

DOCKET NO. HHD CV 23-6175876-S : SUPERIOR COURT  
 :  
 ROGELIO CACERES : JUDICIAL DISTRICT OF HARTFORD  
 :  
 V. : AT HARTFORD  
 :  
 LCR CAPITAL PARTNERS, LLC, ET AL. : JUNE 10, 2024

**MEMORANDUM OF DECISION RE:  
 MOTION TO DISMISS (#107)**

The plaintiff characterizes this lawsuit as a direct action “for unpaid compensation brought under Connecticut common law theories of liability and the Connecticut Minimum Wage Act . . .” Complaint (dated Oct. 12, 2023) (Cmpl.), p. 1. The defendants counter that it is a shareholder derivative action in disguise. They contend that the plaintiff lacks standing to assert most of the claims in his complaint because they allege injuries to his former employer, defendant LCR Capital Partners, LLC (LCR), not to him directly. Because standing requires a direct injury to a plaintiff and is an essential requirement of subject matter jurisdiction, the defendants move to dismiss all but two counts of the complaint for lack of jurisdiction.

For the following reasons, the court denies the motion to dismiss without prejudice.

I

BACKGROUND

From April 2014 through August 2020, the plaintiff was an employee of LCR, a company engaged in the U.S. EB-5 Immigrant Investment Program business. He served LCR in several capacities, including as Co-Founder, Managing Director, Chief Marketing Officer and Chief Commercial Officer. The individual named defendants are Suresh Rajan (Rajan), LCR’s former CEO, and Sherman Baldwin (Baldwin), LCR’s former Co-President.

The plaintiff’s eleven-count complaint consists of three categories of claims. The first category includes Counts One and Four, which assert claims for breach of contract to pay

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compensation and for violation of state wage laws. The defendants do not challenge the plaintiff's standing to assert these claims.

The second category includes claims concerning the plaintiff's rights under a profit incentive program known as the LCR Profits Interest Plan (PIU Plan). Counts Two, Three, Nine, Ten and Eleven assert various claims premised on the plaintiff's alleged failure to receive benefits under the PIU Plan.

The third category includes claims concerning a bonus compensation plan called the Total Rewards Plan (TRP). Counts Five through Eight assert TRP-related claims.

In support of their motion to dismiss, the defendants argue "[t]he PIU and TRP Counts all relate to Plaintiff's alleged interests as one of the Company's stakeholders. Because those counts allege harm not only to Plaintiff, *but also to other members of LCR*, Plaintiff lacks standing to bring them as direct claims in his individual capacity." (Emphasis added.) Defendants' Memorandum of Law in Support of Their Motion to Dismiss (Def. Mem.) (#108), p. 3.

The defendants press the court to take judicial notice of pleadings the plaintiff filed in federal court against the same defendants and raising the same claims. See *Caceres v. LCR Capital Partners, LLC, et al.*, Docket No. 3:2021-cv-01558-VAB. The federal court dismissed that case for lack of diversity jurisdiction. However, the plaintiff argues that the allegations of the plaintiff's original federal court complaint state that the harm for which the plaintiff seeks compensation is based on the alleged dilution in value of all LCR members' equity interests, not just the plaintiff's interest. Def. Mem., p. 5. The defendants rely on cases such as *May v. Coffey*, 291 Conn. 106, 119-20, 967 A.2d 495 (2009), for the proposition that individual corporate shareholders and LLC members lack standing to assert claims that a defendant allegedly diluted

the value of all shareholders' or members' interests in a company. Such claims must be brought as derivative actions.

The plaintiff responds first that the allegations of the present complaint properly allege injuries to him personally, and second that it is improper for the court to look beyond the four corners of the complaint at this juncture. Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss (#111), p. 2.

## II

### DISCUSSION

#### A

In *Conboy v. State*, 292 Conn. 642, 974 A.2d 669 (2009), the state Supreme Court set forth a procedural roadmap—several roadmaps actually—for trial courts to follow when ruling on motions to dismiss. Depending on the state of the record when a motion is filed, different roadmaps apply.

“When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, ‘it must consider the allegations of the complaint in their most favorable light. ... In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.’

“In contrast, if the complaint is supplemented by *undisputed facts* established by affidavits submitted in support of the motion to dismiss; ... other types of undisputed evidence; and/or public records of which judicial notice may be taken; the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts ‘and need not conclusively presume the validity of the allegations of the complaint.’ Rather, those allegations

are 'tempered by the light shed on them by the [supplementary undisputed facts].' If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits; ... or other evidence, the trial court may dismiss the action without further proceedings. If, however, the defendant submits either no proof to rebut the plaintiff's jurisdictional allegations . . . or only evidence that fails to call those allegations into question . . . the plaintiff need not supply counteraffidavits or other evidence to support the complaint, but may rest on the jurisdictional allegations therein.

