
UNITED STATES
BANKRUPTCY COURT

SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re	§	
	§	Bankr. Case No. 20-32654-DRJ
STAGE STORES, INC., et al.,	§	Chapter 11
	§	Jointly Administered
<i>Debtor(s).</i> ¹	§	
AMY STUMPF, et al.,	§	
	§	
<i>Plaintiff(s),</i>	§	
	§	
v.	§	Adv. Proc. No. 20-03303
	§	Jury
STAGE STORES, INC., et al.,	§	
	§	
<i>Defendant(s).</i>	§	

PLAINTIFF AMY STUMPF'S
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AS TO
PRIORITY OF WARN ACT CLAIMS

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and

¹ The debtor(s) in this Chapter 11 case, along with the last four digits of each debtor's federal tax identification number are: Stage Stores, Inc. (6900) and Specialty Retailers, Inc. (1900). The debtors' headquarters is: 2425 West Loop South, Houston, Texas 77027-4205.



<p>may decide the motion at the hearing. Represented parties should act through their attorney.</p>

In accordance with Fed. R. Civ. P. 12(c), made applicable by Fed. R. Bankr. P. 7012(b), Plaintiff Amy Stumpf (referred to as “Stumpf”), individually and on behalf of all others similarly situated, requests that the Court enter partial judgment on the pleadings as to the priority (as an administrative expense under 11 U.S.C. § 503(b)(1)(A)(ii)) of her claim, if allowed, for pre-termination wages and benefits under the Worker Adjustment Retraining and Notification Act, 29 U.S.C. §§ 2101-2109 (“WARN Act”).

I. Background

Stumpf, individually and on behalf of all others similarly situated, sued Defendants Stage Stores, Inc. and Specialty Retailers, Inc. (collectively referred to as “Stage Stores”) claiming that they violated the WARN Act by failing to provide advance written notice with full wages and benefits of a plant closing or mass layoff. (*See generally*, Pl.’s First Am. Compl. (Doc. 14).) She also claims that the pre-termination wages and benefits to which she and the members of the putative class are entitled to under the WARN Act, if allowed, are first priority post-petition administrative expenses under 11 U.S.C. § 503(b)(1)(A)(ii). (*See, id.* at ¶ 82(f).) The

case was referred to the bankruptcy court consistent with 28 U.S.C. § 157(a).² Now, for the reasons explained below, Stumpf, individually and on behalf of the members of the putative class, requests that the Court enter judgment on the pleadings under Rule 12(c) as to the priority (as an administrative expense under 11 U.S.C. § 503(b)(1)(A)(ii)) of her claim, if allowed, for pre-termination wages and benefits under the Worker Adjustment Retraining and Notification Act, 29 U.S.C. §§ 2101-2109 (“WARN Act”).

II. Argument & Authorities

A. Standard of Review

“After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). “Judgment on the pleadings is proper when, taking all allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law.” *Stanley v. Trs. of Cal. State Univ.*, 443 F.3d 1129, 1133 (9th Cir. 2006); *see also*, *Mares v. Wood Group Mustang, Inc.*, No. H-14-089, 2015 U.S. Dist. LEXIS 1018, at *3 (S.D. Tex. Jan. 6, 2015) (Rosenthal, J.) (discussing standard for judgment on the pleadings under Rule 12(c)). A Rule 12(c) motion for judgment on the pleadings is “functionally identical” to—and evaluated under the same

² A motion to withdraw the reference is pending. (*See generally*, Pl.’s Mot. Withdraw Reference (Doc. 22).) *See also*, *In re First Magnus Fin. Corp.*, 390 B.R. 667, 678 (Bankr. D. Az. 2008) (bankruptcy courts do not have jurisdiction to consider WARN Act claims); *see also*, 29 U.S.C. § 2104(a)(5) (WARN Act claims may only be brought in a “district court of the United States”).

standard as—a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989); *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 381 (5th Cir. 2013) (“A Rule 12(c) motion is subject to the same standards as a motion to dismiss under Rule 12(b)(6).”) (citations and quotations omitted); *In re Great Lakes Dredge & Dock Co.*, 624 F.3d 201, 209-10 (5th Cir. 2010) (same); *Gentilello v. Rege*, 627 F.3d 540, 543-44 (5th Cir. 2010) (same); *Doe v. MySpace*, 528 F.3d 413, 418 (5th Cir. 2008) (same); *Johnson v. Johnson*, 385 F.3d 503, 529 (5th Cir. 2004) (same); *Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 330 n.8 (5th Cir. 2002) (same). In ruling on a motion under Rule 12(c), the Court may not look beyond the pleadings.³ Fed. R. Civ. P. 12(d); *see also, Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996).

