IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
NOBLE LOGISTICS, INC., et al.,	)	Case No. 14-10442 (CSS)
	)	Jointly Administered
	)	
Debtors.	)	Re: Docket Nos.: 284 & 285
	)	

MEMORANDUM ORDER

Upon consideration *of Debtors' Motion (I) To Disallow Claim No. 20 of Richard Maximo or, in the Alternative, (II) for Summary Judgment on Objection to Claim No. 20 of Richard Maximo* (D.I. 284) filed October 14, 2015 ("Objection to the Maximo Claim"); and *Debtors' Motion (I) To Disallow or, in the Alternative, (II) For Summary Judgment on Objection to Claim No. 21 of Richard Maximo on Behalf of Himself and Others Similarly Situated* (D.I. 285) filed October 14, 2015 ("Objection to the Maximo Class Claim," and together with the Objection to the Maximo Claim, the "Maximo Objections"); and the response filed thereto (D.I. 301) by Richard Maximo and the Putative Class ("Maximo" and the "Class" respectively); and the Court having held a status conference on January 6, 2015; and the Court having taken the Maximo Objections under advisement; the Court hereby FINDS and ORDERS:

1. On April 14, 2014, Richard Maximo filed a claim in the amount of $188,014.13, as identified by the above-captioned debtors (the "Debtors") as claim no. 20 ("Claim No. 20"). A portion of Claim No. 20 is asserted as an administrative priority claim pursuant to section 507(a)(4) of the Bankruptcy Code.

2. On April 14, 2014, Richard Maximo, on behalf of the putative class, filed a claim in the amount of $61,292,607.17, as identified by the Debtors as claim no. 21 ("Claim No. 21"). A portion of Claim No. 21 is asserted as an administrative priority claim pursuant to section 507(a)(4) of the Bankruptcy Code.

3. Both Claim Nos. 20 and 21 are based on the same underlying facts set forth in state court litigation. More specifically, approximately one year prior to the Debtors' bankruptcy, on February 15, 2013, Maximo filed a complaint (later amended) with the Superior Court of the State of California for the County of San Bernardino – Rancho Cucamonga District (the "Maximo Complaint"). The Maximo Complaint asserts a class action on behalf of individuals of various putative classes, of which Maximo purports to be a representative member. The Maximo Complaint alleges that Maximo and other members of the Putative Classes were working or had previously worked for Aspen (one of the Debtors' affiliates) as "Delivery Drivers." It further alleges that Maximo and other class members were mischaracterized as "independent contractors" by Aspen, and, therefore, were deprived of "premium overtime compensation," minimum wages, and other protections and benefits to which they would have been entitled if treated as traditional employees. Maximo asserts Aspen committed multiple violations of the California Labor Code and the California Business and Professions Code. Specifically, the Maximo Complaint asserts the following causes of action: (1) recovery of unpaid wages; (2) recovery of unpaid minimum wages; (3) failure to provide meal periods; (4) illegal record keeping and noncompliant pay stubs; (5) failure to pay wages of

terminated or resigned employees; (6) misclassification as independent contractors; (7) unfair business practices; (8) failure to indemnify employees for expenses; and (9) for penalties under Labor Code Private Attorney General Act of 2004.

4. Based on these allegations, Maximo seeks to recover through Claims Nos. 20 and 21: (a) damages and liquidated damages for various asserted unpaid wages, minimum wages, and uncompensated meal periods, including prejudgment interest that has accrued on such unpaid amounts; (b) penalties for violations related to illegal record keeping and noncompliant pay stubs; (c) penalties against Aspen for instances of nonpayment of former employees; (d) reimbursement for the "appropriate withholding of federal, state and local income taxes" that were "improperly not paid by [Aspen] as a result of improper 'independent contractor' classification;" (e) an order enjoining Aspen from continuing the practices at issue in the Maximo Complaint; (f) compensatory damages for failure to indemnify employees for expenses; (g) the penalties provided under the Labor Code Private Attorney General Act of 2004; and (h) the reasonable costs associated with bringing the action.

5. The Debtors seek to have both Claim Nos. 20 and 21 disallowed for failure to establish *prima facie* evidence of the validity of the amount of the claims or, in the alternative, for summary judgment on the objections to the claims.

6. In responding to the Maximo Objections, Maximo and the Class filed the declarations of various class members, including: (i) Richard Maximo, (ii) Shaun Weeks, (iii) Romeo Balandra, (iv) Rolando Mendoza, (v) Sheila Walder, (vi) Derek Martin, (vii) Nathaniel Willis, (viii) Kimberly Flores, and (ix) counsel to Maximo, Joseph

Antonelli. Each of these declarations contained facts in support of the Maximo Complaint and, in turn, Claims No. 20 and 21.

