

D.N. FST CV 13 6018043 S

CHRISTINE CASUTO, ET AL

VS

TOWN OF GREENWICH, ET AL

SUPERIOR COURT
STAMFORD - NORWALK
JUDICIAL DISTRICT

2013 DEC 20 :STAMFORD/NORWALK JUDICIAL
DISTRICT AT STAMFORD

:DECEMBER 20, 2013

MEMORANDUM OF DECISION
RE: MOTION TO STRIKE/DISMISS (101.00)

I. FACTS

The plaintiffs, fourteen current or former employees of the Greenwich public school system, served the twenty-eight count complaint in this action on the defendants, the town of Greenwich (Greenwich) and the Greenwich Board of Education (Board), on April 4, 2013. In the complaint, each plaintiff has two counts alleging the exact same facts, one against Greenwich and one against the Board, and each plaintiffs' counts allege the same fact pattern. The complaint alleges the following facts.

The plaintiffs are all current or former food services employees of the Greenwich public school system. All of the plaintiffs started their employment between 1994 and 2011. "Over a period of many years," the defendants failed to compensate the plaintiffs for their fifteen minute breaks as required by federal law. See 29 C.F.R. § 785.18. The Wages and Standards division of the Connecticut Department of Labor "investigated the [defendants'] conduct toward the [plaintiffs]" and found it "to be wrongful, unjustified, and in violation of" state and federal law. On or about October 12, 2012, the defendants remitted the unpaid wages owed to each of the plaintiffs with interest, which represented "unpaid wages for the two years prior to the [Department of Labor] commencing its investigation." The plaintiffs claim that this payment

does not fully compensate them because General Statutes § 31-72 allows employees to recover twice the amount of unpaid wages plus costs and reasonable attorney's fees. In consequence of this shortfall, the plaintiffs filed the present action to recover the remaining balance available under the statute.

On June 3, 2013, the defendants filed a single motion, which contained both a motion to dismiss and a motion to strike, along with a memorandum of law in support. The ground for the motion to dismiss is that the court lacks subject matter jurisdiction because the complaint is not justiciable due to mootness, while the ground for the motion to strike is that the plaintiffs failed to allege the defendants acted with bad faith, arbitrariness or unreasonableness. The plaintiffs filed a memorandum of law in opposition on July 3, 2013, in which they oppose the motion to dismiss but concede the motion to strike. The court heard arguments on the motions at short calendar on October 7, 2013. The motion to strike was granted by consent at short calendar, and only the motion to dismiss remains unresolved.

II. DISCUSSION

“[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). “Pursuant to the rules of practice, a motion to dismiss is the appropriate motion for raising a lack of subject matter jurisdiction.” *St. George v. Gordon*, 264 Conn. 538, 545, 825 A.2d 90 (2003); See Practice Book § 10-31.

“Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [the] court's subject matter jurisdiction” (Internal quotation marks

omitted.) *Valvo v. Freedom of Information Commission*, 294 Conn. 534, 540, 985 A.2d 1052 (2010). “Since mootness implicates subject matter jurisdiction . . . it can be raised at any stage of the proceedings.” (Citation omitted; internal quotation marks omitted.) *Domestic Violence Services of Greater New Haven, Inc. v. Freedom of Information Commission*, 240 Conn. 1, 6, 688 A.2d 314 (1997).

“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.” (Internal quotation marks omitted.) *Conboy v. State*, 292 Conn. 642, 651, 974 A.2d 669 (2009). “[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised.” (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003). “[I]t is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged.” (Internal quotation marks omitted.) *Keller v. Beckenstein*, 305 Conn. 523, 531, 46 A.3d 102, 107 (2012).

The defendants argue that the complaint fails to invoke the subject matter jurisdiction of the court because the matter is moot and, therefore, non justiciable. Specifically, the defendants argue that the plaintiffs have already received compensation from the defendants for the withheld wages in response to the Department of Labor’s investigation. In addition, the defendants argue that General Statutes § 31-72 provides alternative means for seeking relief for unpaid wages; employees may either seek the assistance of the Department of Labor or file a

civil suit, but not both. The plaintiffs counter that they have not been fully compensated under § 31-72, which allows for a private right of action to recover twice the amount of unpaid wages plus costs and reasonable attorney's fees. The plaintiffs further argue that they retain the right to file suit to recover the full amount allowable under statute.

