

The Supreme Court of the State of Louisiana

RICK SUTTON

No. 2022-C-01673

VS.

JACK ADAMS AND MAISON ROYALE, LLC

IN RE: Rick Sutton - Applicant Plaintiff; Applying For Writ Of Certiorari, Parish of Orleans Civil, Orleans Civil District Court Number(s) 2015-03495, Court of Appeal, Fourth Circuit, Number(s) 2019-CA-0975;

March 07, 2023

Writ application granted. See per curiam.

JDH
JLW
SJC
JTG
WJC
JBM
PDG

Supreme Court of Louisiana
March 07, 2023



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2022-C-01673

RICK SUTTON

VS.

JACK ADAMS AND MAISON ROYALE, LLC

On Writ of Certiorari to the Court of Appeal, Fourth Circuit,
Parish of Orleans Civil

PER CURIAM

Writ granted. In this application, the applicant seeks review of the dismissal of his Petition for Unpaid Wages via exceptions of no right of action and no cause of action, with prejudice, and without an opportunity to amend. In his petition, the applicant alleged that he was hired by Maison Royale, LLC and Jack Adams in 2012, and that he was paid a weekly salary until October 10, 2014, at which time Adams ceased paying him. Applicant alleged that he was owed unpaid wages, vacation pay, and other benefits, as well as penalty wages and attorneys' fees. The Fourth Circuit Court of Appeal affirmed the judgment of the Orleans Parish Civil District Court, finding that, "although [applicant] alleges that he was hired as an employee by defendants, [applicant] fails to allege that the employment relationship ceased to exist." Therefore, the Fourth Circuit found that the applicant's allegations not only failed to state a cause of action under the Louisiana Wage Payment Act, LSA-R.S. 22:631, *et seq.*, but that, under his own factual allegations, the applicant therefore does not belong to the class of persons to whom LSA-R.S. 22:631 provides a cause of action. As such, the Fourth Circuit found no error in the district court's judgment granting the exceptions of no right of action and no cause of action.

Moreover, as for the dismissal of the applicant's petition with prejudice and without an opportunity to amend, the Fourth Circuit upheld the district court's

decision based upon its purported awareness of a separate Breach of Contract claim filed by the applicant in a different division of the court. Specifically, the Fourth Circuit noted that, in his Breach of Contract petition, applicant alleged that he was a member of Maison Royale, LLC. The Fourth Circuit concluded that, as a member of Maison Royale, LLC, the applicant would not have an individual right of action against it for a wage claim, and thus, “any attempt to amend the petition to state a right of action and cause of action would *likely* include allegations contradictory to the original petition.” (Emphasis added.) On that basis, the Fourth Circuit found that the district court did not abuse its discretion in dismissing the applicant’s Petition for Unpaid Wages with prejudice and without allowing an opportunity to amend.

An exception of no cause of action must be tried on the face of the petition alone, and no evidence may be introduced to support or oppose the exception. “When the grounds of an objection pleaded by peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception *shall* order such amendment . . .”. LSA-C.C.P. art. 934. (Emphasis added). Further, “a petition may set forth two or more causes of action in the alternative, even though the legal or factual bases thereof may be inconsistent or mutually exclusive.” LSA-C.C.P. art. 892. The grounds of the exception could easily be removed. The lower courts therefore erred in dismissing applicant’s claim with prejudice and without an opportunity to amend. As such, the judgment of the district court is vacated.

Moreover, in light of this court’s ruling in 2022-C-1672, 2022-C-1674, and 2022-C-1677, which were also filed by the applicant, this matter is remanded to Division N of the Orleans Parish Civil District Court for a contradictory hearing

pursuant to LSA-C.C.P. art. 1561,¹ LSA-C.C.P. art. 253.2,² and CDC App. 9.3 of the Louisiana District Court Rules,³ to determine whether consolidation would be appropriate and/or in the interest of justice.

VACATED AND REMANDED.

¹ LSA-C.C.P. art. 1561(A) states:

- A. When two or more separate actions are pending in the same court, the section or division of the court in which the first filed action is pending may order consolidation of the actions for trial or other limited purposes after a contradictory hearing, upon a finding that common issues of fact and law predominate, and, in the event a trial date has been set in a subsequently filed action, upon a finding that consolidation is in the interest of justice. The contradictory hearing may be waived upon the certification by the mover that all parties in all cases to be consolidated consent to the consolidation.

² The interdivisional transfer of cases is governed by LSA-C.C.P. art. 253.2, which states as follows:

After a case has been assigned to a particular section or division of the court, it may not be transferred from one section or division to another section or division within the same court, unless agreed to by all parties, or unless it is being transferred to effect a consolidation pursuant to Article 1561. However, the supreme court, by rule, may establish uniform procedures for reassigning cases under circumstances where an expeditious disposition of cases may be effectuated.

³ CDC App. 9.3 states, in pertinent part, as follows:

ALLOTMENT OF CASES

4. To achieve continuity of case management, and to avoid the appearance of forum shopping, it is the policy of the court that subsequent but related cases should be transferred to the division to which the original case was allotted, whether or not such earlier case is still pending. It shall be the duty of any attorney in such cases to call to the court's attention the existence of such earlier case.

TRANSFER AND CONSOLIDATION

1. To facilitate the fair and expeditious resolution of cases, it is the policy of the court to transfer to the lower numbered suit and consolidate for trial those cases in which such consolidation is appropriate. The transfer and consolidation shall be by order of the judge to whom the case is being transferred, after contradictory hearing with all parties in each case, or with their written approval. It shall be the duty of any attorney in any case which ought to be consolidated to so move or call to the court's attention the pendency of related cases that should be considered for consolidation.