"Finally, where a jurisdictional determination is dependent on the resolution of a critical factual dispute, it cannot be decided on a motion to dismiss in the absence of an evidentiary hearing to establish jurisdictional facts. Likewise, if the question of jurisdiction is intertwined with the merits of the case, a court cannot resolve the jurisdictional question without a hearing to evaluate those merits. An evidentiary hearing is necessary because 'a court cannot make a critical factual [jurisdictional] finding based on memoranda and documents submitted by the parties.' (Internal citations, quotations and footnotes omitted.) *Conboy v. State*, 292 Conn. 651-54.

Significantly, the Supreme Court also explained that "[w]hen the jurisdictional facts are intertwined with the merits of the case, the court may in its discretion choose to postpone resolution of the jurisdictional question until the parties complete further discovery or, if necessary, a full trial on the merits has occurred." *Id.*, 654.

Which procedural roadmap must the court follow in this case? Plainly, the court cannot conclusively resolve the standing question by referencing the allegations of the plaintiff's complaint alone. The defendants have provided the court with good reason to suspect that the

plaintiff has engaged in artful pleading by removing from his complaint critical allegations that were present in his original federal court complaint. However, the court cannot resolve the standing question based on allegations the plaintiff made in his original federal court complaint. Those allegations are admissions, but the court is not prepared to hold that they are binding judicial admissions.

In short, the present state of the factual record is disputed. Pursuant to *Conboy v. State*, the court cannot conclusively determine whether the plaintiff has standing to assert the PIU and TRP claims without an evidentiary hearing.

Although the court could schedule an evidentiary hearing now, the court will exercise its discretion to postpone the jurisdictional question until trial.<sup>1</sup> The court does so for two reasons. First, barring a successful dispositive motion, the plaintiff is entitled to a trial on Counts One and Four of his complaint, as to which no standing challenge has been raised. Thus, even if the court held an evidentiary hearing on the motion to dismiss and resolved the standing issues in the defendants' favor, this case would remain on the docket.

Second, an evidentiary hearing to determine whether the defendants diluted all LCR members' interests, just the plaintiff's interest, or did not dilute any member's interest, is likely to be an extended, multi-day hearing. Moreover, that critical factual issue appears to be intertwined with the merits of the case. Judicial economy is not served by having two trials.

#### B

As an alternative ground for dismissing the plaintiff's PIU-related claims, the defendants argue that the court lacks subject matter jurisdiction because the claims are subject to arbitration.

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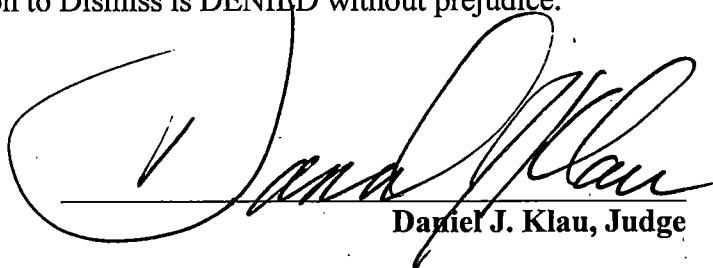
<sup>1</sup> This order is without prejudice to the defendants' right to file a summary judgment motion on the standing issue.

Def. Mem., p. 15. This argument is frivolous. The existence of an agreement to arbitrate certain claims does not oust the court of subject matter jurisdiction. *Catrini v. Erickson*, 113 Conn. App. 195, 197, 966 A.2d 275 (2009) (“The fact that General Statutes § 52-409 allows a court to enter a stay in a matter involving an arbitration agreement belies the defendants’ claim . . . that an agreement to arbitrate ousts the court of its subject matter jurisdiction.”).<sup>2</sup>

III

ORDERS

For the foregoing reasons, the Motion to Dismiss is DENIED without prejudice.



Daniel J. Klau, Judge

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<sup>2</sup> The court expresses no opinion on the merits of any motion the defendants may file pursuant to General Statutes § 52-409.