"A case is considered moot if [the trial] court cannot grant the [plaintiff] any practical relief through its disposition of the merits." (Internal quotation marks omitted.) *Wyatt Energy, Inc. v. Motiva Enterprises, LLC*, 308 Conn. 719, 736, 66 A.3d 848 (2013). "Mootness is a question of justiciability Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. . . . Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant." (Internal quotation marks omitted.) *Id.* The defendants' arguments call into question the first and third requirements

First, the defendants argue that there is no controversy between the parties because they have already compensated the plaintiffs for the unpaid wages. General Statutes § 31-72 provides in relevant part, "When any employer fails to pay an employee wages . . . such employee . . . *may recover, in a civil action*, twice the full amount of such wages, with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between him and his employer for payment of wages other than as specified in [statute] shall be no defense to such action. The Labor Commissioner *may collect* the full amount of any such unpaid wages . . . as well as interest calculated . . . from the date the wages or payment should have been received,

had payment been made in a timely manner. In addition, the Labor Commissioner *may bring any legal action necessary* to recover twice the full amount of unpaid wages . . . and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. The commissioner shall distribute any wages . . . collected pursuant to this section to the appropriate person.” (Emphasis added.) “The statute provides for a discretionary award of double damages, with costs and reasonable attorney's fees, to employees who are successful in actions against their employers for wages due.” (Internal quotation marks omitted.) *Ravetto v. Triton Thalassic Technologies, Inc.*, 285 Conn. 716, 724, 941 A.2d 309 (2008). “Although § 31-72 does not set forth a standard by which to determine whether double damages should be awarded in particular cases, it is well established . . . that it is appropriate for a plaintiff to recover attorney's fees, and double damages under [§ 31-72], only when the trial court has found that the defendant acted with bad faith, arbitrariness or unreasonableness.” (Internal quotation marks omitted.) *Saunders v. Firtel*, 293 Conn. 515, 530, 978 A.2d 487 (2009).

In the present case, the defendants argue that, as alleged in the complaint, the controversy is moot because the plaintiffs have already recovered one times their wages with interest and, thus, there is no remaining controversy for the court to address. The plaintiffs point out in their brief that, under the § 31-71, they are entitled to twice unpaid wages plus costs and reasonable attorney's fees if the court finds in its discretion that the defendants withheld the wages with bad faith, arbitrariness, or unreasonableness. In their complaint, the plaintiffs only seek the difference between the remitted wages they have already received and the full amount available under the statute. In other words, they are not seeking the whole apple again, just that

part they have not yet received but to which they are potentially entitled under the statute. Accordingly, the court finds there remains a controversy as to whether the plaintiffs may be compensated for the full amount available under § 31-72.

Next, the defendants argue that the matter is incapable of adjudication because the plaintiffs have already received administrative relief. The Supreme Court has said that “[u]nder § 31-72, either an employee . . . or the commissioner of the department may bring an action necessary to recover twice the full amount of unpaid wages, with costs and reasonable attorney's fees. The department may act on behalf of an employee without a formal assignment of claim.” *Schoonmaker v. Lawrence Brunoli, Inc.*, 265 Conn. 210, 226 n.20, 828 A.2d 64 (2003). In *Schoonmaker*, id. 231 n.23, the court found that in the legislative history, the General Assembly addressed the potential problem of aggrieved parties getting “two bites of the apple, one through the commissioner” and one on their own through the court; in response to this concern in the House debate, “Representative Joseph A. Adamo, house chairman of the joint standing committee on labor and public employees, replied: Either one or the other can do it, *not both*.” (Citation omitted; emphasis in original; internal quotation marks omitted.) In other words, as soon as either the employee or the commissioner files a civil action, the authority of the other to file suit is revoked. Nevertheless, the *Schooner* court held that “plaintiffs . . . retained equitable ownership of [their] claims,” even when they formally assign those claims to the Department of Labor for collection. Id. 229. The court reconciled its holding with the legislative history partly because “the department's policy is to discontinue its collection efforts upon the filing of a private action by the employee.” Id. 231. As a result, under the Supreme Court's interpretation of § 31-72, a plaintiff continues to retain the right to file a civil action even after the Department

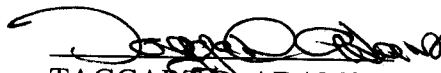
of Labor has commenced collecting under the statute, so long as the department has not yet commenced a collection action in court.

Here, the complaint alleges that the Department of Labor found the defendants to be in violation of wages law and that the defendants remitted one times the wages owed. A fact implied in the complaint is that the Department of Labor has not sought nor filed an action to recover the amount presently sought by the plaintiffs, and the defendants have not argued otherwise. As the Department of Labor has not exercised its authority to file suit, the plaintiffs retain the authority to file a civil action to recover under the statute.

In accordance with the test for justiciability, there remains a controversy as to whether the plaintiffs are entitled to twice wages plus costs and reasonable attorney's fees; the parties' interests are adverse; § 31-72 gives the plaintiffs authority to file a civil action to settle such a claim, and thus, gives the court authority to adjudicate the claim; and the determination of the controversy has the potential to result in practical relief to the complainants. Consequently, construing the allegations in the complaint in a manner most favorable to the pleader, the plaintiffs have met their burden in proving that the case is not moot and, as a result, this court retains subject matter jurisdiction.

III. CONCLUSION

For the foregoing reasons, the court denies the defendants' motion to dismiss.


TAGGART ADAMS
JUDGE TRIAL REFEREE

Decision entered in accordance
with the foregoing. All
counsel and self-represented
parties notified.