

("Horsehead"). In February of 2002, Stoe and Zinc renegotiated his employment agreement. The agreement required, in part, the payment to Stoe of the lump sum amount of \$1,000,000 in the event that Horsehead terminated his employment for any reason other than for "cause." Approximately two months later, on April 30, 2002, Stoe and Zinc entered into a severance agreement. The terms of the agreement granted Stoe severance totaling \$638,000, paid in biweekly installments of \$13,500. It also gave Stoe the right, in the event of default, to sue under the February 2002 Agreement.

Zinc made all required payments until Horsehead filed for bankruptcy on August 19, 2002. At that point in time, Horsehead was prohibited by the Bankruptcy Code from making any further payments to Stoe. Thereafter, Stoe filed suit in the Court of Common Pleas of Allegheny County, Pennsylvania. Rather than sue Horsehead or Zinc, however, Stoe chose to sue Defendants William E. Flaherty, David Carpenter, James Carpenter, William Smelas, Robert Sunderman and Ronald Statile ("the Defendants"). The Defendants are current or former officers / directors of Zinc or Horsehead. Stoe brings his claims under Pennsylvania's Wage Payment and Collection Law ("WPCL"), 43 Pa. Cons. Stat. Ann. § 260.1 *et seq*, for the failure to make payments under the February 2002 Agreement. The WPCL allows the imposition of personal liability upon a corporation's top officers when a corporation fails to pay wages and benefits that it owes its employees.

Pending are Motions to Dismiss filed by David Carpenter and James Carpenter (Docket No. 2), by Smelas, Sunderman and Statile (Docket No. 3) and by Flaherty

(Docket No. 6). The Carpenters raise a challenge to this Court's exercise of personal jurisdiction. In addition to that challenge, each Defendant urges that the Third Circuit court's decision in Belcufine v. Aloe, 112 F.3d 633 (3d Cir. 1997) forecloses liability under the WPCL. As I agree with this assertion, I decline to consider the other arguments offered in support of dismissal.

(I) Rule 12(b)(2) Motion - Lack of Personal Jurisdiction

Defendants James Carpenter and David Carpenter ("the Carpenters") contest this Court's exercise of personal jurisdiction over them. They urge that what minimal contacts they had with Pennsylvania, were all made in the context of their corporate capacities. Accordingly, they contend that the "fiduciary shield" or the "corporate shield" doctrine protects them from the exercise of personal jurisdiction.

"The corporate shield doctrine protects officers and directors by limiting the extent to which their actions performed in the corporate capacity may be used to exercise jurisdiction over them individually." Lautman v. The Lowen Group, Inc., Civ. No. 99-75, 2000 WL 772818 at * 5 (E.D. Pa. June 15, 2000). The doctrine developed as an effort to avoid forcing corporate officers and directors to either "disassociate themselves from the corporation or defend the propriety of their conduct in a distant forum." Lautman, 2000 WL 772818 at * 5, quoting, PSC Professional Servs. Group v. American Digital Sys., Inc., 555 F. Supp. 788, 793 (E.D. Pa. 1983). Yet this doctrine is not absolute.

"Courts have recognized exceptions to the fiduciary shield doctrine in situations where: (1) a corporate agent engages in tortious conduct in his corporate

capacity within the forum; and / or; (2) the corporate agent is charged with violating a statutory scheme that provides for personal, as well as corporate, liability." Irons v. Transcor America, Civ. No. 1-4328, 2002 WL 32348317 at * 5 (E.D. Pa. July 8, 2002); see also Lautman, 2000 WL 772818 at * 5; Huth v. Hillsboro Ins. Mgmt., 72 F. Supp. 506, 511 (E.D. Pa. 1999); DaimlerChrysler Corp. v. Askinazi, Civ. No. 99-5581, 2000 WL 822449 p. 4, n. 3 (E.D. Pa. June 26, 2000); and United Products v. Admiral Tool & Mfg., 122 F. Supp.2d 560, 562 (E.D. Pa. 2000). Where the exceptions are applicable, courts consider three factors in determining whether consideration of the defendant's corporate contacts are appropriate: (1) the defendant's role in the corporate structure; (2) the nature and quality of the defendant's contacts with the forum; and (3) the extent and nature of the defendant's personal participation in the conduct charged. Lautman, 2000 WL 772818 at * 5 (citations omitted).

Here, Stoe contends that the Carpenters violated a statute, the WPCL, which allows for the imposition of personal liability. Consequently, this case falls within the second application of the corporate shield doctrine.¹ Accordingly, I would normally proceed to a consideration of the Carpenters' roles in the corporate structure, the nature and quality of the Carpenters' contacts with Pennsylvania and the nature and extent of the Carpenters' personal participation in the conduct charged. Stoe urges that he has no knowledge of the nature and quality of the Carpenters' contacts with Pennsylvania, or their involvement with the conduct

¹ The Carpenters urge that violations of the WPCL do not fall within the first exception. I need not address that contention, nor the cases standing for this proposition, as I find the second exception applies.

charged. As such, he asks for a period of discovery within which to explore these subjects.