## Checklist for Clerk

**Docket Number:** HHD-CV23-6175876-S

**Case Name:** Rogelio Caceres v. LCR Capital Partners, LLC, Et Al.

**Memorandum of Decision dated:** 6/10/24

**File Sealed:** Yes No X

**Memo Sealed:** Yes No X

**This Memorandum of Decision may be released to the Reporter of Judicial Decisions for Publication XXXX**

**This Memorandum of Decision may NOT be released to the Reporter of Judicial Decisions for Publication**

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# State of Connecticut Judicial Branch Superior Court Case Look-up



Superior Court Case Look-up  
Civil/Family  
Housing  
Small Claims

**HHD-CV23-6175876-S**

**CACERES, ROGELIO v. LCR CAPITAL PARTNERS, LLC Et Al**

Prefix: HD2

Case Type: M90

File Date: 10/25/2023

Return Date: 11/07/2023

[Case Detail](#) | [Notices](#) | [History](#) | [Scheduled Court Dates](#) | [E-Services Login](#) | [Screen Section Help](#) | [Exhibits](#)

[To receive an email when there is activity on this case, click here.](#)

Attorney/Firm Juris Number Look-up

Case Look-up

By Party Name

By Docket Number

By Attorney/Firm Juris Number

By Property Address

Information Updated as of: 06/10/2024

### Case Information

Case Type: M90 - Misc - All other

Court Location: HARTFORD JD

List Type: No List Type

Trial List Claim:

Last Action Date: 05/31/2024 (The "last action date" is the date the information was entered in the system)

Short Calendar Look-up

By Court Location

By Attorney/Firm Juris Number

Motion to Seal or Close

Calendar Notices

Court Events Look-up

By Date

By Docket Number

By Attorney/Firm Juris Number

### Disposition Information

Disposition Date:

Disposition:

Judge or Magistrate:

Legal Notices

Pending Foreclosure Sales

Understanding

Display of Case Information

### Party & Appearance Information

Contact Us

#### Party

No Fee Party Category

#### P-01 ROGELIO CACERES

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Attorney: PHV NEINAST LINDSAY 11/29/23 (445239) File Date: 12/11/2023  
LITTLER MENDELSON P.C.

Defendant



Comments

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








**Viewing Documents on Civil, Housing and Small Claims Cases:**

If there is an  in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.\* For more information on what you can view in all cases, view the [Electronic Access to Court Documents Quick Card](#).
- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.\*
- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.\*
- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.\*
- An Affidavit of Debt is not available publicly over the internet on small claims cases filed before October 16, 2017.\*

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Motions / Pleadings / Documents / Case Status					
<u>Entry No</u>	<u>File Date</u>	<u>Filed By</u>	<u>Description</u>	<u>Arguable</u>	
	11/09/2023	D	<b>APPEARANCE</b>  Appearance		
	12/11/2023		<b>APPEARANCE</b>  PHV D-01,02,03		
	01/08/2024		<b>APPEARANCE</b>  P-01 PHV		
	05/28/2024		<b>APPEARANCE</b>  ! NEW PHV P-01		
100.30	10/25/2023	P	<b>SUMMONS</b> 	No	
100.31	10/25/2023	P	<b>COMPLAINT</b> 	No	
100.32	10/25/2023	P	<b>RETURN OF SERVICE</b> 	No	
101.00	11/09/2023	P	<b>CLAIM FOR JURY OF 6</b> 	No	
102.00	11/09/2023	D	<b>MOTION FOR PERMISSION TO APPEAR PRO HAC VICE PB 2-16</b>  Attorney Lindsay Neinast <i>RESULT: Granted 11/28/2023 HON STUART ROSEN</i>	No	
102.86	11/28/2023	C	<b>ORDER</b>  <i>RESULT: Granted 11/28/2023 HON STUART ROSEN</i>	No	
103.00	11/13/2023	P	<b>MOTION FOR PERMISSION TO APPEAR PRO HAC VICE PB 2-16</b>  Permission for Attorney C. Ryan Morgan to Appear Pro Hac Vice <i>RESULT: Denied 11/28/2023 HON STUART ROSEN</i>	No	
103.86	11/28/2023	C	<b>ORDER</b>  <i>RESULT: Denied 11/28/2023 HON STUART ROSEN</i>	No	
104.00	11/13/2023	P	<b>AFFIDAVIT</b>  Affidavit of Attorney C. Ryan Morgan Seeking Permission to Appear Pro Hac Vice <i>RESULT: Denied 11/27/2023 HON STUART ROSEN</i>	No	
104.86	11/27/2023	C	<b>RECORD CORRECTION</b>  <i>RESULT: Denied 11/27/2023 HON STUART ROSEN</i> Watermark <b>Last Updated:</b> Legend Code - 11/28/2023	No	

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