Motions, Pleadings and Filings

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United States District Court,
D. Kansas.
Moses MOORE, Plaintiff,
v.
Patrick MCKEE and William H. Barratt,
Defendants.
No. Civ.A. 03-2332KHV.

Sept. 5, 2003.
Moses Moore, pro se, Lansing, KS, for Plaintiff.

Beth Romans Bower, Jeremiah J. Morgan, Bryan Cave LLP, Kansas City, MO, for Defendants.

MEMORANDUM AND ORDER

VRATIL, J.

*1 Moses Moore, an inmate at the Lansing Correctional Facilities, brings suit against two officers of the corporation which provides food services at the prison, alleging that they violated the Fair Labor Standards Act ("FLSA"), breached a contract, and violated plaintiff's constitutional rights by failing to pay him minimum wage for his services. This matter is before the Court on defendants' *Motion To Dismiss* (Doc. # 3) filed June 30, 2003. For reasons set forth below, the Court sustains defendant's motion.

Standards For Motions To Dismiss Under Rule 12(b)(6)

A Rule 12(b)(6) motion should not be granted 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." *GFF Corp. v. Associated Wholesale Grocers, Inc.,* 130 F.3d 1381, 1384 (10th Cir.1997) (quoting *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). The Court accepts all well-pleaded factual allegations in the complaint as true and draws all reasonable inferences from those facts in favor of plaintiff. *See Shaw v. Valdez,* 819 F.2d 965, 968 (10th Cir.1987). In reviewing the sufficiency of plaintiff's complaint, the issue is not whether plaintiff will prevail, but whether plaintiff is entitled to offer evidence to support his claims. *See Scheuer v. Rhodes,* 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974). Although plaintiff need not precisely state each element of his claims, he must plead minimal factual allegations on those material elements that must be proved. *See Hall v. Bellmon,* 935 F.2d 1106, 1110 (10th Cir.1991).

The Court affords a *pro se* plaintiff some leniency and must liberally construe the complaint. *See Oltremari v. Kan. Soc. & Rehab. Serv.,* 871 F.Supp. 1331, 1333 (D.Kan.1994). While *pro se* complaints are held to less stringent standards than pleadings drafted by lawyers, *pro se* litigants must follow the same procedural rules as other litigants. *See Hughes v. Rowe,* 449 U.S. 5, 9, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980); *Green v. Dorrell,* 969 F.2d 915, 917 (10th Cir.1992), *cert. denied,* 507 U.S. 940, 113 S.Ct. 1336, 122 L.Ed.2d 720 (1993). The Court may not assume the role of advocate for a *pro se* litigant. *See Hall,* 935 F.2d at 1110.

Factual Background

Plaintiff's complaint alleges the following facts:

Plaintiff is an inmate at the Lansing Correctional Facilities ("LCF") in Lansing, Kansas. ARAMARK Correctional Services, Inc. ("ARAMARK") provides food services at LCF. During his incarceration, ARAMARK employed plaintiff as baker, dining room helper, sanitation unit worker, porter and dishwasher. The Kansas Department of Corrections ("KDOC") paid plaintiff $1.05 per day for his work with ARAMARK.

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Patrick McKee was general manager for ARAMARK at LCF. William Barratt was president of ARAMARK. ARAMARK had a contract with KDOC to employ selected prisoners and to pay such prisoners no less than minimum wage rates. Under the contract, ARAMARK was to pay all inmate wages to KDOC, however, and not the individual inmates. Plaintiff, McKee and Barratt were not parties to the contract.

*2 On May 6, 2003, plaintiff filed a petition in the District Court of Leavenworth County, Kansas against McKee and Barratt, alleging that they violated the FLSA, breached the contract between ARAMARK and the KDOC and violated his rights under 42 U.S.C. § 1983 by failing to pay him minimum wage for his services. On June 23, 2003, defendants removed the case to federal court.

Both defendants ask the Court to dismiss plaintiff's complaint for failure to state a claim on which relief can be granted. Barratt also seeks dismissal under Rule 12(b)(5) for improper service.

Analysis

I. Plaintiff's Objection To Defendant's Notice Of Removal

Plaintiff argues that removal was improper because the contract between ARAMARK and the KDOC stated that litigation between the parties could be maintained in federal *or* state court. *See Plaintiff's Answer And Motion To Dismiss Defendants' Motion To Dismiss* (Doc. # 10) filed July 28, 2003 at 1. Plaintiff's objection is without merit. A defendant may remove any "civil action of which the district courts have original jurisdiction." 28 U.S.C. § 1441(b). Removal is not restricted to cases that can be maintained *only* in federal court. In addition, plaintiff has not shown that McKee and Barratt are bound by the terms of the contract between ARAMARK and the KDOC.

II. Defendants' Motion To Dismiss

Both defendants ask the Court to dismiss plaintiff's complaint for failure to state a claim on which relief can be granted. Barratt also seeks dismissal under Rule 12(b)(5) for improper service. Because plaintiff has failed to state a claim against either defendant, the Court need not address whether plaintiff properly served Barratt.

A. *Fair Labor Standards Act Claim*

Plaintiff claims that defendants violated the FLSA by failing to pay him minimum wage. Defendants correctly note that plaintiff cannot maintain such a claim because inmates are not "employees" under the FLSA. *See Franks v. Okla. State Indus.*, 7 F.3d 971, 972-73 (10th Cir.1994); *see also Williams v. Meese,* 926 F.2d 994, 997 (10th Cir.1991) (inmate not employee under Title VII or ADEA because his relationship with Bureau of Prison arises out of status as inmate, not as employee).

B. *Breach Of Contract Claim*

Plaintiff claims that defendants breached the contract between ARAMARK and the KDOC because they did not pay him minimum wage for his services. Plaintiff has not alleged that he and defendants were parties to the contract. Absent privity of contract, plaintiff cannot maintain a breach of contract claim. *See Land v. Midwest Office Tech., Inc.,* 979 F.Supp. 1344, 1349 (D.Kan.1997); *Prof'l Lens Plan. Inc. v. Polaris Leasing Corp.,* 234 Kan. 742, 745, 675 P.2d 887, 891 (1984). [FN1]

> FN1. Because plaintiff has not sued ARAMARK, the Court does not address whether he could state a claim against ARAMARK as a third-party beneficiary of the contract between it and the KDOC. *See Gray v. Manhattan Med. Ctr., Inc.,* 28 Kan.App.2d 572, 580, 18 P.3d 291, 298 (2001) (two types of third-party beneficiariesintended and incidental; only intended beneficiaries can sue for damages).

C. *Section 1983 Claim*

Section 1983 creates a private right of action for redressing the violation of federal law by those

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acting under color of state law. *See Migra v. Warren City Sch. Dist. Bd. of Educ.,* 465 U.S. 75, 82, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984); 42 U.S.C. § 1983. It is not itself a source of substantive rights, but merely provides a method for vindicating federal rights conferred elsewhere. *See Albright v. Oliver,* 510 U.S. 266, 271, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994). Plaintiff has not alleged a violation of his federal rights. As explained above, the FLSA does not apply to inmates. Likewise, the United States Constitution does not confer any rights for prisoners to receive certain wages. *See Robinson v. Cavanaugh,* 20 F.3d 892, 894 (8th Cir.1994) (no constitutional right to prison wages; any such wages are by grace of state). Absent a violation of federal law, plaintiff cannot maintain a Section 1983 claim.

*3 IT IS THEREFORE ORDERED that defendants' *Motion To Dismiss* (Doc. # 3) filed June 30, 2003 be and hereby is SUSTAINED.

2003 WL 22466160 (D.Kan.)

Motions, Pleadings and Filings (Back to top)

• 2003 WL 23791774 (Trial Motion, Memorandum and Affidavit) Reply Memorandum in Support of Defendants' Motion to Dismiss (Aug. 14, 2003)

• 2003 WL 23791771 (Trial Pleading) Plaintiff's Answer and Motion to Disniss Defendants Motion to Dismiss (Jul. 28, 2003)

• 2003 WL 23791768 (Trial Motion, Memorandum and Affidavit) Sworn Affidavit of Moses Moore (Jul. 23, 2003)

• 2003 WL 23791763 (Trial Motion, Memorandum and Affidavit) Memorandum in Support of Defendants' Motion to Dismiss (Jun. 30, 2003)

• 2:03cv02332 (Docket)
(Jun. 23, 2003)

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