

Stuto v. Kerber

Court of Appeals of New York

January 10, 2012, Argued; February 16, 2012, Decided

No. 19

Reporter

18 N.Y.3d 909 *; 963 N.E.2d 1257 **; 940 N.Y.S.2d 556 ***; 2012 N.Y. LEXIS 264 ****; 2012 NY Slip Op 1146

[1] Christine M. Stuto, Appellant, v Gregory G. Kerber et al., Defendants, and William J. McNeary III et al., Respondents.

Prior History: APPEAL, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the Third Judicial Department, entered October 28, 2010. The Appellate Division affirmed an order of the Supreme Court, Albany County (Richard M. Platkin, J.; op 26 Misc 3d 535, 888 NYS2d 872 [2009]), which, among other things, had granted a motion by defendants William J. McNeary III, Jamie Jayko and William J. McNeary IV to dismiss the complaint as against them.

Stuto v Kerber, 77 AD3d 1233, 910 NYS2d 215, affirmed.

Stuto v Kerber, 77 AD3d 1233, 910 NYS2d 215, 2010 N.Y. App. Div. LEXIS 7726 (N.Y. App. Div. 3d Dep't, 2010)

Disposition: [****1] Order affirmed, with costs, in a memorandum.

Counsel: *Cooper, Erving, Savage LLP*, Albany (Phillip G. Steck of counsel), for appellant.

Driver Greene, LLP, Albany (John D. Hoggan, Jr., of counsel), for respondents.

Judges: Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Opinion

[**1257] [*909] [***556] MEMORANDUM.

The order of the Appellate Division should be affirmed, with costs.

Plaintiff Christine M. Stuto was employed by Wurld Media, Inc., a corporation [2] organized under the laws of the State of Delaware. In May 2006, after encountering financial difficulties, Wurld Media stopped paying plaintiff's salary. She continued [*910] working, however, in the hope that the corporation's financial position would improve. It did not, and the corporation closed. Plaintiff thereafter obtained a judgment against Wurld Media for unpaid wages and commenced this action against Wurld Media's 10 largest shareholders to recover the unpaid wages pursuant to Business Corporation Law § 630. Supreme Court granted the motion of three defendant shareholders to dismiss the complaint on the ground that the statute does not apply to foreign corporations, and the Appellate Division affirmed.

We agree with the courts below that the plain language and history of Business Corporation Law § 630 (*see Armstrong v Dyer*, 268 NY 671, 198 N.E. 551 [1935]), [****2] as well as other relevant portions of the Business Corporation Law (*see Business Corporation Law* §§ 102 [a] [4], [7]; § 1319), reveal that section 630 applies to only domestic corporations, and not to foreign corporations.

Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Order affirmed, with costs, in a memorandum.

End of Document