

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 05-2407-RGK (CTx) Date August 18, 2005

Title U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. ROYALWOOD CARE CENTER LLC, et al.

SCANNED

Present: The Honorable R. GARY KLAUSNER, U.S. DISTRICT JUDGE

Sharon L. Williams	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) DEFENDANTS ROYALWOOD CARE CENTER LLC AND SKILLED HEALTHCARE LLC'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (DE 7)

I. FACTUAL BACKGROUND

The United States Equal Employment Opportunity Commission ("EEOC" or "Plaintiff") filed its First Amended Complaint on behalf of Elvira Mendoza ("Mendoza") against Defendants Royalwood Care Center, LLC and Skilled Healthcare, LLC on April 1, 2005. Plaintiff alleges that Defendants unlawfully discriminated against Mendoza based upon her gender and pregnancy. Plaintiff bases this claim upon facts surrounding Mendoza's alleged layoff from the Royalwood Care Center (now known as "Skilled Healthcare") on March 25, 2002. Plaintiff alleges that Defendants violated: (1) Section 703(a)(1) of Title VII; (2) 42 U.S.C. Sections 2000e-2(a); and (3) 42 U.S.C. Section 2000e(k).

On October 2, 2001, Defendants filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code ("Bankruptcy Code") in the United States Bankruptcy Court of the Central District of California ("Bankruptcy Court"). (Mot. to Dismiss, Ex. C.) Plaintiff's employment concluded in March of 2002. (Compl. at 3.) The deadline for Plaintiff to file a Proof of Claim against Defendants ("Bar Date") was August 30, 2002. (Mot. to Dismiss, Ex. D at 139.) Both parties agree that Defendants first received formal notice of Plaintiff's claim on October 16, 2002. Defendants bankruptcy was subsequently discharged on August 20, 2003. (Mot. to Dismiss, Ex. C.) Defendants now bring the present Motion to Dismiss, alleging that Plaintiff's claims were properly discharged at that time.

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II. JUDICIAL STANDARD

In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), the Court must assume the plaintiff's allegations are true, and must construe the complaint in a light most

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favorable to the plaintiff. See *United States v. City of Redwood City*, 640 F.2d 963, 967 (9th Cir. 1981). The sole issue raised by such a motion is whether the facts pleaded would, if established, support a valid claim for relief. Thus, no matter how improbable the facts alleged are, they must be accepted as true for purposes of the motion. See *Neitzke v. Williams*, 490 U.S. 319, 328-29 (1989). However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations. See *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Upon review of a complaint, a court may not dismiss pursuant to Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). However, dismissal is proper if a complaint is vague, conclusory, and fails to set forth any material facts in support of the allegation. See *N. Star Int'l v. Ariz. Corps. Comm'n*, 720 F.2d 578, 583 (9th Cir. 1983).

III. DISCUSSION

Plaintiff argues that Plaintiff's First Amended Complaint states claims upon which relief may be granted because: (1) Defendants' failed to serve appropriate statutory notice; (2) post-petition back pay is an administrative expense under Section 503 of the Bankruptcy Code, and not subject to discharge; and (3) Plaintiff's request for injunctive relief was not discharged. For the following reasons, the Court agrees in part.

A. The Court May Take Judicial Notice of Defendants' Bankruptcy

On the face of the Complaint, Plaintiff has adequately pled causes of action under Title VII of the 1964 Civil Rights Act and Title I of the Civil Rights Act of 1991. However, Defendants request that the Court also take judicial notice of Defendants' bankruptcy documents, including the August 20, 2003 Discharge Order ("Discharge Order"), which Defendants assert bars Plaintiff's claim.

