

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Greist v. LendUS, LLC

Greist · No. 24-cv-02411-AMO · Decided February 25, 2025

SUMMARY

The Northern District of California denied CrossCountry Mortgage, LLC’s motion to dismiss claims alleging that it is liable as LendUS, LLC’s successor for wage-and-hour violations under the Fair Labor Standards Act and California law. The court held that the plaintiffs plausibly alleged CrossCountry had notice of potential employment liabilities through acquisition due diligence and that LendUS had been subsumed into CrossCountry, satisfying the pleading-stage requirements for successor liability. The court also noted that CrossCountry waived its challenge to the first successor-liability factor by raising it for the first time in reply.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Araceli Martinez-Olguin
JURISDICTION	United States District Court for the Northern District of California
DECIDED	February 25, 2025
DOCKET	24-cv-02411-AMO
DISPOSITION	other
PROCEDURAL POSTURE	Defendant CrossCountry Mortgage, LLC moved to dismiss the amended complaint with prejudice under the successor-in-interest theory of liability.
STANDARD OF REVIEW	On a motion to dismiss, well-pleaded allegations must be accepted as true and construed in the light most favorable to the plaintiffs; the allegations must plausibly establish entitlement to relief.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- wage and hour
- flsa
- motions to dismiss
- employment law
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the amended complaint plausibly alleged that CrossCountry had notice of LendUS's potential wage-and-hour liabilities for purposes of successor-in-interest liability.
2. Whether the amended complaint plausibly alleged that LendUS could not provide adequate relief directly because its assets and operations had been acquired and subsumed by CrossCountry.
3. Whether CrossCountry's motion to dismiss should be denied at the pleading stage.

HOLDINGS

1. The amended complaint plausibly alleged facts supporting successor-in-interest liability because it alleged that CrossCountry had or should have had notice of LendUS's wage-and-hour violations during acquisition due diligence and that LendUS had been subsumed into CrossCountry, potentially limiting LendUS's ability to provide adequate relief.
2. CrossCountry waived its challenge to the bona-fide-successor factor by raising that argument for the first time in reply.

KEY QUOTATIONS

“A successor-in-interest may be liable for its predecessor’s labor law violations depending on whether “1) the subsequent employer was a bona fide successor[,] . . . 2) the subsequent employer had notice of the potential liability,” and 3) “the extent to which the predecessor is able to provide adequate relief directly.”” (at 1)

“But for purposes of the instant motion to dismiss, the well-pleaded allegations in Plaintiffs’ operative complaint must be taken as true and viewed in the light most favorable to them.” (at 2)

FACTUAL BACKGROUND

Plaintiffs alleged that CrossCountry acquired LendUS, a thriving company that was not in financial distress, creating a combined company with more than 600 branches and over 8,000 employees. They alleged that CrossCountry continued LendUS's mortgage-lending services and maintained its operations, employees, locations, facilities, equipment, and marketplace activities without significant change. Plaintiffs further alleged that CrossCountry knew or should have known of LendUS's unpaid overtime liabilities through acquisition due diligence and that LendUS had been wholly subsumed into or rolled over into CrossCountry.

PROCEDURAL HISTORY

Barbara Greist, Susan Schell, and Melanie Green filed a proposed collective and class action against LendUS, LLC and CrossCountry Mortgage, LLC, asserting claims under the Fair Labor Standards Act and California law. CrossCountry moved to dismiss, arguing that the plaintiffs had not plausibly alleged facts establishing successor-in-interest liability. The court denied the motion to dismiss.

DISPOSITION

CASES CITED

- Steinbach v. Hubbard, 51 F.3d 843, 845-46 (9th Cir. 1995)
- Criswell v. Delta Air Lines, Inc., 868 F.2d 1093, 1094 (9th Cir. 1989)
- Wheeler v. Snyder Buick, Inc., 794 F.2d 1228, 1237 (7th Cir. 1986)
- Xue Ming Wang v. Abumi Sushi Inc., 262 F. Supp. 3d 81 (S.D.N.Y. 2017)
- Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008)
- Musikiwamba v. ESSI, Inc., 760 F.2d 740, 752 (7th Cir. 1985)
- Lowenthal v. ...

OPINION

Greist v. LendUS, LLC

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 BARBARA GREIST, et al., Case No. 24-cv-02411-AMO 8 Plaintiffs,

ORDER DENYING MOTION TO

9 v. DISMISS

10 LENDUS, LLC, et al., Re: Dkt. No. 22 Defendants. 11 12 13 Plaintiffs Barbara Griest, Susan Schell, and Melanie Green bring this proposed collective 14 and class action against LendUS LLC and CrossCountry Mortgage, LLC. ECF 19 (“Am. 15 Compl.”) ¶¶ 21-29. In their amended complaint, Plaintiffs assert eleven claims for relief under the 16 Fair Labor Standards Act and California law. Id. ¶¶ 76-136. CrossCountry moves to dismiss the 17 operative complaint with prejudice. ECF 22 (“Mot.”). It contends that Plaintiffs have not 18 adequately alleged that CrossCountry can be held liable for LendUS’s wage and hour law 19 violations as a successor-in-interest. Id. at 3-6. 20 A successor-in-interest may be liable for its predecessor’s labor law violations depending 21 on whether “1) the subsequent employer was a bona fide successor[,] . . . 2) the subsequent 22 employer had notice of the potential liability,” and 3) “the extent to which the predecessor is able 23 to provide adequate relief directly.” Steinbach v. Hubbard, 51 F.3d 843, 845-46 (9th Cir. 1995) 24 (citations omitted). The successorship doctrine’s roots “lie in equity,” and “consequently, 25 ‘fairness is a prime consideration in [its] application.’ ” Steinbach, 51 F.3d at 846 (quoting 26 Criswell v. Delta Air Lines, Inc., 868 F.2d 1093, 1094 (9th Cir. 1989)). Thus, “courts have 27 recognized that extending liability to successors will sometimes be necessary in order to vindicate 1 employee protections are concerned, ‘judicial importation of the concept of successor liability is 2 essential to avoid undercutting Congressional purpose by parsimony in