7. The filing of a proof of claim constitutes *prima facie* evidence of the validity of the claim.[1] Yet once an objecting party submits sufficient evidence to place the claimant's entitlement at issue, the burden of going forward with the evidence to sustain the claim shifts to the claimant or its assignee. These shifting burdens of proof are described by the Third Circuit as follows:

> The burden of proof for claims brought in the bankruptcy court under 11 U.S.C.A. § 502(a) rests on different parties at different times. Initially, the claimant must allege facts sufficient to support the claim. If averments in his filed claim meet this standard of sufficiency, it is "*prima facie*" valid. In other words, a claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward. The burden of going forward then shifts to the objector to produce evidence sufficient to negate the *prima facie* validity of the filed claim. It is often said that the objector must produce evidence equal in force to the prima facie case. In practice, the objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency. If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The burden of persuasion is always on the claimant.[2]

To refute the allegations in Claim Nos. 20 and 21, the Debtors filed the declaration of James P. Carroll, Chief Liquidation Officer of the Debtors in support of the Maximo

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[1] *See* 11 U.S.C. § 502(a).

[2] *In re Allegheny Intern., Inc.,* 954 F.2d 167, 173–74 (3d Cir. 1992) (internal citations omitted).

Objections (the "Carroll Declaration").[3] The Carroll Declaration attaches documents such as the Debtors' paperwork with its drivers, such as Maximo, which includes *Frequently Asked Questions* which explicitly discusses that the drivers are independent contractors and explains the drivers' relationship and obligations to the Debtors, as well as an *Independent Contractor Agreement*. However, presence of an "independent contractor" agreement is but one factor in considering whether a person was an independent contractor or an employee.[4] However, *even if* the Court found that the Carroll Declaration refuted at least one of the allegations essential to the Class' allegation of employment in Claims Nos. 20 and 21; the responses filed by Maximo and the Class, attaching the factual declarations discussed *supra*, certainly refute the Carroll Declaration for purposes of reviewing the Maximo Objections based on a motion to dismiss basis. Regardless, the Court's consideration of the Class's declarations converts this matter to a summary judgment motion.[5]

8. Rule 56(c) of the Federal Rules of Civil Procedure mandates that summary judgment should be granted when the "pleadings, the discovery and disclosure materials

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[3] *See* D.I. 284 and 285.

[4] *Toyota Motor Sales U.S.A., Inc. v. Superior Court*, 220 Cal. App. 3d 864, 875 (Ct. App. 1990), *as modified* (June 5, 1990) ("The real test has been said to be whether the employee was subject to the employer's orders and control and was liable to be discharged for disobedience or misconduct; and the fact that a certain amount of freedom of action is inherent in the nature of the work does not change the character of the employment where the employer has general supervision and control over it. Perhaps no single circumstance is more conclusive to show the relationship of an employee than the right of the employer to end the service whenever he sees fit to do so.") (citations and internal quotation marks omitted).

[5] *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993) (discussing Rule 12(b)(6)'s requirement "that a motion to dismiss be converted to a summary judgment motion if a court considers matters outside the pleadings.").

on file, and any affidavits show that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter if law."[6] After an adequate time for discovery, Federal Rule of Civil Procedure 56(c) "mandates judgment against the party who 'fails to make a sufficient showing to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'"[7]

9. Initially, "the burden of showing that no genuine issue of material fact exists rests . . . on the moving party."[8] The moving party may discharge this burden by "showing . . . that there is an absence of evidence to support the nonmoving party's case."[9]

10. The moving party must "put the ball in play, averring an absence of evidence to support the nonmoving party's case."[10] The burden then shifts to the nonmoving party who has to "set forth specific facts showing that there is a genuine issue for trial."[11] "There is no issue for trial unless the nonmoving party can demonstrate that there is sufficient evidence favoring the nonmoving party so that a reasonable jury could return a verdict in that party's favor."[12] The nonmoving party must show more than a

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[6] Fed.R.Civ.P. 56.

[7] *Brockstedt v. Sussex Cnty. Council*, 794 F. Supp. 2d 489, 498 (D. Del. 2011) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)).

[8] *Wilson v. Mt. Tee's*, 855 F.Supp. 679, 681 (D.N.J. 1994) (quoting *Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976), cert. denied, 429 U.S. 1038, 97 S.Ct. 732, 50 L.Ed. 748 (1977).

[9] *Id*. at 681 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552, 91 L.Ed 2d 265 (1986)).

[10] *Celotex Corp*., 477 U.S. at 325.

[11] *Wilson v. Tee*, 855 F.Supp. at 681 (quoting *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 247–48; *see also Mesnick v. General Electric Co*., 950 F.2d 816, 822 (1st Cir. 1991), *cert. denied*, 504 U.S. 985 (1992)).

[12] *Id*. (citation omitted).

