Docket #0021 Date Filed: 7/22/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

in Re: **ZACHRY HOLDINGS, INC., et al.,** **Debtors**	§ § § § § § § §	**Chapter 11** **Case No. 24-90377 (MI)** **(Jointly Administered)**
AVIS LAMOTTE, on behalf of herself and those similarly situated, **Plaintiff,** **v.** **ZACHRY INDUSTRIAL, INC.,** **Defendant.**	§ § § § § § § § §	**Adversary No. 4:24-AP-03122** **JURY TRIAL DEMANDED**

DEFENDANT DEBTORS' MOTION TO STRIKE JURY DEMAND

Pursuant to BLR 9013-1(b):

> If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at https://ecf.txsb.gov/ within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the court may treat the pleadings as unopposed and grant the relief requested.

Represented parties should act through their attorney.

Defendant Zachry Industrial, Inc. ("Defendant"), through its attorneys of record, and pursuant to Federal Rule of Civil Procedure 39(a)(2) and BLR 9013-1, and moves the Court to strike Plaintiff Avis LaMotte's ("Plaintiff") demand for a trial by jury. In support of its Motion, Defendant states:

INTRODUCTION

Defendant respectfully moves this Court for its order striking Plaintiff's jury demand in this action solely alleging violations of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101–2109 (the "WARN Act"). The Fifth Circuit has unequivocally concluded there is no right to a jury regarding WARN Act claims. *Fleming v. Bayou Steel BD Holdings II L.L.C.*, 83 F.4th 278, 289 (5th Cir. 2023). Accordingly, Defendant moves the Court to strike Plaintiff's jury trial demand.

ISSUE IN DISPUTE

The issue presented in this Motion is whether the Court should strike Plaintiff's jury trial demand. "Whether a party is entitled to a jury trial is a legal question that is reviewed *de novo*." *U.S. Bank Nat. Ass'n v. Verizon Commc'ns, Inc.*, 761 F.3d 409, 416 (5th Cir. 2014), as revised (Sept. 2, 2014) (citing *Provident Life & Accident Ins. Co. v. Sharpless*, 364 F.3d 634, 639 (5th Cir. 2004)).

FACTUAL BACKGROUND

On June 17, 2024, Plaintiff filed a putative class action against Defendant alleging WARN Act violations. Doc. 286. In her Complaint, Plaintiff demanded a jury trial. *Id.* at caption. Defendant opposes Plaintiff's jury trial demand and, accordingly, files this Motion.

ARGUMENT

A civil litigant has the inviolate right to a jury trial when provided for under a federal statute or the Seventh Amendment. Fed.R.Civ.P. 38(a). When either source does not confer such a right, the Court should strike a related jury demand. Fed.R.Civ.P. 39(a)(2).

Here, Plaintiff has demanded a jury, but she has no right to one. Plaintiff's only justiciable claim in this case involves ostensible violations of the WARN Act. However, the WARN Act does

not grant a right to a jury trial. Moreover, Fifth Circuit precedent is clear the Seventh Amendment also does not confer such a right. Accordingly, the Court should grant this Motion and strike Plaintiff's jury demand.

I. There is no right to a jury under the WARN Act or the Seventh Amendment.

The first question under Rule 38(a)—*i.e.*, whether a federal statute gives Plaintiff the right to a jury—requires little discussion. The WARN Act does not grant parties a right to a jury. *See Fleming*, 83 F.4th at 289.

The Seventh Amendment only provides the right to a jury "[i]n Suits at common law." U.S. Const. Amend. VII. Notably, however, "suits at common law' are suits regarding legal, as opposed to equitable, rights." *Id.* (citing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989)). Thus, when a suit is equitable in nature, the Seventh Amendment right to a jury trial does not apply.

In *Fleming*, when the Fifth Circuit addressed the nature of WARN Act claims, it applied a two-prong approach. *Fleming*, 83 F.4th at 289. First, the court compared the statutory action to suits brought in Eighteenth-century England, before the merger of the courts of law and equity, finding a WARN action is analogous to a claim sounding in employer's breach of a fiduciary duty, which is historically an equitable cause of action. *Id.* at 291. Second, the court examined the kind of remedy typically sought in a WARN action, finding the available damages under the WARN Act are restitutionary, not punitive. *Id.* at 292. Because the remedy provided by the WARN Act seeks to restore former employees to the position they would have been in if a violation of the act had not occurred, the Fifth Circuit determined the remedy is equitable in nature, and the parties to such an action are not entitled to a jury trial regarding WARN Act claims.

Because Plaintiff is seeking an equitable remedy under the WARN Act, the Court should follow Fifth Circuit precedent and strike Plaintiff's demand for a jury trial.

CONCLUSION

Defendant respectfully requests this Court's order striking Plaintiff's jury demand from Plaintiff's Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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