



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

508836

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD DEPARTMENT**

*2010 NY Slip Op 7646; 77 A.D.3d 1233; 910 N.Y.S.2d 215; 2010 N.Y. App. Div. LEXIS 7726*

**October 28, 2010, Decided  
October 28, 2010, Entered**

**SUBSEQUENT HISTORY:** Leave to appeal granted by *Stuto v. Kerber*, 16 N.Y.3d 704, 2011 N.Y. LEXIS 177 (2011)

**PRIOR HISTORY:** *Stuto v. Kerber*, 26 Misc. 3d 535, 888 N.Y.S.2d 872, 2009 N.Y. Misc. LEXIS 3077 (2009)

**HEADNOTES**

Corporations--Foreign Corporation--Unpaid Wages.--Defendants, shareholders in closely held foreign corporation, were entitled to dismissal of plaintiff's complaint for unpaid wages pursuant to *Business Corporation Law §630*; section 630 does not apply to foreign corporations.

**COUNSEL:** Cooper, Erving & Savage, L.L.P., Albany (Phillip G. Steck of counsel), for appellant.

Stockli, Greene & Slevin, L.L.P., Albany (John D. Hoggan Jr. of counsel), for respondents.

**JUDGES:** Before: Spain, J.P., Lahtinen, Kavanagh, Stein and Garry, JJ. Lahtinen, Kavanagh, Stein and Garry, JJ., concur.

**OPINION BY:** Spain

**OPINION**

[\*\*1233] [\*\*\*215] Spain, J.P. Appeal from an order of the Supreme Court (Platkin, J.), entered October 21, [\*\*\*216] 2009 in Albany County, which, among other things, granted a motion by defendants William J. McNeary III, Jamie Jayko and William J. McNeary IV to dismiss the complaint against them.

Plaintiff worked for defendant Wurld Media, Inc. -- a now defunct closely-held foreign corporation incorporated in Delaware -- beginning in 2005 and continuing beyond 2006 even after Wurld Media ceased to pay her. In February 2009, plaintiff obtained a judgment in Supreme Court, Albany County against Wurld Media in the amount of \$99,918.38 based on a claim for unpaid wages. Thereafter, plaintiff commenced the instant action against, among others, defendants William J. McNeary III, Jamie Jayko and William J. McNeary IV (hereinafter collectively referred to as defendants) for unpaid wages pursuant to *Business Corporation Law § 630*, based upon their alleged status as 3 of the 10 largest shareholders of Wurld Media. Defendants moved to dismiss the complaint, and Supreme Court granted [\*\*1234] defendants' motion, holding that *Business Corporation Law § 630* did not apply to foreign corporations. Plaintiff now appeals.

[\*2] *Business Corporation Law* § 630 is essentially the reenactment of former Stock Corporation Law § 71 and provides that "[t]he [10] largest shareholders" of a nonpublicly traded company "shall jointly and severally be personally liable for all debts, wages or salaries due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation." \* Prior to the enactment of the Business Corporation Law, decisional law held that former Stock Corporation Law § 71 did not apply to foreign corporations (see *Armstrong v Dyer*, 268 NY 671, 672, 198 NE 551 [1935]; *Bogardus v Fitzpatrick*, 139 Misc 533, 534, 247 NYS 692 [1931]). "It is well settled that the legislative history of a particular enactment must be reviewed in light of the existing decisional law which the Legislature is presumed to be familiar with and to the extent it left it unchanged, that it accepted" (*Matter of Knight-Ridder Broadcasting v Greenberg*, 70 NY2d 151, 157, 511 NE2d 1116, 518 NYS2d 595 [1987] [citations omitted]). Under the former Stock Corporation Law, the term "stock corporation" referred specifically to domestic corporations (see *Reconstruction Fin. Corp. v Eastern Terra Cotta Realty Corp.*, 266 App Div 148, 149, 41 NYS2d 569 [1943], *lv denied* 266 App Div 857, 43 NYS2d 861 [1943]). Similarly, under the Business Corporation Law, the term "[c]orporation" refers to domestic corporations (see *Business Corporation Law* § 102 [a] [4]) and "[f]oreign corporation" has its own separate definition (see *Business Corporation Law* § 102 [a] [7]).