³ In other words, it does not matter that a defendant may have included extraneous information about its defenses in motions or discovery responses because Rule 12(d) expressly prohibits their consideration in the context of a motion for judgment on the pleadings. Fed. R. Civ. P. 12(d). On top of that, the Fifth Circuit has unequivocally held that a party cannot rely on extraneous material to correct a deficiency in a pleading. *See, Funding Sys. Leasing Corp. v. Pugh*, 530 F.2d 91, 96 (5th Cir. 1976) (“When the defendant has waived his affirmative defense by failing to [adequately] allege it in his answer ... he cannot revive the defense in a memorandum in support of a motion for summary judgment.”).

B. Because Stumpf and the Members of the Putative Class Were Terminated by the Debtors Post-Petition, Their Claims for Pre-Termination Wages and Benefits Under the WARN Act, if Allowed, Are First Priority Post-Petition Administrative Expenses Under 11 U.S.C. § 503(b)(1)(A)(ii)

1. *Under the WARN Act, the debtors were obligated to pay Stumpf and the members of the putative class full wages and benefits for the sixty days preceding their terminations.*

The WARN Act requires an employer to provide written notice to its employees sixty days before a plant closing or mass layoff. *Long v. Dunlop Sports Gp. Am., Inc.*, 506 F.3d 299, 301 (4th Cir. 2007) (citing 29 U.S.C. § 2012(a)). During the notice period, the employees need not perform any work, but they must receive their full wages and benefits. *Id.* at 302 (“[T]he WARN Act’s required notice must precede the date when the *employment loss*⁴ resulting from the shutdown occurs, not the date when the shutdown itself occurs.” (italicization in original)); *see also, id.* at 303 (“[T]ermination’ does not necessarily occur when the employer ceases production.”); *see also, id.* (“Thus, in the WARN Act, Congress sought to protect employees’ *expectation of wages* and benefits, *not* (sic) their expectation of performing work.” (first emphasis added)). Those wages and benefits are considered earned upon termination. *Int’l Brotherhood of Teamsters v. Kitty Hawk Int’l, Inc. (In re Kitty Hawk, Inc.)*, 255 B.R. 428, 2000 Bankr. LEXIS 1706,

⁴ 29 U.S.C. § 2101(a)(6).

at *29 (Bankr. N.D. Tex. Nov. 22, 2000); *see also*, *In re Cargo, Inc.*, 138 B.R. 923, 928 (Bankr. N.D. Iowa 1992).

2. *Under 11 U.S.C. § 503(b)(1)(A)(ii), the claims for pre-termination wages and benefits under the WARN Act by Stumpf and the members of the putative class, if allowed, are first priority post-petition administrative expenses.*

Before passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005), (“BAPCPA”), the prevailing view was that claims for pre-termination wages and benefits under the WARN Act, like severance pay, were only entitled to priority as administrative expenses if the wages and benefits were earned⁵ post-petition. *Int’l Brotherhood of Teamsters*, 2000 Bankr. LEXIS 1706 at *29-*30; *see also*, *In re Cargo, Inc.*, 138 B.R. at 928; *see also*, *In re Roth Am., Inc.*, 975 F.2d 949, 957 (3d Cir. 1992); *In re Health Maintenance Found.*, 680 F.2d 619, 621 (9th Cir. 1982); *In re Mammoth Mart, Inc.*, 536 F.2d 950, 952 (1st Cir. 1976); *In re Campo Electronics, Inc.*, 247 B.R. 646, 651 (E.D. La. 1998). Post-BAPCPA, the prevailing view appears to be that claims for pre-termination wages and benefits under the WARN Act are entitled to priority as administrative expenses regardless of when they are earned and whether there was any concrete benefit to the estate or whether the claimant performed any work at all. *Matthews v. Truland Gp., Inc. (In re Truland Gp., Inc.)*, 520

⁵ *Int’l Brotherhood of Teamsters*, 2000 Bankr. LEXIS 1706 at *29 (WARN Act wages and benefits earned upon termination).

