Appellant brought suit to hold Appellee liable for the promised productivity bonus and tuition benefits that Appellee never paid.

ARGUMENT

The Superior Court's dismissal of Appellant's Complaint is reviewable *de novo* by this Court. *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1022-23 (D.C. 2007); *In re Estate of Curseen*, 890 A.2d 191, 193 (D.C. 2006). Additionally, the Superior Court's refusal to grant leave to amend is reviewable for abuse of discretion. *Nat'l Ass'n of Post-Masters v. Hyatt Regency Washington*, 894 A.2d 471, 477 (D.C. 2006); *Sherman v. Adoption Ctr. of Washington*, 741 A.2d 1031, 1037 (D.C. 1999).

With regard to Appellant's claim for a productivity bonus, the Superior Court erred in construing the productivity bonus as discretionary. Additionally, Appellant's Proposed Amended Complaint includes additional facts demonstrating that Appellant should at least be permitted to proceed on a breach of contract claim for the productivity bonus. With regard to Appellant's claim for law school tuition benefits, the Superior Court erred in construing the benefits as reimbursements rather than wages. Additionally, Appellant's Proposed Amended Complaint includes additional facts demonstrating that Appellant should at least be permitted to proceed on a breach of contract claim for the law school tuition benefits.

I. Appellant's Original Complaint is sufficient to establish the productivity bonus as mandatory.

In a single sentence, the Superior Court construed Appellant's productivity bonus as discretionary and dismissed Appellant's claim. Order (granting Motion to Dismiss) at 3 (App'x at AP22) (citing *Ronaldson v. Nat'l Ass'n of Home Builders*, 502 F. Supp. 2d 290, 297 (D.D.C. 2020)). However, the Superior Court ignored numerous alleged facts to reach this conclusion. Because a court must "'accept the allegations of the complaint as true, and construe all facts and inferences in favor of the plaintiff'" when considering a motion to dismiss, the Superior Court's decision is legally erroneous and should be reversed. *Solers, Inc. v. Doe*, 977 A.2d 941, 947 (D.C. 2009) (quoting *In re Estate of Curseen*, 890 A.2d at 193).

Appellant's allegations are similar to the allegations that were sufficient to survive a motion to dismiss in *Molock v. Whole Foods Mkt*. In *Molock*, the plaintiffs "sufficiently alleged that payment of a Gainsharing bonus was not subject to any employer discretion, but rather automatic and mandatory upon satisfaction of the condition that the department in which Plaintiffs were employed obtained a surplus." 297 F. Supp. 3d 114, 134 (D.D.C. 2018). In fact, the court in *Molock* found it sufficient for plaintiffs to allege "that the 'Gainsharing program distributes automatic (non-discretionary) bonuses' to qualifying employees" in order to survive the defendant's motion to dismiss. *Id.* Appellant has gone even further than the plaintiffs in *Molock* and alleged specific criteria by which the productivity bonus was earned. Am. Compl. at ¶¶ 18 and 25 (App'x at AP27-28). Concrete allegations that Appellant "met [the] objectives" required for the productivity bonus rather than relying "entirely on conclusory allegations that he is owed the bonus" is sufficient to proceed beyond a motion to dismiss. *Brady v. Liquidity Servs., Inc.*, No. 18-cv-1040 (RCL), slip op. at 8-9 (D.D.C. Nov. 29, 2018).

Indeed, dismissal is only appropriate when "'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Murray v. Wells Fargo Home Mortgage*, 953 A.2d 308, 316 (D.C. 2008) (quoting *Owens v. Tiber Island Condo. Ass'n*, 373 A.2d 890, 893 (D.C. 1977)). In this case, Appellant intends to use discovery to prove oral promises from Appellee's representatives as well as gather testimony from former and current employees to prove that productivity bonuses are presented to employees as mandatory. *See, e.g.*, Am. Compl. at ¶¶ 18 and 25 (App'x at AP27-28) (reciting that bonus schedules are "understood throughout the firm"). Even though "a complaint should not be dismissed because a court does not believe that a plaintiff will prevail on her claim," that is exactly what the Superior Court has done. *Murray*, 953 A.2d at 316 (citing *Duncan v. Children's Nat'l Med. Ctr.*, 702 A.2d 207, 210 (D.C. 1997)). Therefore, this Court should reverse the Superior Court's decision and remand.

II. Appellant's Proposed Amended Complaint further establishes a claim for breach of contract with respect to the productivity bonus.

As an initial point, the Superior Court fixated on a minor change in Appellant's Proposed Amended Complaint in order to avoid any substantive analysis of Appellant's allegations. *See* Order (denying Motion for Leave to Amend) at 2 (App'x at AP39). Appellant's change regarding whether productivity bonuses are mandatory or discretionary for student associates is a "reconcilable 'small variation[]'" that is "acceptable" under relevant precedent. *Hourani v. Mirtchev*, 943 F. Supp. 2d 159, 171 (D.D.C. 2013) (quoting *Price v. Socialist People's Libyan Arab Jamahiriya*, 389 F.3d 192, 198 (D.C. Cir. 2004)). In fact, Appellee paid productivity bonuses earned by Appellant as a student associate, so any allegations about the nature of productivity bonuses for student associates are irrelevant to the substance of the present case. Appellant drafted the Original Complaint based on the best of his recollection; Appellant then

discovered contemporary notes from his 2016 conversation with Mr. Timothy Henderson indicating that the productivity bonus was mandatory for student associates. Therefore, Appellant proposed to amend his Complaint to reflect this new information in order to comply with his duty of candor under D.C. Rule of Professional Conduct 3.3.