\* Former Stock Corporation Law § 71 (repealed in 1963 upon the enactment of the Business Corporation Law) provided that "[t]he stockholders of every stock corporation shall jointly and severally be personally liable for all debts due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation."

While *Business Corporation Law* § 103 (a) provides that the Business Corporation Law "applies to every domestic corporation and to every foreign corporation" doing business in New York, the applicability of the Business Corporation Law to foreign corporations is refined in article 13, which comprehensively regulates the conduct of foreign corporations in the state, providing, among other things, for their authorization (see *Business Corporation Law* § 1301 *et seq.*) and termination (see *Business Corporation Law* § 1311) [\*\*\*217] and for actions by and against them (see *Business Corporation*

*Law* §§ 1312, 1313, 1314). Furthermore, article 13 also defines the scope of application of other provisions of the Business Corporation Law to foreign [\*\*1235] corporations (see *Business Corporation Law* §§ 1319, 1320). *Business Corporation Law* § 1319 (a) provides that articles 1, 3 and 13 and a number of specific provisions contained in articles 6, 7, 8 and 9 "shall apply to a foreign corporation doing business in this state, its directors, officers and shareholders." Significantly, while three specific sections of article 6 are listed in *Business Corporation Law* § 1319 (a) as being applicable to foreign corporations, *Business Corporation Law* § 630 is not listed, and those provisions denominated as having application to foreign corporations expressly or impliedly use the term "foreign corporation" (see *e.g.* *Business Corporation Law* arts 1, 3; §§ 623, 626, 627, 808, 907; see also *Business Corporation Law* § 1319 [a]).

While plaintiff asserts that *Business Corporation Law* § 1320 exempts certain provisions of the Business Corporation Law from application to foreign corporations but does not exempt *Business Corporation Law* § 630, section 1320 only discusses specific circumstances under which particular sections of article 13 shall not apply to foreign corporations (see *Business Corporation Law* § 1320), and it does not purport to cover the Business Corporation Law in its [\*3] entirety or describe each section that does not apply to foreign corporations. Section 1320 is specifically necessary to define the inapplicability of the provisions of article 13, as *Business Corporation Law* § 1319 (a) provides that article 13, generally, applies to foreign corporations. Plaintiff's suggested interpretation would make applicable to foreign corporations all those provisions of the Business Corporation Law not excluded by section 1320, rendering section 1319 mere surplusage.

We further reject plaintiff's contention that, despite the fact that *Business Corporation Law* § 102 (a) (4) provides that the terms "[c]orporation" and "domestic corporation" are to be read synonymously, the use of the term "corporation" in *Business Corporation Law* § 630 should be read to include foreign corporations because the statute is remedial and should be broadly construed. While section 630 does appear to be remedial in nature (see *Planned Consumer Mktg. v Coats & Clark*, 71 NY2d 442, 451, 522 NE2d 30, 527 NYS2d 185 [1988]; *Sasso v Vachris*, 66 NY2d 28, 33, 484 NE2d 1359, 494 NYS2d 856 [1985]), even a remedial provision cannot be construed "beyond the clearly expressed provisions of the

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act" (*Miller v Town of Irondequoit*, 243 App Div 240, 242, 276 NYS 497 [1935], [internal quotation marks and citation omitted], *affd* 268 NY 578, 198 NE 412 [1935] *see Leppard v O'Brien*, 225 App Div 162, 164, 232 NYS 454 [1929], *affd* 252 NY 563, 170 NE 144 [1929]; *overruled in part by Payne v Payne*, 28 NY2d 399, 271 NE2d 220, 322 NYS2d 238 [1971]). Accordingly, we conclude that *Business Corporation Law* § 630 [\*\*1236] does not apply to foreign corporations, and Supreme

Court properly dismissed the complaint against defendants.

We have considered plaintiff's remaining contentions and find them unavailing.

Lahtinen, Kavanagh, Stein and Garry, JJ., concur. Ordered that the order is affirmed, with costs. [Prior Case History: 26 Misc 3d 535, 888 NYS2d 872.]