

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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VINCENT VALENTA, :
 :
 Plaintiff, :
 :
 -against- :
 :
 HOBOKEN WOOD FLOORING : **No. 3:03 CV 2009 (GLG)**
 CORPORATION : **Memorandum Decision**
 :
 Defendant. :
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Pending before the court is plaintiff's motion for leave to file an amended complaint to which defendant Hoboken Wood Flooring Corporation objects. For the reasons set forth below, the court denies plaintiff's motion. **(Doc. #9)**.

I. Procedural Facts and Background

On October 22, 2003, plaintiff filed a two-count complaint in the Connecticut Superior Court alleging breach of contract and promissory estoppel, seeking, inter alia, damages and prejudgment interest in the Connecticut Superior Court. Plaintiff claims that defendant wrongfully terminated him in breach of a written employment contract dated November 15, 1999.

On November 21, 2003, defendant removed this action to the United States District Court, District of Connecticut, pursuant to 28 U.S.C. § 1441, diversity of citizenship. On November 26, 2003, defendant filed an answer and affirmative defenses to the complaint and filed a counterclaim against plaintiff. On December

8, 2003, plaintiff filed the pending motion, seeking to add two statutory counts, specifically, violations of Connecticut General Statutes §§ 31-71 and 31-72. Plaintiff also seeks double damages and attorney's fees under § 31-72.

II. Discussion

Rule 15(a) of the Federal Rules of Civil Procedure provides that "leave [to amend] shall be freely given when justice so requires." A district court may, however, deny leave to amend a complaint if the proposed amendment would be futile. See Foman v. Davis, 371 U.S. 178, 182 (1962).

In his memorandum of law in support of his motion to amend, plaintiff claims that these additional causes of action are based on defendant's failure to pay plaintiff's wages in violation of his employment agreement. (Pl.'s Mem. at 1). In its opposing memorandum of law, defendant counters that plaintiff's motion should be denied because of futility. (Def.'s Mem. at 2). Defendant asserts that under a correct application of §§ 31-71c and 31-71e, the proposed amendment cannot survive because plaintiff does not allege that defendant failed to pay him wages that he earned prior to his termination. (Id. at 4). Defendant also notes that in the complaint, plaintiff admits "from the time of the formation of the contract until or about April 2, 2003, both parties performed their duties under the contract." Defendant construes this admission as evidence that defendant paid plaintiff all monies owed during his employment. (Id.)

Connecticut General Statutes § 31-71c(b) provides:

"[w]henver an employer discharges an employee, the employer shall pay the employee's wages in full not later than the business day next succeeding the date of such discharge."

Subsection (c) provides: "[w]hen work of any employee is suspended as a result of a labor dispute, or when an employee for any reason is laid off, the employer shall pay in full to such employee the wages earned by him not later than the next regular pay day ..."

Connecticut General Statutes § 31-71e provides: "No employer may withhold or divert any portion of an employee's wages unless (1) the employer is required or empowered to do so by state or federal law, or (2) the employer has written authorization from the employee for deductions on a form approved by the commissioner, or (3) the deductions are authorized by the employee, in writing, for medical, surgical or hospital care or service, without financial benefit to the employer and recorded in the employer's wage record book."

The term "wages" is defined as "compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation." Conn. Gen. Stat. § 31-71a(3). Wages, unlike severance pay, cease when employment does. See McGowan v. Administrator, 153 Conn. 691, 693, 220 A.2d 284, 286 (Conn.1966).

In the absence of specific allegations that defendant withheld or diverted improperly any portion of plaintiff's wages earned during his employment with defendant, the court agrees

with defendant's contention that the proposed amendment seeking to add two statutory counts, violations of Connecticut General Statutes §§ 31-71 and 31-72, would be futile.

III. Conclusion

For the reasons set forth above, the court denies plaintiff's motion to file an amended complaint **(Doc. #9)**.

SO ORDERED.

Date: January 21, 2004.
Waterbury, Connecticut.

/s/

GERARD L. GOETTEL,
United States District Judge