Phoenix Holding Group, LLC, et al. v. Greenwich Insurance Co., et al.

CV 15-1583 DSF (JCx)

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

2016 U.S. Dist. LEXIS 25497

February 29, 2016, Decided
February 29, 2016, Filed

COUNSEL: [*1] Attorneys for Plaintiffs: Not Present.

Attorneys for Defendants: Not Present.

JUDGES: Honorable DALE S. FISCHER, United States District Judge.

OPINION BY: DALE S. FISCHER

OPINION

MEMORANDUM

Proceedings: (In Chambers) Order GRANTING Motion to Dismiss (Dkt. No. 14)

In 2013 and 2014, Plaintiffs were sued by their employees in four separate wage-and-hour class actions for violations of the California Labor Code and the California Unfair Competition Law. Plaintiffs tendered their defense to their insurer, Defendant Greenwich Insurance Company, which denied coverage. This coverage suit followed. Greenwich now moves to dismiss the case based on its contention that the claims made in the underlying cases are not covered by the applicable policy.

Greenwich denied the claims on several bases, but only one is relevant to this motion: whether the allegations in the underlying cases constituted "Wrongful Employment Act[s]" under the policy. "Wrongful Employment Act[s]" are defined in the policy as:

> (1) Discrimination; (2) Harassment; (3) Retaliation; (4) Wrongful Termination; (5) employment-related misrepresentation; (6) breach of written or oral employment contract or implied employment contract; (7) failure to enforce employment-related policies [*2] and procedures relating to any Wrongful Employment Act; (8) wrongful discipline; (9) wrongful deprivation of career opportunity, wrongful failure or refusal to employ or promote, or wrongful demotion; (10) employment related defamation (including libel and slander), infliction of emotional distress or mental anguish, humiliation, false imprisonment, or invasion of privacy which arise from the terminating, disciplining, promoting or demoting of an Employee; (11) violations of the Family and Medical Leave Act; (12) violations of the Uniformed Services Employment and Reemployment Rights Act; or (13) negligent hiring, evaluation, supervision

> of others, training, or retention, but only if such act is alleged in connection with a Wrongful Employment Act set forth in 1. through 12. above; brought by or on behalf of any Employees; and committed or allegedly committed by any Insured.

Mathis Decl., Ex. A at ¶ III.U.

Plaintiffs argue that the California Labor Code violations alleged in the underlying cases qualify as "breach of . . . [an] implied employment contract" and/or "failure to enforce employment-related policies or procedures relating to any Wrongful Employment Act." Given that the "failure [*3] to enforce . . . policies . . ." provision only applies to policies or procedures relating to an act otherwise defined as a Wrongful Employment Act, Plaintiffs effectively must demonstrate that the underlying claims for violations of the California Labor Code amount to "breach[es] of . . . [an] implied employment contract."

The Court finds that they do not. First, and most obviously, the claims in the underlying class action cases are not contract claims. The tendered claims simply do not involve contractual theories of recovery. More fundamentally, however, those claims also are not contractual in nature regardless of what the plaintiffs in those cases chose to plead. The California Labor Code violations at issue -- and the related UCL claims -- are part of the underlying legal scheme of the jurisdiction in which the employment relationship occurred, not part of an agreement between the parties. While it may be true that the employees understood that the Labor Code would be followed, that is because the State of California requires it, not because it was agreed to by contract. In considering a similar question -- whether the employee indemnity provision of *California Labor Code § 2802* is contractual is nature -- the California [*4] Court of Appeal stated:

> While it is true that a contract of employment must exist for *section 2802* to apply -- inasmuch as that statute applies only to an employer and an employee -- that does not mean that the obligation of indemnity imposed by *section 2802* arises from "a contract of indemnity" subject to the rules of interpretation in Civil Code *section 2778*. For there to be a contractual obligation of indemnity, the parties would have had to consent to that obligation. There is no evidence they did so. The contract on which Carter relies here is one of employment, not indemnity, and the obligation of indemnity arises only by operation of law from the terms of *section 2802*, without the consent of either the employer or the employee.

Carter v. Entercom Sacramento, LLC, 219 Cal. App. 4th 337, 348 (2013).

Similarly, while the provisions of the California Labor Code at issue in the underlying class action applied only because of the employment relationship between Plaintiffs and their employees, that does not make those statutory obligations contractual. The obligations arose by operation of law once an employer-employee relationship was created; Plaintiffs and their employees did not agree to them by contract and most likely had no flexibility to opt out of them by contract either.

The motion to dismiss [*5] is GRANTED.

IT IS SO ORDERED.

JUDGMENT

The Court having ordered that the case be dismissed on a motion to dismiss, IT IS ORDERED AND ADJUDGED that the plaintiffs take nothing, that the action be dismissed with prejudice, and that defendants recover their costs of suit pursuant to a bill of costs filed in accordance with *28 U.S.C. § 1920*.

Dated: 2/29/16

/s/ Dale S. Fischer

Dale S. Fischer

United States District Judge