B.R. 197, 200-205 (Bankr. E.D. Va. 2014); *see also*, *In re World Mktg. Chi., LLC*, 564 B.R. 587, 594-97, 603 (Bankr. N.D. Ill. 2017) (WARN Act claims are administrative expenses if termination occurs post-petition); *Henderson v. Powermate Holding Corp.* (*In re Powermate Holding Corp.*), 394 B.R. 765, 773-78 (Bankr. D. Del. 2008) (WARN Act claims vest upon termination and are administrative expenses if termination occurs post-petition); *In re Phila. Newspapers, LLC*, 433 B.R. 164, 168-75 (Bankr. E.D. Pa. 2010) (same); *In re First Magnus Fin. Corp.*, 390 B.R. at 672-79 (same).

In this case, it does not matter which approach the Court adopts because Stage Stores has judicially admitted⁶ that it terminated Stumpf and the members of the putative class *after* it filed for bankruptcy. (*See*, Defs.’ Answer (Doc. 17) ¶¶ 28-41, 44-45, 54.) Every “court[to] ... have considered such post[-]petition [WARN Act] claims [has] ... determined that the claims qualify as administrative.” *In re World Mktg. Chi., LLC*, 564 B.R. at 597 (citations omitted). Again, that is because “WARN Act [pay] is a statutory form of severance pay ... *earned at the moment of termination.*” *Id.* (emphasis added) (citations omitted); *see also*, *Oil, Chem. & Atomic Workers v. Hanlin Group* (*In re Hanlin Group*), 176 B.R. 329, 333 (D.N.J. 2005) (back pay under WARN Act entitled

⁶ Judicial admissions, or formal concessions of fact in the pleadings, have the effect of withdrawing the facts from contention. *Mares*, 2015 U.S. Dist. LEXIS 1018 at *3 (citing *Martinez v. Bally’s Louisiana, Inc.*, 244 F.3d 474, 476 (5th Cir. 2001)). They are conclusive unless the court allows them to be withdrawn. *Id.*; *see also*, *White v. ARCO/Polymers, Inc.*, 720 F.2d 1391, 1396 & n.5 (5th Cir. 1983) (“[F]actual assertions in pleadings and pretrial orders are considered to be judicial admissions conclusively binding on the party who made them.”).

to first priority post-petition administrative expenses where termination occurs post-petition). Accordingly, the Court should enter judgment on the pleadings under Rule 12(c) that the claims for pre-termination wages and benefits under the WARN Act by Stumpf and the members of the putative class, if allowed, are first priority post-petition administrative expenses under 11 U.S.C. § 503(b)(1)(A)(ii).

III. Conclusion

Since Stage Sores terminated Stumpf and the members of the putative class after it filed for bankruptcy, the Court should enter judgment on the pleadings under Rule 12(c) that their claims for pre-termination wages and benefits under the WARN Act, if allowed, are first priority post-petition administrative expenses under 11 U.S.C. § 503(b)(1)(A)(ii).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

As required by Fed. R. Bankr. P. 7005 and Fed. R. Civ. P. 5(a)(1), I certify that I served a copy of this document on all parties or their attorney(s) of record—who are listed below—in accordance with Fed. R. Civ. P. 5(b) as follows:

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March 17, 2021

Date


Melissa Moore

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	§	Jury
STAGE STORES, INC., et al.,	§	
	§	
<i>Defendant(s).</i>	§	

**ORDER GRANTING PLAINTIFF AMY STUMPF'S
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AS TO
PRIORITY OF WARN ACT CLAIMS**

IT IS ORDERED that Plaintiff Amy Stumpf's Motion for Partial Judgment on the Pleadings as to Priority of WARN Act Claims is GRANTED.

IT IS FURTHER ORDERED that the claims for pre-termination wages and benefits under the WARN Act by Stumpf and the members of the putative class, if

¹ The debtor(s) in this Chapter 11 case, along with the last four digits of each debtor's federal tax identification number are: Stage Stores, Inc. (6900) and Specialty Retailers, Inc. (1900). The debtors' headquarters is: 2425 West Loop South, Houston, Texas 77027-4205.

allowed, are first priority post-petition administrative expenses under 11 U.S.C. § 503(b)(1)(A)(ii).

Date: _____

David R. Jones
United States Bankruptcy Judge