

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

WILLIAM BLAEUER and	:	OCTOBER TERM, 2003
DAVID BLAEUER,	:	
	:	No. 4034
Plaintiffs,	:	
	:	Commerce Program
v.	:	
	:	
MAURICE ROMY, M.D., THE SPINE	:	
CENTER OF PENNSYLVANIA, P.C.,	:	
THE SPINE CENTER OF NEW	:	
JERSEY, P.C., AMERICAN LIFE	:	
CARE, INC. and TSC MANAGEMENT	:	
OF PENNSYLVANIA, INC., RIVERSIDE	:	
MEDICAL CENTER, P.C., MARK I.	:	
SLOTKIN, DOLCHIN, SLOTKIN & TODD,	:	
P.C., ROBERT K. MOSER, and STEPHEN	:	
OTERI,	:	
	:	Control Numbers: 121372; 122523
Defendants.	:	

O R D E R

AND NOW, this 23rd day of March 2004, upon consideration of the two sets of Preliminary Objections of defendants, the responses in opposition, the respective memoranda, and all other matters of record, and in accord with the Opinion being filed contemporaneously, it is **ORDERED** that both sets of Preliminary Objection are **OVERRULED**. The defendants shall file an Answer within twenty (20) days of the date of entry of this Order.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

Plaintiffs allege that they were employees of the Corporate Defendants and that their employment was terminated inappropriately by the Individual Defendants and the Attorney Defendants, who were acting as officers and agents of the Corporate Defendants. Plaintiffs further allege that they are entitled to certain vacation, severance, and other pay due upon their termination, but that the defendants have refused to tender it to them.

I. A Good Faith Dispute Or Set-off Does Not Require Dismissal of Plaintiffs' Claims.

Defendants argue that plaintiffs' claims should be dismissed because defendants have a "good faith dispute or contest as to the amount of wages due or a good faith assertion of a right of set-off or counter-claim" that accounts for the non-payment of wages. 43 P.S. § 260.10. Specifically, there is a related action pending before this court in which the Corporate Defendants and others claim that substantial damages are due to them from plaintiffs. *See Romy v. Burke*, May Term, 2002, No. 01236 (Phila. C.C.P.)

This good faith claim may serve as a proper defense to a claim for wages and penalties under the WPCL. *See Laborers Combined Funds of Western Pa. v. Mattei*, 359 Pa. Super. 399, 403-4, 518 A.2d 1296, 1298-9 (1986). *See also Anderson v. Pittsburgh Press Co.*, 880 F. Supp. 407, 414 (W.D. Pa. 1995) (denying motion for summary judgment where there were "genuine issues of material fact concerning whether Defendants in good faith contested or disputed any wage claim.") However, since it is a defense, the defendants must prove it. The defendants' mere assertion of a good faith defense is not a sufficient basis upon which to dismiss a WPCL claim at the preliminary objection stage.

In addition, defendants argue that they have a good faith basis to dispute plaintiffs' WPCL claims because the Municipal Court has ruled in defendants' favor on similar claims brought by another terminated employee of the Corporate Defendants. *See Tindall v. TSC Management, Inc.*, SC: 01-12-20-2940 (Phil. Mun. Ct.). This Municipal Court Order does not have an issue-preclusive effect here, because plaintiffs were not parties to the Municipal Court litigation. *See Mellon Bank v. Rafsky*, 369 Pa. Super. 585, 593, 535 A.2d 1090, 1093 (1987) ("the party against whom [issue preclusion] is asserted [must have been] a party or in privity with a party in the prior case.") Therefore, this court cannot dismiss plaintiffs' claims based on the Municipal Court Order.

**II. The Attorney and Individual Defendants
May Be Liable Under the WPCL As
Policy-Making Agents of Corporate Defendants.**

The Individual Defendants and the Attorney Defendants argue that they were not agents of the Corporate Defendants involved in policy-making decisions and, therefore, that they cannot be held liable under the WPCL. *See Mahoney v. McClure*, 390 Pa. Super. 338, 344, 568 A.2d 682, 685 (1990), *aff'd w/o op.*, 529 Pa. 430, 604 A.2d 1021 (1992) ("evidence of an active role in decision making is required" to hold an officer or agent liable under the WPCL).

Plaintiffs allege that the Attorney Defendants "served as general counsel to Dr. Romy and the Corporate Defendants and participated in policy making decisions of the Corporate Defendants" including the decision to terminate plaintiffs. Complaint, ¶¶ 23-4, 35-6, 46-7, 51. Furthermore, plaintiffs' allege that the Attorney Defendants were "agent[s] in control of payroll and active decision maker[s] involved in policy making function of the Corporate Defendants." *Id.* ¶¶ 62-3.

At this preliminary objection stage, the court cannot determine whether plaintiffs will be able to satisfy their burden of proof with respect to their claims against the Individual Defendants and the Attorney Defendants. *See Mahoney*, 390 Pa. Super. at 344, 568 A.2d at 685 (court granted summary judgment dismissing WPCL claim against attorney for corporation after court had chance to consider “the uncontroverted evidence concerning [his] authority and responsibility in the company”). If plaintiffs are able to demonstrate that the Attorney Defendants did exceed their role as counsel for the other defendants and that the Attorney Defendants actually made the decision to terminate plaintiffs, then the plaintiffs may be able to recover from Attorney Defendants. Likewise, if plaintiffs are able to prove their allegations that the Individual Defendants held policy-making positions and that they made the decision to terminate plaintiffs, then plaintiffs may be able to recover from the Individual Defendants. *See* Complaint, ¶¶ 23-4, 35-6, 46-7, 51.

At this juncture, however the court cannot dismiss plaintiffs claims against the Individual Defendants and the Attorney Defendants.

III. Plaintiffs’ Failure To Attach the Employment Manual Or Other Document To the Complaint Is Not Fatal To Their Claims.

Defendants object that plaintiffs failed to attach the Corporate Defendants’ Employment Manual to the Complaint, despite the fact that plaintiffs cite to the provisions of that Manual in support of their claims for additional severance pay. Complaint, ¶¶ 21, 70, 74. Defendants also object that plaintiffs have not attached to the Complaint any document that purports to be an employment contract between plaintiffs and the Corporate Defendants. However, defendants have not claimed that they were

prejudiced by such omissions, which have since been rectified, thus, plaintiffs' failure to attach these documents does not require dismissal of the claims.

CONCLUSION

For these reasons, the defendants' Preliminary Objections are **Overruled**. The defendants shall file an Answer within twenty (20) days of the dates of this Order. The court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.