While a court should generally permit a plaintiff to take discovery in aid of the court's exercise of personal jurisdiction, the facts at hand are somewhat unique. As set forth below, each Defendant has made the argument that the WPCL is inapplicable here. I agree with their argument. As such, even assuming that I would find that the Carpenters have sufficient minimum contacts with the Commonwealth of Pennsylvania so as to permit the exercise of personal jurisdiction, I would necessarily dismiss the claims against them. Thus, allowing a period of discovery would be fruitless and a waste of the parties' and this Court's resources. At most, it would simply postpone the dismissal of the claims against the Carpenters. Consequently, I decline to award Stoe a period of discovery for the purposes of establishing jurisdiction. As set forth below, even were jurisdiction properly exercised, the claims against the Carpenters would be dismissed.

(II) Rule 12(b)(6) Motion - Applicability of the WPCL

As stated above, each Defendant urges that the WPCL is inapplicable here, as the Bankruptcy Code prevented them from making any further payments to Stoe under either the Severance Agreement or the February 2002 Agreement. Consequently, they seek a dismissal of all claims.

STANDARD OF REVIEW

In deciding a Motion to Dismiss, all factual allegations, and all reasonable inferences therefrom, must be accepted as true and viewed in a light most

favorable to the plaintiff. Colburn v. Upper Darby Twp., 838 F.2d 663, 666 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1988). I may dismiss a complaint only if it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45 (1957). In ruling on a motion for failure to state a claim, I must look to "whether sufficient facts are pleaded to determine that the complaint is not frivolous, and to provide the defendants with adequate notice to frame an answer." Colburn, 838 F.2d at 666.

While a court will accept well-pleaded allegations as true for the purposes of the motion, it will not accept legal or unsupported conclusions, unwarranted inferences, or sweeping legal conclusions cast in the form of factual allegations. See Miree v. DeKalb County, Ga., 433 U.S. 25, 27 n.2 (1977). Moreover, the plaintiff must set forth sufficient information to outline the elements of his claims or to permit inferences to be drawn that these elements exist. See Fed. R. Civ. P. 8(2)(a) and Conley, 355 U.S. at 45-46. Matters outside the pleadings should not be considered. This includes "any written or oral evidence in support of or opposition to the pleadings that provides some substantiation for and does not merely reiterate what is said in the pleadings." Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure, § 1366 (West 1990).

ANALYSIS

It is undisputed that Zinc Corporation remained current on all severance payments due and owing Stoe until Horsehead filed its bankruptcy petition in the United States District Court for the Southern District of New York on August 19, 2002.

See Complaint, ¶ 18. It is further undisputed that the Bankruptcy Code prohibited Horsehead from making the severance payments owed to Stoe. “The question, then, is whether, in this context, where, by law, the company’s managers have no discretion to order payment of the amounts owed to the employees, they can simultaneously be held liable for not making the payments. Belcufine v. Aloe, 112 F.3d 633, 634 (3d Cir. 1997). To paraphrase the Third Circuit court, I think not. Belcufine, 112 F.3d at 634.

The Third Circuit squarely resolved this issue in Belcufine. In Belcufine, Shenango Corporation filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Thereafter, a group of former employees sued Shenango’s officers pursuant to the WPCL, claiming that they were owed specific sums of money for vacation and supplemental retirement benefits. The court observed that:

[t]he issue raised by this case is what happens when their company files a Chapter 11 bankruptcy petition and the employees seek to recover from the corporate managers for unpaid vacation and retirement benefits that were allegedly earned in the *prepetition period*, but that came *due* only in the *post-petition period*.

Belcufine, 112 F.3d at 634 (emphasis in original). The Third Circuit court concluded that corporate managers cannot be held personally liable under the WPCL when the corporation’s failure to make payments occurs as a result of the operation of the Bankruptcy Code.

The Belcufine decision is consistent with the purpose of the WPCL. The WPCL is designed “to deter managers from strategically diverting company resources away

from the payment of wages and benefits... ." Id., at 639. Thus, it applies where the managers have a choice in how to administer corporate funds. Where a corporation has filed for bankruptcy, however, that choice, or ability to make strategic decisions with respect to corporate finances, is restricted by the Bankruptcy Code. Consequently, managers are not making deliberate choices to divert company funds away from the payment of wages and benefits. As such, it would serve no purpose to apply the WPCL where the nonpayment of wages / benefits occurs because of the operation of the Bankruptcy Code.

I find unpersuasive Stoe's attempts to distinguish this case from the Belcufine decision, and thus from the conclusion that the WPCL is inapplicable here. Stoe urges that he seeks to recover amounts that were due him prior to the date of the bankruptcy filing. See Docket No. 22, p. 16-17. The severance agreement may have contained language acknowledging that Stoe had earned the amounts payable, but the fact remains that the parties agreed that the amount would be paid in installments. Prior to the filing of the bankruptcy petition, Horsehead had timely made each required installment payment. As such, Stoe could not have brought an action under the WPCL against the Defendants prior to the filing of the bankruptcy petition. Once Horsehead filed the bankruptcy petition, the Bankruptcy Code operated so as to preclude the Defendants from making further installment payments under the terms of the severance agreement. Consequently, here, as in Belcufine, the Defendants did not make a strategic decision to avoid payments of the wages. Rather, in both instances the Defendants were forbidden by the

Bankruptcy Code to make the disputed payments. Thus, although the claim may have arose out of *pre-petition* obligations, the claim arose with respect to payments *that came due in the post-petition period.* Id., p. 635.

Summary judgment is granted in favor of the Defendants on all claims set forth in the Complaint.

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