

Pleadings for Underfunded Contract under State Law Must be Sufficiently Detailed, California Court Rules

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Section 2810 of the California Labor Code prohibits businesses from entering into contracts for certain services, such as security and janitorial services, where the contracting party “knows or should know” the contract does not include enough funds to allow the contractor to comply with applicable labor laws. But mere boilerplate allegations are not enough, the California Court of Appeal has ruled. It dismissed a putative class action against several airlines for alleged unpaid wages, overtime and uniform reimbursement due to employees of a defunct security services firm because employee’s complaint for violations of the statute failed to allege facts sufficient to state a claim. *Hawkins v. TACA Int’l Airlines, S.A., et al.*, No. B242769 (Cal. Ct. App. Jan. 27, 2014).

Background

Arlette Hawkins filed a class action lawsuit against Sereca Security Corp. for its alleged failure to pay wages and overtime and to reimburse uniform expenses, and for wage statement violations. Hawkins alleged Sereca “had the ability to pay all wages earned” in accordance with the California Labor Code, but adopted policies “incompatible with the requirements of [the] Labor Code.”

In 2011, Hawkins learned that, due to financial difficulties, Sereca likely would not be able to pay a judgment. Hawkins then added TACA International Airlines, S.A., LAN Airlines and LAN Cargo, and Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. (collectively, the “airlines”) as defendants in her action. She alleged they violated Section 2810 of the California Labor Code by entering into underfunded contracts with Sereca. The airlines asked the trial court to dismiss the claims because Hawkins alleged no facts supporting the alleged violation. Hawkins admitted she had never seen the contracts between Sereca and the airlines, but asserted she should be permitted to conduct pretrial discovery to flesh out her complaint. The trial court disagreed and dismissed the complaint. Hawkins appealed.

Applicable Law

Section 2810(a) of the California Labor Code prohibits businesses from entering into certain services contracts, including those for security and janitorial services, where the party “knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.” The term “knows” is defined as including knowledge “arising from familiarity with the normal facts and circumstances of the business activity engaged in.” The phrase “should know” includes the knowledge “of any additional facts or information that would make a reasonably prudent person undertake to inquire” whether the funds are sufficient. Cal. Lab. Code §§ 2810 (i)(1) & (2).

Sufficiently Detailed Complaint Required

The California Court of Appeal in *Hawkins* agreed with the airlines that the plaintiff’s allegations alone were insufficient, that the complaint must contain some facts asserting the alleged violation. The Court stated, “[I]t

cannot be that a plaintiff employed in the industries covered by section 2810 who has not been paid the wages he or she is owed can state a claim under the statute against every entity who entered into a contract with the employer simply by utilizing a pair of scissors and a paste pot and transferring the language of the statute to a form complaint.” Rather, the plaintiff was required to “point out exactly how or in what manner” the airlines “transgressed.”

Furthermore, the Court noted Hawkins’s allegations were inconsistent with a claim for a violation of Section 2810 as she alleged Sereca had the ability to pay its employees. The Court observed, “If Sereca had the ability to pay all wages earned by the plaintiff classes, the contracts were *not* underfunded.” (Emphasis in original.) Accordingly, the Court affirmed the dismissal of the claims against the airlines for violations of Section 2810.

For additional information on *Hawkins*, please contact Mark S. Askanas, at AskanasM@jacksonlewis.com, Mitchell Boomer, BoomerM@jacksonlewis.com, in our San Francisco office, (415) 394-9400, or the Jackson Lewis attorney with whom you regularly work with any questions about this and other workplace developments.

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