provision of effective 3 remedies.’ ” Id. (quoting *Wheeler v. Snyder Buick, Inc.*, 794 F.2d 1228, 1237 (7th Cir. 1986)). 4 CrossCountry argues that Plaintiffs have failed to plausibly allege facts supporting the 5 application of the successorship doctrine. Mot. at 4. Specifically, CrossCountry argues Plaintiffs’ 6 allegations as to the second factor are wholly conclusory and speculative and that they allege no 7 facts at all with respect to the third factor.1 Id. CrossCountry’s arguments are not persuasive. 8 As to the second factor, the allegations in the operative complaint plausibly establish that 9 CrossCountry had notice of the wage and hour violations that are the subject of this suit while it 10 was (or should have been) conducting due diligence in connection with its acquisition of LendUS. 11 Plaintiffs allege that at the time of the acquisition, LendUS was a “ ‘thriving’ company not in 12 financial distress[,]” that “[t]he acquisition created a combined company with more than 600 13 branches and over 8,000 employees nationwide[,]” and that following the acquisition, 14 “CrossCountry continued to offer the same mortgage lending services through LendUS and 15 maintained LendUS’s operations without interruption or significant change to LendUS’s business, 16 employees, locations, facilities, equipment, and marketplace activities.” Am. Compl. ¶¶ 30, 35. 17 Plaintiffs further allege, on information and belief, that: 18 CrossCountry had notice of LendUS’s potential liability for employment-related legal claims, including the unpaid overtime 19 claims alleged herein, as this would or should have been part of its due diligence process conducted prior to the merger and acquisition, 20 and a comparison of time records to available electronic data would readily reveal significant amounts of off the-clock unpaid overtime. 21 22 Id. ¶ 42. 23 The Court does not find these allegations conclusory or speculative given the alleged scope 24 of the merger. It is plausible that as part of its acquisition of a “thriving” company CrossCountry 25 would have or should have reviewed records as part of its due diligence, which would have given 26 1 In reply, CrossCountry attempts to challenge the first factor, but in failing to raise that the 27 challenge in its opening brief, it has waived any argument on that point. See *United States v. 1* it a picture of LendUS’s operations, including any liabilities possibly stemming from the manner 2 in which those operations were conducted. At the pleading stage, this is sufficient to plausibly 3 allege Cross Country had notice. See *Steinbach*, 51 F.3d at 847 (explaining that the purpose of the 4 “notice requirement is to ensure fairness by guaranteeing that a successor had an opportunity to 5 protect against liability by negotiating a lower price or indemnity clause” but that it is “not 6 intend[ed] to shield companies who were merely lacking in foresight.”). 7 In advocating for a different conclusion, CrossCountry relies on *Xue Ming Wang v. Abumi 8 Sushi Inc.*, 262 F. Supp. 3d 81 (S.D.N.Y. 2017). Its reliance on that case is misplaced. There, the 9 court resolved the successor-in-interest question against the plaintiff at the summary judgment 10 stage, rejecting the plaintiff’s contention that the Court should “impose a duty on purchasers to 11 engage in due diligence without respect to the size of the transaction and even in the absence of 12 any red flags in order to avoid being burdened with a predecessor’s FLSA liabilities.” Id. at 92, 13 93. CrossCountry is free to seek a similar ruling at the summary judgment stage. But for 14 purposes of the instant motion to dismiss, the well-

pleaded allegations in Plaintiffs' operative 15 complaint must be taken as true and viewed in the light most favorable to them. See *Manzarek v. 16 St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). So construed, they are 17 sufficient to plausibly establish that CrossCountry was or should have been on notice of the 18 violations alleged in the complaint. See *Musikiwamba v. ESSI, Inc.*, 760 F.2d 740, 752 (7th Cir. 19 1985) (declining to find that successor had notice of a lawsuit filed the same day as the sale of the 20 predecessor's assets where the successor conducted due diligence and nonetheless failed to 21 discover the suit, but stating that "[n]ormally, the burden would be on the successor to find out 22 from the predecessor all outstanding potential and actual liabilities."). 23 As for the third factor – the extent to which the LendUS is able to provide adequate relief 24 directly – Plaintiffs plausibly allege that CrossCountry acquired LendUS's assets and has been 25 wholly subsumed by or “ ‘rolled over’ into” CrossCountry. See, e.g., Am. Compl. ¶¶ 30-32. 26 Given “the successorship doctrine's policies and at this early stage in the case, this is sufficient to 27 allege [CrossCountry] may be liable as [LendUS's] successor-in-interest” See *Lowenthal v. 1* (finding allegations of successor liability plausible where the plaintiff quoted from emails stating 2 || that the predecessor's bank accounts were frozen and that the plaintiff's 7% stake in the company 3 had very little value). 4 For the reasons set forth above, CrossCountry's motion to dismiss is DENIED. 5 IT IS SO ORDERED. 6 || Dated: February 25, 2025 7 = 3 .

ARACELI MARTINEZ-OLGUIN

9 United States District Judge 10 11 12 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28