In general, the Court may not look to evidence beyond the face of the Complaint in order to decide a motion to dismiss. See *Keams v. Tempe Technical Inst., Inc.*, 110 F.3d 44, 46 (9th Cir. 1997). Considering such evidence would require the Court to convert a motion to dismiss into a motion for summary judgment. *Id.* However, the Court may take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment. *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1989); *Mack v. S. Bay Beer Distribs.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

To be judicially noticeable, the Discharge Order "must be one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). The Discharge Order was entered by Jon D. Ceretto, Clerk of the Court in the United States Bankruptcy Court in the Central District of California. The source of the Discharge Order was not questioned by Plaintiff, nor can it reasonably be questioned. For the same reason, the Court may take judicial notice of Defendants' Exhibits A through E (collectively, "Bankruptcy Documents"), as all five exhibits are matters of public record whose source has not, and may not, be reasonably questioned. Plaintiff has not disputed the Court's ability to take judicial notice of any of Defendant's bankruptcy documents. Therefore, the submitted bankruptcy documents are judicially noticeable.

B. Plaintiff's Claims for Damages Are Discharged and Plaintiff's Requests for Injunctive Relief Are Not Discharged

An order of discharge by the Bankruptcy Court discharges the debtor from "all debts that arose before the date of the order for relief." 11 U.S.C. § 727(b). "Debt," as defined by the Bankruptcy Code, is a "liability on a claim;" and "claim" is a "right to payment whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." 11 U.S.C. §§ 101(1), 101(5)(A).

Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

Fed. R. Bankr. P. 3003(c)(2).

Defendants assert that Plaintiff's claims for damages and injunctive relief are barred by Discharge Order issued pursuant to Defendants' bankruptcy.

Plaintiff argues that the Discharge Order does not bar Plaintiff's claims: (1) for front pay, lost benefits, prejudgment interest, past and future non-pecuniary loss compensation, and punitive damages (collectively, "non-back pay claims") because Defendants failed to serve Plaintiff with statutory notice of the bankruptcy; (2) for back pay because back pay is a non-dischargeable "administrative expense," and (3) for injunctive relief because such relief does not fall within the definition of a "claim" as defined by the Bankruptcy Code. For the following reasons, the Court concludes that Plaintiff's claims for damages are discharged and Plaintiff's requests for injunctive relief are not discharged.

1. Plaintiff's claims for non-back pay damages were discharged

Plaintiff argues that the Discharge Order does not bar recovery of Plaintiff's non-back pay damages because Defendants failed to serve Plaintiff with statutory notice of the bankruptcy. Defendants contend that Plaintiff failed to assert a claim prior to the bar date, and Defendants provided sufficient notice by publication.

For purposes of discharge in bankruptcy, a claim arises at the time of the events giving rise to the claim, not at the time plaintiff files suit on the claim. *Loghlin v. County of Orange*, 229 F.3d 871, 874 (9th Cir. 2000). Here, Plaintiff's claim arose when Mendoza's employment concluded in March 2002. (Compl. at 3.) The Bar Date was August 30, 2002. (Mot. to Dismiss, Ex. D. at 140) Plaintiffs concede that Defendants did not receive actual notice of Plaintiff's claim until October 16, 2002. Therefore, Defendants were not obligated to treat Plaintiff as a creditor with respect to Plaintiff's claim. Fed. R. Bankr. P. 3003(c)(2).

The Court acknowledges that "notice by publication is a poor and sometimes a hopeless substitute for actual service of notice." *City of New York v. N.Y., N.H. & H.R. Co.*, 344 U.S. 293, 296 (1953). However, "when the names, interests and addresses of persons are unknown, plain necessity may cause a resort to publication." *Id.*

Documentation filed with the Bankruptcy Court, of which this Court has taken judicial notice, indicates that Defendants complied with their obligations to provide notice to unknown creditors. (Mot. to Dismiss, Ex. E.) Specifically, on June 28, 2002, Defendants published notices in The Los Angeles Times, the Wall Street Journal (National Edition), and the Orange County Register, along with five other newspapers. (*Id.*) At the time, Mendoza was an unknown creditor because Defendants

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were unaware of her claim until October 16, 2002. Therefore, Defendants fulfilled their obligation of notifying Mendoza of their bankruptcy, and Plaintiff's non-back pay claims were properly discharged in Defendants' bankruptcy.

2. Plaintiff's Claim for Back Pay Was Discharged in Defendants' Bankruptcy

Plaintiff asserts that post-petition back pay is an administrative expense under Section 503 of the Bankruptcy Code, and therefore exempt from discharge pursuant to 11 U.S.C. § 348(d). Defendants contend that, in their bankruptcy plan ("Plan"), any such back pay would be classified as a "non-ordinary course administrative expense," which would have required Plaintiff to: (1) file a proof of claim, and (2) receive court approval of the claim by final order. (Mot to Dismiss, Ex. A, at 53-54.) For the following reasons, the Court concludes that Plaintiff's claim for back pay has been discharged.

Section 503 of the Bankruptcy Code allows administrative expenses, which include "necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case." 11 U.S.C. § 503(b)(1)(A). Administrative expenses are exempt from discharge pursuant to 11 U.S.C. § 348(d).

The payment of administrative expenses are governed exclusively by the terms of the Plan. (Mot. to Dismiss, Ex. A. at 53-56.) The Plan defines ordinary course administrative expenses as expenses "arising from the provision of goods or services to the debtors in the ordinary course of business of the Debtors and the provider of goods or services after the Petition Date and before the Effective Date." (*Id.* at 32-33.) According to the Plan, all other administrative expenses are considered "non-ordinary course administrative expenses." (*Id.* at 32.)

While Plaintiff's Complaint prays for relief in the form of back pay, there is no allegation that Mendoza provided goods or services for which she was not paid. On the contrary, there is no dispute that Mendoza was paid wages for all time actually worked. Therefore, any services rendered by Mendoza during the post-petition, pre-confirmation time period have already been compensated. As a result, Plaintiff's prayer for back pay does not constitute a claim for non-dischargeable administrative expense.

Non-ordinary course administrative claims required the filing of a proof of claim, and court approval of the claim by final order. (Mot. to Dismiss, Ex. A, at 53-54.) Plaintiff failed to meet these requirements. Therefore, Plaintiff's claim for back pay was discharged in Defendants' Bankruptcy.

3. Plaintiff's Claims for Injunctive Relief Survive Defendants' Bankruptcy Discharge

As pled in Plaintiff's Complaint, Plaintiff requests (1) a permanent injunction enjoining Defendants from discriminating based upon gender, and (2) an Order requiring Defendants to implement policies to eradicate unlawful employment practices. Defendants argue that Plaintiff's desired injunctive relief is unnecessary as it merely requires Defendants to comply with California and Federal Law. The Court concludes that Plaintiff's request for injunctive relief may be granted.

A "claim," as defined by the Bankruptcy Code is either a "right to payment" or a "right to equitable remedy . . . [that] gives rise to a right to payment." 11 U.S.C. § 101(5)(A), (B). Consequently, injunctive relief is not discharged at bankruptcy unless the injunction gives rise to a payment. *See Ohio v. Kovacs*, 469 U.S. 274 (1985). Here, the injunctive relief sought by Plaintiff is

Plaintiff's Complaint, assumed as true, indicates that Defendants have previously failed to comply with the relevant California and Federal Law in regard to gender discrimination. "The sole function of an action for injunction is to forestall future violations." *United States v. Or. State Med. Soc.*, 343 U.S. 326, 333 (1952). Therefore, if Defendants have failed to comply with the law, injunctive relief may be needed to correct this unlawful behavior. *Id.*

IV. CONCLUSION

Based on the foregoing, Defendant's Motion to Dismiss is **DENIED** in reference to Plaintiff's request for injunctive relief, and **GRANTED** in reference to Plaintiff's remaining claims for monetary damages.

IT IS SO ORDERED.

Initials of Preparer _____
_____ *SKW* _____
