

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JUSTIN POWELL, )  
Plaintiff, )  
 )  
v. ) C.A. No. 07-11033-MLW  
 )  
DASSAULT SYSTEMES ENOVIA CORP., )  
ET AL., )  
Defendants. )

MEMORANDUM AND ORDER

WOLF, D.J.

September 29, 2009

Plaintiff Justin Powell filed this suit against his former employer, which was previously known as Enovia MatrixOne, Inc. ("MatrixOne"), and its former Chief Executive Officer Mark O'Connell. Powell asserts various claims arising out of his discharge as an employee of MatrixOne. The court phased discovery to permit defendants to file a motion for partial summary judgment based on the release of claims in the Separation Agreement Powell entered into when MatrixOne discharged him. For the reasons stated in court on November 18, 2008, the court granted summary judgment for defendants "as to all claims now in the Complaint (Docket No. 1) arising from events before the signing of the Separation Agreement and Release on August 12, 2005, because plaintiff Justin Powell failed to rescind the agreement in a reasonable period of time after [the] duress and coercion [he alleges] ceased. See, e.g., Cabot Corp. V. AVX Corp., 448 Mass. 629, 642-43 (2007)." Nov. 20, 2008 Order, ¶1.

The original Complaint being addressed on November 18, 2008 did not include a claim under the Massachusetts Wage Act, Mass. Gen. Laws ch. 149, §§148, 150 (the "Wage Act"). In opposing the motion for partial summary judgment, Powell contended that a Wage Act claim would survive even if the release at issue was valid. After deciding the motion for summary judgment, the court offered Powell an opportunity to move to amend the Complaint to add a Wage Act claim and defendants an opportunity to oppose any such motion.

Powell subsequently moved to amend the Complaint to add a Wage Act claim. Defendants opposed the motion on several grounds. Powell replied to their opposition. For the reasons set forth below, the motion to amend is being denied.

Federal Rule of Civil Procedure 15(a)(2) provides that "the court should freely give leave [to amend] when justice so requires." However, it has long been established that a proposed amendment may be denied if it is evident that it would be futile to add the new claim. See Foman v. Davis, 371 U.S. 178, 182 (1962). This is such a case.

As explained earlier, after relevant discovery was completed, the court found that the parties' August 12, 2005 Separation Agreement and Release barred all claims asserted by Powell in his Complaint that were in existence as of that date. See Nov. 20, 2009 Order, ¶1. Powell argues that the reasoning for that decision does not apply to his proposed Wage Act claims because Mass. Gen. Laws ch. 149, §148 states, in part, that "[n]o person shall by

special contract with an employee or by any other means exempt himself" from the requirements of the Wage Act. This contention is not correct in the context of this case.

The foregoing language of the statute prohibits an employer from prospectively exempting himself from the requirements of the Wage Act in an agreement with an employee or a person he may hire. See Dobin v. CIOview, 16 Mass. L. Rptr. 785 (2003). However, as has been persuasively explained by the Superior Court of Massachusetts in terms equally applicable here:

The plaintiff is not helped by the decision of Justice Ralph Gants in the Dobin v. CIOview Corporation case. In Dobin, the court held that a wage deferral agreement was void as being contrary to the specific language of the Wage Act. The Act states, "No person shall by a special contract with an employee or by any other means exempt himself from this section or from section one hundred and fifty." This court agrees with Justice Gants that such a waiver is unlawful; however, a waiver is very different from a release. The law prohibits a waiver of the employee's rights under the Wage Act; it does not prohibit releasing those rights after the claim has been established. In other words, there is no proscription in the statute to releasing an acknowledged wage claim, particularly when it is to the benefit of the employee. In fact, in order to resolve the claim short of trial a release would be necessary.

Gordon v. Millivision Holdings, LLC, 2005 WL 705110, at \*3 (Mass. Super. Jan. 15, 2005) (footnote omitted).

The Wage Act provides in pertinent part that "any employee discharged from such employment shall be paid in full on the day of his discharge." Mass. Gen. Laws ch. 149, §148. Powell was terminated effective July 1, 2005. Compl. ¶40. Therefore, the rights Powell seeks to assert in the proposed Amended Complaint

allegedly existed on August 12, 2005, the date he signed the Separation Agreement. The General Release of Claims: Accord on Satisfaction provision of the Separation Agreement bars all claims "whether specifically enumerated or not" against defendants as of that date. J. Keselenko Affidavit, Ex. 1, §D.1. The Separation Agreement also provides that the payments being made to Powell were made as a "complete[] settlement" of, among other things, "all claims" regarding Powell's "employment", including "all claims for wages, salary, commissions . . . [and] bonuses." Id., §D.2. Because the Release has been determined to be valid and covers the proposed Wage Act claim, allowing the amendment would be futile. Therefore, the motion to amend is being denied. See Foman, 371 U.S. at 181-82.

In view of the foregoing, it is hereby ORDERED that:

1. Plaintiff's Motion to Amend (Docket No. 47) is DENIED.
2. The parties shall comply with the attached Scheduling Order.

/s/ MARK L. WOLF  
UNITED STATES DISTRICT JUDGE