"mere existence of a scintilla of evidence"[13] as "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment."[14] The nonmoving party "must point to actual evidence in the record on which a jury could decide an issue of fact its way."[15]

11. Summary judgment is designed "to avoid trial or extensive discovery if facts are settled and [the] dispute turns on [an] issue of law."[16] "In deciding a motion for summary judgment, the court must construe the facts and inferences in a light most favorable to the nonmoving party."[17] The court's role at this stage in the litigation is not "to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial."[18]

12. In determining whether someone is an employee or an independent contractor, courts consider the following factors:

> (1) whether the worker is engaged in a distinct occupation or business, (2) whether, considering the kind of occupation and locality, the work is usually done under the principal's direction or by a specialist without supervision, (3) the skill required, (4) whether the principal or worker supplies the instrumentalities, tools, and place of work, (5) the length of time for which the services are to be performed, (6) the method of payment, whether by time or by job, (7) whether the work is part of the principal's regular business, and

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[13] *Anderson v. Liberty Lobby, Inc.*, 477 US. 242, 252 (1986).

[14] *Elmer v. Tenneco Resins, Inc.*, 698 F. Supp. 535, 538 (D. Del. 1988) (citing *Anderson*, 477 U.S. at 247-48.).

[15] *El v. Se. Pa. Transp. Auth. (SEPTA)*, 479 F.3d 232, 238 (3d Cir. 2007).

[16] 11-56 MOORE'S FEDERAL PRACTICE, § 56.02 (Matthew Bender 3d ed.)

[17] *Wilson*, 55 F. Supp. at 681 (citation omitted).

[18] *Id.* (citing *Anderson*, 477 U.S. at 249).

> (8) whether the parties believe they are creating an employer-employee relationship.[19]

"The individual factors cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations. That some factors suggest an employment relationship does not lead to the conclusion that such a relationship necessarily exists."[20] Furthermore, in order to prevail on a motion for summary judgment, the Debtors would have to

> establish that a jury would be compelled to find that it had established by a preponderance of the evidence that the plaintiff was an independent contractor. The Ninth Circuit has recognized that this hurdle is particularly difficult for a defendant to overcome in light of the multi-faceted test that applies in resolving the issue whether the plaintiff is an employee. It is the rare case where the various factors will point with unanimity in one direction or the other.[21]

13. In *Toyota Motor Sales U.S.A, Inc. v. Superior Court*, the Court was assessing the reasonableness of a settlement agreement that arose out of a car accident caused by a pizza delivery driver. As a result of the car accident, the injured driver sued the delivery driver, the owners of the pizza parlor, and the manufacturer of the vehicle. The owners of the pizza parlor claimed that the driver was an independent contractor and, thus, reached a settlement based on the insurance policy limits for independent contractors. The car manufacturer challenged the settlement agreement as "unreasonable" arguing that the delivery driver was an employee and not an independent contractor. The *Toyota Motor Sales* Court found that the only evidence that the driver was an independent

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[19] *Hennighan v. Insphere Ins. Sols., Inc.*, 38 F. Supp. 3d 1083, 1098 (N.D. Cal. 2014) (citations omitted).

[20] *Id.* (citations and internal quotation marks omitted).

[21] *Id.* at 1099 (N.D. Cal. 2014) (citations, internal quotations marks and modifications omitted).

contractor was that he provided his own car, expenses and car insurance. The driver also had a written agreement with the pizza parlor which characterized their relationship as one of "client-independent contractor." The court stated that "attempts to conceal employment by formal documents purporting to create other relationships have led the courts to disregard such terms whenever the acts and declarations of the parties are inconsistent therewith."[22] Furthermore, the fact that the driver paid his own payroll and income taxes and provided his own worker's compensation insurance were a "mere[] consequence of an independent contractor status not a means of proving it."[23] Thus, the court considered factors such as when the driver reported for work, how long he worked, when deliveries were made and to whom – all aspects which were controlled by the pizza parlor owner and not the driver.[24] Thus, the court found that there was no evidence to support the finding that the driver was an independent contractor and, thus, the settlement agreement would have to be reevaluated under the fact that the pizza parlor owner was deemed exposed to the possibility of full vicarious liability to the plaintiff for any negligent act or omission by the driver in course and scope of his employment.[25]

14. Similarly, in the case *sub judice*, there are genuine issues of material facts, including whether the Class members had the right to control and the discretion as to the manner of performance of their services, whether the Class members could complete the

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[22] *Toyota Motor Sales U.S.A., Inc.*, 220 Cal. App. 3d at 877, *as modified* (June 5, 1990) (citations omitted).

[23] *Id.*

[24] *Id.*

[25] *Id.* at 877-878.

route without the Debtors' direction or supervision, what skills were required, the length of time for which the services were performed, and whether the work was part of the Debtors' regular business, among other things. Based on the record before the Court, it would be impossible to make such factual determination without developing the evidentiary record. As a result, summary judgment is not appropriate at this time.

CONCLUSION

15. As set forth *supra*, the Court hereby DENIES the Maximo Objections, without prejudice.

Christopher S. Sontchi, Judge
United States Bankruptcy Court

Dated: January 26, 2016