

CAUSE NO. 2005-58359

Bravo, et al.	§	IN THE DISTRICT COURT OF
	§	
v.	§	HARRIS COUNTY, T E X A S
	§	
Stage Call Corp.	§	157 th JUDICIAL DISTRICT

Order Denying Motion for Partial Summary Judgment

Plaintiffs have sued defendant for negligence following an automobile collision that occurred on October 14, 2003 in Madison, Florida. This Court has previously ruled that Florida substantive law governs this suit. Defendant has moved for partial summary judgment based on the fact that plaintiff is an undocumented, illegal alien. Defendant argues that, under Florida law, only legal residents may recover lost wages.

1. Veliz

Defendant relies primarily upon *Veliz v. Rental Service Corp. USA, Inc.*, 313 F. Supp. 2d 1317 (M.D. Fla. 2003). There, the district court, in an *Erie* context, ruled that plaintiff's undocumented alien status precluded an award of lost U.S. wages. The court relied upon the Immigration Reform and Control Act of 1986 8 U.S.C. § 1324a, et seq. ("IRCA") which is a "comprehensive scheme prohibiting the employment of illegal aliens in the United States." *Hoffman Plastic Compounds, Inc. v. NLRB*, 525 U.S. 137, 147, 122 S. Ct. 1275 (2002). The IRCA requires that employers verify the identify an eligibility of all new hires by examining specified documents before commencement of work. 8 U.S.C. § 1324a(b); *Hoffman*, 535 U.S. at 148. If an alien applicant does not present the requisite documentation, he or she cannot be hired. 8 U.S.C. § 1324a(a)(1); *Hoffman*, 535 U.S. at 148. Further, if the employer unknowingly

hires an unauthorized alien, and later discovers the worker's undocumented status, the employer is required to discharge the worker. 8 U.S.C. § 1324a; *Hoffman*, 535 U.S. at 148.

The *Veliz* court relied primarily on *Hoffman*, where the Supreme Court held that the NLRB could not award backpay to an undocumented alien who had been terminated illegally because it “would unduly trench upon explicit statutory prohibitions critical to federal immigration policy”, “encourage the successful evasion of apprehension by immigration authorities”, “condone prior violations of the immigration laws”, and “encourage future violations.” 313 F. Supp. 2d at 1336, *citing Hoffman*, 535 U.S. at 151.

As a result of *Hoffman*, *Veliz* held that it could not condone an award of lost wages. The court reasoned that to do so “would be tantamount to violating the IRCA.” 313 F. Supp. 2d at 1336.

It is important to remember that the *Valiz* court was merely predicting Florida substantive law. A federal court, in fulfilling its *Erie* role, can only predict state law; it is not up to the federal court to change the substantive law of that state. *American Waste & Pollution Control Co. v. Browning-Ferris, Inc.*, 949 F.2d 1384 (5th Cir. 1991).

Further, *Valiz* relied almost exclusively on the IRCA as opposed to anything unique to Florida law.¹ The *Valiz* court was essentially examining the interplay of federal versus state law. The court could have reached the same conclusion about virtually any other state. Thus, while *Valiz* is instructive on Florida law, it is by no means conclusive.

2. Applicability of *Hoffman* in Other Jurisdictions

Prior to *Hoffman*, the various jurisdictions were split on the question of illegal aliens recovering lost future damages. *See Note*, 58 BAYLOR L. REV. 985 (Fall 2006). For example,

¹ The only discussion in *Valiz* unique to Florida was to note that the cases permitting workers' compensation benefits to illegal aliens are inapplicable. *Valiz*, 313 F. Supp. at 1336.

California permitted the illegal alien to recover lost future wages, but the future earnings must be limited to those earnings he could expect in his country of lawful residence. *Rodriguez v. Kline*, 232 Cal. Rptr. 157 (Cal. Ct. App. 1986). Texas courts, on the other hand, have held that an illegal alien may recover lost future wages based on U.S. wage rates. *Wal-Mart Stores, Inc. v. Cordova*, 856 S.W.2d 768, 769 (Tex. App.—El Paso 1993, writ denied). Finally, other courts permitted lost future earnings based on U.S. wage rates, unless the defendant can prove that deportation was likely. *See Hernandez v. M/V Rajaan*, 848 F.2d 498, 499 (5th Cir. 1988).