By its own terms, the DCWPL applies to "Other remuneration promised or owed: . . . [p]ursuant to a contract for employment, whether written **or oral**." D.C. Code § 32-1301(3)(E) (emphasis added). The Proposed Amended Complaint includes multiple facts showing that mandatory productivity bonuses were orally promised to Appellant. Am. Compl. at ¶¶ 15, 22, 23 (App'x at AP27-28). There is no reason Appellant is prevented from proceeding on a claim for orally promised remuneration under the terms of the DCWPL.

In the alternative, Appellant should be permitted to proceed on a breach of contract claim similar to that in *Peck v. SELEX Sys. Integration*. In *Peck*, the defendant made a formal agreement with the plaintiff to reimburse "costs associated with the sale of [his] primary residence in Overland Park" and "closing costs on the purchase of [his] primary residence in Virginia." 270 F. Supp. 3d 107, 112 (D.D.C. 2017). Similarly, Appellee made an oral agreement with Appellant about productivity bonuses, and Appellant should be permitted to enforce this oral agreement against Appellee.

"[T]he policy which favors resolution of cases on the merits imposes a 'virtual presumption' that leave should be granted absent sound reasons which dictate a contrary result." *Crowley v. N. Am. Telecomms.*, 691 A.2d 1169, 1174 (D.C. 1997). Because the Superior Court failed to articulate any sound reasons for rejecting Appellant's Proposed Amended Complaint, this Court should reverse and remand.

III. Appellant's Proposed Original Complaint is sufficient to establish that the tuition benefits are wages.

The Superior Court held that Appellant's tuition benefits were reimbursements under *Sivaraman v. Guizzetti & Assocs., Ltd.*, 228 A. 3d 1066 (D.C. 2020). Order (granting Motion to Dismiss) at 4 (App'x at AP23). However, *Sivaraman* is inapposite because the distinguishing features between wages and expense reimbursements considered in *Sivaraman* go the opposite way in the present case. The court in *Sivaraman* noted that "[i]t would be bizarre if a person, upon being asked what wage they made the prior year, included various expenses they were reimbursed for during that time." 228 A.3d at 1075. However, the tuition benefits that Appellant received **were** included in Appellant's adjusted gross income. INTERNAL REVENUE SERVICE, PUB. 970 at 58 ("If your employer pays more than $5,250 in educational assistance benefits for you during the year, you must generally pay tax on the amount over $5,250. Your employer should include in your wages (box 1 of Form W-2) the amount that you must include in income."). The court in *Sivaraman* further considered that "[i]t would be perverse if an employer's reimbursement of expenses counted toward satisfying their obligation to pay the minimum hourly wage required." 228 A.3d at 1076 (internal quotation marks and citation omitted). However, tuition is treated differently than other expense reimbursements for the purposes of wage calculation. For example, students may have "tuition remission and other forms of compensation paid as, or in lieu of, wages" under 2 C.F.R. § 200.466. Because Appellant's tuition benefits are distinguishable from the reimbursements at issue in *Sivaraman*, this Court should reverse the Superior Court's decision and remand.

IV. Appellant's Proposed Amended Complaint further establishes a claim for breach of contract with respect to the tuition benefits.

As noted previously, the DCWPL applies to "Other remuneration promised or owed: . . . [p]ursuant to a contract for employment, whether written or oral." D.C. Code § 32-1301(3)(E).

The Proposed Amended Complaint includes multiple facts showing that full tuition benefits were promised to Appellant both in writing and orally. Am. Compl. at ¶¶ 28-30 and 36-38 (App'x at AP28 and AP30). Additionally, unlike the unknown expense reimbursements in *Sivaraman*, the exact amount of tuition benefits was known to both Appellant and Appellee at the time of employment. Am. Compl. at ¶¶ 31-32 (App'x at AP29). The only condition for the tuition benefits was an objective criterion, not discretionary ones. Am. Compl. at ¶¶ 29-30 (App'x at AP28). A conditional bonus is still cognizable under the DCWPCL as long as the bonus is not "subject to any employer discretion, but rather automatic and mandatory upon satisfaction of the condition." *Molock*, 297 F. Supp. 3d at 134. Appellant should be allowed to proceed on a claim for remuneration that was promised both in writing and orally.

In the alternative, Appellant should be permitted to proceed on a breach of contract claim similar to that in *Peck*. The court in *Peck* found that the alleged relocation costs were part of a formal agreement between employer and employee, thus entitling the plaintiff to payment of the same. 270 F. Supp. 3d at 116. Additionally, the plaintiff in *Peck* was prevented from voluntarily leaving employment in order to retain entitlement to the relocation costs. *Id.* Appellant's tuition benefits were similarly part of a formal agreement with Appellee and were tied to work "as an associate for a minimum of two years after graduation from law school." Compl., Ex. A (App'x at AP16). Because the plaintiff in *Peck* was permitted to proceed on a breach of contract claim, Appellant should be afforded the same right.

Again, because the Superior Court failed to articulate any "sound reasons" for rejecting Appellant's Proposed Amended Complaint, this Court should reverse and remand. *Crowley*, 691 A.2d at 1174.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the Superior Court's dismissal of wage and contract claims against Appellee and remand.

Respectfully submitted,

Date: February 12, 2024 By:_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 12, 2024, true copies of this Brief and its accompanying Appendix were served electronically upon Trina Fairley Barlow and Cori B. Schreider, counsels of record for Appellee, consistent with Rule 25(c)(2). Consistent with Rule 25(a)(2)(B)(ix), two (2) paper copies of this Brief and its accompanying Appendix will be deposited in the mail for delivery to this Court.

Date: February 12, 2024 By:_____
Alexander Zajac

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

Signature

23-CV-0781
Case Number(s)

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