

Castillo v Sammy Group LLC

2024 NY Slip Op 34361(U)

December 12, 2024

Supreme Court, New York County

Docket Number: Index No. 151932/2022

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

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JUAN CASTILLO,

Plaintiff,

- v -

SAMMMY GROUP LLC, MOIN DEVELOPMENT CORP.,
THE MOINIAN GROUP

Defendant.

-----X

INDEX NO. 151932/2022
MOTION DATE 04/23/2024
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82, 84, 85, 86, 88 were read on this motion to/for PARTIAL SUMMARY JUDGMENT

Upon the foregoing documents, plaintiff's motion for partial summary judgment against defendants Sammy Group LLC (Sammy), Moin Development Corp (Moin) and The Moinian Group (Moinian) is decided as follows.

From October 1992 until October 2021, plaintiff Juan Castillo claims that he was employed as the fulltime, live-in building superintendent at a mixed commercial and residential property located at 1264-1270 Lexington Avenue, New York, New York (Building). The Building is owned by Sammy and managed/operated by Moin and Moinian. Plaintiff asserts that he was never paid wages during his employment by defendants and that he was never provided any wage statements or wage notices in violation of the Fair Labor Standards Act, the New York Labor Law, and the New York State Minimum Wage Order for the Building Service Industry.

Plaintiff previously filed a motion for partial summary judgment, which the court denied as premature. Plaintiff maintains that defendants' prior argument that plaintiff was an independent contractor rather than an employee raised merely a feigned issue of fact. Plaintiff further asserts that defendants have had an ample opportunity to conduct discovery since that prior motion was denied (see decision/order dated April 4, 2023). In support of this argument, plaintiff points to the Order of Judge Jack Stoller of the Housing Part of the New York City Civil Court, New York County, who stated in relevant part in a decision/order dated December 18, 2023: "the corpus of evidence adds up to proof by a preponderance of the evidence that Respondent was an employee whose employment was terminated. A reasonable inference to be drawn from the evidence is that Respondent's occupancy was incidental to his employment."

Defendants' opposition to plaintiff's motion amounts to a litany of complaints that this is a successive motion for summary judgment, that discovery is not yet complete, and that defendants' have attempted to settle this action. These arguments are unavailing.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

At the outset, while successive motions for summary judgment are discouraged, they are not automatically denied. Rather, the court has discretion to consider a successive motion for summary judgment, particularly where the underlying facts has changed as the record has developed, as is the case here.

Summary judgment is also not premature when the parties have had an opportunity to obtain discovery, but have failed to do so. Therefore, defendants' arguments on this point are rejected.

There can be no legitimate dispute that plaintiff was employed by defendants as to argue otherwise would amount to a contrary position that Sammy took in the underlying housing court proceeding. While Moin and Moinan were not parties to that housing court proceeding, there is no dispute on this record that all three defendants are united in interest insofar as plaintiff asserts without dispute that "[d]efendants are related entities which share principals, employees, agents and resources." On this record, the court finds that defendants are collaterally estopped from arguing that plaintiff was anything other than an employee (*see generally Singleton Management, Inc. v. Compere*, 243 AD2d 213 [1st Dept 1998]).

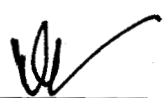
Nor is there any dispute on this record that plaintiff was never paid wages, or provided wage statements or wage notices in violation of the Fair Labor Standards Act, the New York Labor Law, and the New York State Minimum Wage Order for the Building Service Industry. Accordingly, plaintiff's motion for partial summary judgment on liability on his claims for violation of the Fair Labor Standards Act, the New York Labor Law, and the New York State Minimum Wage Order for the Building Service Industry is granted, with the issue of plaintiff's damages remaining.

Accordingly, it is hereby ORDERED that plaintiff's motion is granted and plaintiff is awarded partial summary judgment on liability on his claims for violation of the Fair Labor Standards Act, the New York Labor Law, and the New York State Minimum Wage Order for the Building Service Industry is granted, with the issue of plaintiff's damages remaining; and it is further

ORDERED that on or before January 17, 2025, the parties shall meet and confer and set deadlines for all outstanding discovery in a written stipulation to be so ordered by the court.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

12/12/2024
DATE


LYNN R. KOTLER, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE