



Court Dismisses Partner's Wage Act Claim and Revives Counterclaim Claims Against Him for Breach of Fiduciary Duty

The Massachusetts Wage Act, G.L. c. 149, § 148, requires the timely payment of “wages” to “employees” and provides for individual liability, multiple damages and attorneys’ fees upon violation. While simple in concept, the Wage Act is fertile ground for litigation, particularly concerning the meaning of “wages” and whether the claimant is an “employee” as opposed to an independent contractor. In *O’Connor v. Kadrmas*, 96 Mass. App. Ct. 273 (2019), the Appeals Court considered whether an owner’s distributions under a stockholder agreement are “wages” under the Wage Act.

O’Connor involved the break-up of Post, O’Connor and Kadrmas, an ophthalmology practice in Plymouth, MA, owned one-third by each individual. O’Connor left the company to join a competing practice, and brought a claim for unpaid distributions due under the stock agreement. He argued that the distributions were “wages” because the agreement provided for compensation under a formula tied to the business he had generated for the company prior to his departure. The Superior Court allowed O’Connor’s motion for summary judgment, and to make matters worse for Kadrmas, the trial court also allowed O’Connor’s motion for summary judgment on Kadrmas’ breach of fiduciary duty counterclaim.

The Appeals Court reversed. The Court held that the distributions under the stockholder agreement “fundamentally . . . are not compensation from an employer to an employee, but rather profit distributions to shareholders to which they are entitled because of their ownership in interest in the corporation, not because of their employment.” The Court therefore held that the distributions were not “wages” under the Wage Act.

It is important to note that the Court did not categorically declare that a shareholder can never be an employee under the Wage Act, nor state in absolute terms that distributions can never be considered “wages.” The Court’s decision hinged on the specific language of the stockholder agreement, which contained only two references to the shareholders as employees, and did not bear any resemblance to an employment agreement. The Court also looked to the surrounding circumstances, including that Kadrmas paid \$195,000 for his ownership interest in the company. Additionally, the Court emphasized that the compensation was highly contingent on a number of variables, including the billings of the other doctors.

This case is also a helpful reminder of the fiduciary duties owed by owners of closely held businesses. For a full year prior to his departure, O’Connor secretly set up a competing business, planned to solicit patients, referral sources and key personnel away from the company, and failed to help locate or hire replacements for the employees he solicited to leave. The trial court dismissed the claim because there was no reduction in Kadrmas’ billings after O’Connor left, and therefore he had no expectation of proving causation or damages. The Appeals Court, relying on Kadrmas’ experts’ reports, held that a triable issue exists as to whether O’Connor’s breach caused his compensation and the value of his ownership interest in the company to diminish.

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