

DOCKET NO. HHD CV-14-6055022 S : SUPERIOR COURT
STATE OF CONNECTICUT,
DEPARTMENT OF LABOR : J. D. OF HARTFORD
VS. : AT HARTFORD
B & G RESTORATIONS, LLC, ET AL : APRIL 22, 2019

MEMORANDUM OF DECISION

In its three-count complaint, the State of Connecticut, Department of Labor, alleges, based on General Statutes § 31-72 and other statutes, that defendants B & G Restorations, LLC (B & G) and James Bonito failed to pay wages to four employees for the period August 31, 2009 to December 31, 2012. See complaint, dated September 29, 2014. Trial began on December 4, 2018, and has continued on several trial days thereafter. Additional trial days have been scheduled in May 2019.

Before the court for consideration are the written submissions and the oral arguments presented on April 16, 2019 concerning the defendants' motion to quash and for a protective order concerning the plaintiff's subpoena duces tecum, which was directed to defendant Bonito, and seeks production of documents concerning nonparty Bonito Millwork, LLC (Bonito Millwork) and Bonito personally (#132). The subpoena was served on March 19, 2019, after the fourth day of trial on January 29, 2019, and before the scheduled fifth day of trial on March 26, 2019.

Although the subpoena requested documents from 2012 to the present, at oral argument the plaintiff modified the time-frame for the requested documents to from 2012 to the fall of 2014.

cc: Rptr. Judicial Decisions
4/22/19 (alp)

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The trial court has the inherent authority to moderate the discovery process by imposing protective orders under appropriate circumstances. See *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 221-22 n. 59, 884 A.2d 981 (2005). “[T]he granting or denial of a discovery request rests in the sound discretion of the [trial] court . . .” (Internal quotation marks omitted.) *Woodbury Knoll, LLC v. Shipman and Goodwin, LLP*, 305 Conn. 750, 775, 48 A.3d 16 (2012).

“A subpoena is an appropriate process for the production of documents that are relevant to the matter before the court. . . . It may not be used, however, for the purpose of conducting a fishing expedition into the papers of a party or a stranger to the proceedings. . . . The subpoena should be sufficiently particularized so that the documents sought may be readily identified. . . . If the subpoena on its face is too broad and sweeping, it is subject to a motion to quash.” (Citations omitted; internal quotation marks omitted.) *Three S. Development Co. v. Santore*, 193 Conn. 174, 179, 474 A.2d 795 (1984).

As to Bonito Millwork, the defendants argue that it is not a party to this action, cannot be held liable for any of the claims brought in this action, and its records are irrelevant, immaterial, and inadmissible. Rather, the defendants assert that the production request in the subpoena is an impermissible attempt to pursue unpleaded claims of piercing the corporate veil and successor liability.

The defendants also contend that the time frame for which documents are sought is outside the time-frame of the complaint, except to the extent that Bonito Millwork made payments on any wage claims by the claimants, limited to checks paid for work performed

before December 30, 2012 or to make good on any unpaid B & G check or any amount alleged unpaid by that defendant. They assert that Bonito Millwork's other financial records are not relevant to any allegation of the complaint as there are none which bear on its financial capability.

As to Bonito personally, the defendants contend that, under Count III of the complaint, the plaintiff alleges that Bonito was the owner and principal member of B & G and violated General Statutes § 31-71b by personally deciding to neglect or refuse to pay the alleged unpaid wages. See complaint, Count III, ¶ 9. They argue that the requested documentation, concerning Bonito's personal bank account statements and investment account statements, does not bear on the plaintiff's claims against Bonito as his personal financial condition is not at issue. They reiterate that claims of piercing and successor liability have not been pleaded, and that the time-frame for the requested documents is outside that which is alleged in the complaint, except to the extent that Bonito made payments on any wage claims by the claimants, limited to checks paid for work performed before December 30, 2012 or to make good on any unpaid B & G check or any amount alleged unpaid by that defendant.

In response, the plaintiff asserts that there are three theories on which Bonito's personal liability rests. First, citing *Butler v. Hartford Technical Institute, Inc.*, 243 Conn. 454, 464-65, 704 A.2d 222 (1997), it argues that an individual can be held personally liable as an employer for wage obligations if the individual is the cause for the withholding of wages. This is the theory pleaded in Count III. See *Butler v. Hartford Technical Institute, Inc.*, supra (defendant was the individual in control of, and solely responsible for, all decisions with regard to wages,

and was specifically the cause for the withholding of, and the failure and refusal to pay the overtime wages).

The plaintiff also argues that, under the successorship doctrine, an employer may be held liable for employment obligations incurred by a prior employer. It argues that Bonito Millwork succeeded B & G, and that Bonito's personal liability is triggered if Bonito legally constitutes Bonito Millwork or is otherwise liable for its obligations, then he is liable in effect as successor to B & G.

The plaintiff also contends that Bonito is personally liable for the wage claims, albeit arising against B & G, on the basis of piercing the corporate veil of Bonito Millwork as successor to B & G having successor liability.

The plaintiff argues that the requested documents are needed for the possible presentation of evidence, including concerning Bonito's personal liability.

The plaintiff also asserts that the complaint may be amended and the theories of successorship and piercing the corporate veil do not have to be in the complaint as long as the facts proved are consistent with the complaint's allegations. In view of the course of conduct in the litigation, they contend that the defendants have not shown prejudice or surprise in having to address the plaintiff's theories. They also note that the defendants filed no request to revise or motion to strike portions of the complaint. The plaintiff alluded to pretrial written discovery and depositions without specific citation thereto.

Neither successor liability nor piercing the corporate veil are pleaded in the plaintiff's complaint as bases for recovery. In addition, as noted above, Bonito Millwork is not a party to

this action.

“[P]leadings have their place in our system of jurisprudence. While they are not held to the strict and artificial standard that once prevailed, we still cling to the belief, even in these iconoclastic days, that no orderly administration of justice is possible without them. . . . The purpose of a complaint or counterclaim is to limit the issues at trial, and such pleadings are calculated to prevent surprise. . . . Moreover, [t]he principle that a plaintiff may rely only upon what he has alleged is basic. . . . It is fundamental in our law that the right of a plaintiff to recover is limited to the allegations of his complaint. . . . What is in issue is determined by the pleadings and these must be in writing. . . . Once the pleadings have been filed, the evidence proffered must be relevant to the issues raised therein. . . . A judgment upon an issue not pleaded would not merely be erroneous, but it would be void.” (Citation omitted; internal quotation marks omitted.) *Foncello v. Amorossi*, 284 Conn. 225, 233, 931 A.2d 924 (2007).

“A plaintiff may not allege one cause of action and recover upon another.” (Internal quotation marks omitted.) *Alaimo v. Alaimo*, 179 Conn. App. 769, 771, 181 A.3d 149 (2018).

Also, the plaintiff has filed no request to amend its complaint. “While our courts have been liberal in permitting amendments . . . this liberality has limitations. Amendments should be made seasonably. Factors to be considered in passing on a motion to amend are the length of the delay, fairness to the opposing parties and the negligence, if any, of the party offering the amendment. . . . The motion to amend is addressed to the trial court’s discretion which may be exercised to restrain the amendment of pleadings so far as necessary to prevent unreasonable delay of the trial. . . . Whether to allow an amendment is a matter left to the sound discretion of

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