Subsequent to *Hoffman*, the courts remain split. In *Hernandez-Cortez v. Hernandez*, a federal district court, relying upon *Hoffman*, disallowed illegal alien plaintiffs' claims for lost United States earnings where the plaintiffs brought a negligence action for personal injuries resulting from a motor vehicle accident. *Hernandez-Cortez v. Hernandez*, 2003 WL 22519678, at *6-7 (D. Kan. Nov.4, 2003). The court noted that "while many illegal aliens do find employment in the United States, this argument does not overcome [8 U.S.C.] § 1324a and *Hoffman*." *Id.* In *Majlinger v. Cassino Contracting Corp.*, 1 Misc.3d 659, 766 N.Y.S.2d 332 (N.Y. Sup. Ct. 2003), the trial court found that although New York appellate courts in the past had permitted illegal alien plaintiffs to prove lost United States wages, *see, e.g., Public Adm'r of Bronx County v. Equitable Life Assur. Socy.*, 192 A.D.2d 325, 595 N.Y.S.2d 478 (N.Y. App. Div. 1993); *Collins v. NYC Health and Hospitals Corp.*, 201 A.D.2d 447, 607 N.Y.S.2d 387 (N.Y. App. Div. 1994), the *Hoffman* decision "would appear to require this court to conclude that the plaintiff should not be permitted to recover for lost wages given his inability to prove he is legally authorized to work in this country." *Majlinger*, 766 N.Y.S.2d at 333-34. And, in *Sanango v. 200 East Street Housing Corp.*, 788 N.Y.S.2d 314, 316 (N.Y. App. Div. 2004), a court vacated a jury verdict awarding the plaintiff lost United States earnings and remanded for a trial for a

determination of the earnings that the plaintiff may have earned in his country of origin. However, in *Madeira v. Affordable Housing Foundation, Inc.*, 315 F. Supp.2d 504, 507 (S.D.N.Y. 2004), a federal district court disagreed with *Majlinger* and *Veliz*. The court upheld a jury's award of lost earnings to an illegal alien plaintiff who brought an action against the site owner and general contractor to recover damages for personal injuries sustained in the course of his work on a construction site. *Madeira*, 315 F.Supp.2d at 505, 507. In its ruling the court stated, "The jury obviously concluded that plaintiff would have obtained employment in the United States, where he has continuously resided since the accident, if he had not been severely injured by his fall. And the fact is, undocumented aliens do obtain work in the United States." *Id.* at 507.

Needless to say, the law nationally is less than resolved on the subject.

3. Florida State Court Decisions

The Florida state court decisions appear to reject defendant's arguments, although in slightly different contexts. In *Enterprise Leasing Co. v. Sosa*, 907 So. 2d 1239 (Fla. Dist. Ct. App. 2005), the court concluded that an illegal alien could recover damages under the Florida Wrongful Death Act, § 768.18, Florida Statutes. Although that case involved a statutory wrongful death claim, as opposed to a common law tort action, the rationale of the *Enterprise Leasing* court is equally applicable to both situations. Moreover, *Enterprise* was a post-*Hoffman* case and specifically examined the split of authority among the federal district courts on the issue and nevertheless concluded that plaintiff, an illegal alien, could recover.

Similarly, the Florida courts have held that an illegal alien can recover worker's compensation benefits. See *Safeharbor Employer Servs. I., Inc. v. Velazquez*, 860 So.2d 984 (Fla. Dist. Ct. App. 2003); *Cenvill Dev. Corp. v. Candolo*, 478 So.2d 1168, 1170 (Fla. Dist. Ct.

App. 1985); *Genes Harvesting v. Rodriguez*, 421 So.2d 701 (Fla. Dist. Ct. App. 1982). The *Safeharbor* decision is particularly instructive since it specifically considered and rejected defendant's argument that *Hoffman* preempts Florida law and mandates that an illegal alien is barred from receiving worker's compensation benefits.

4. Conclusion

It is not the purpose of this court to create Florida substantive law. Nor is this court permitted to determine what it believes the law should be. Rather, this court's role is modest: try to determine the substantive law of Florida based on the few decided cases. As a result of *Enterprise Leasing* and *Safeharbor*, this court concludes that the law of Florida permits an illegal alien to recover lost future income. Defendant's motion for summary judgment is Denied.

Signed May 31, 2007.

Hon. Randy Wilson