

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Moulton, J.P., Mendez, Gesmer, O'Neill Levy, Michael, JJ.

7010

GLEININ MARTINEZ,
Plaintiff-Respondent-Appellant,

Index No. 802015/23
Case No. 2025-05940

-against-

THE BRONX COUNTY HISTORICAL SOCIETY,
Defendant-Appellant-Respondent.

Tarter Krinsky & Drogin LLP, New York (Laurent S. Drogin of counsel), for appellant-respondent.

Law Offices of Russell E. Adler PLLC, New York (Russell E. Adler of counsel), for respondent-appellant.

Order, Supreme Court, Bronx County (Mary Ann Brigantti, J.), entered August 28, 2025, which, to the extent appealed from as limited by the briefs, denied defendant's motion for summary judgment dismissing the complaint, granted plaintiff's motion for summary judgment as to liability on a purported breach of contract claim and a liquidated damages claim and referred the matter to a special referee to determine the amount of liquidated damages, less the value of non-monetary compensation provided by defendant, unanimously modified, on the law, to the extent of granting summary judgment as to liability on plaintiff's cause of action for unpaid wages and striking that portion of the order granting summary judgment as to liability on an unpled breach of contract claim, dismissing plaintiff's claims to the extent that they accrued before February 6, 2017 as barred by the statute of limitations, and directing that plaintiff's

non-monetary compensation be calculated to reduce the total amount of unpaid wages owed, and otherwise affirmed, without costs.

Defendant is not a governmental agency excluded from the Labor Law's definition of an "employer" pursuant to Labor Law § 190(3) (*see Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 387-388 [1987]). Defendant does not perform an "essential government function" such as administering a municipality (*see Perry v Town of Huntington*, 60 Misc 3d 45, 49 [App Term, 2d Dept, 9th & 10th Jud Dists 2018]), facilitating public transportation (*see Clark-Fitzpatrick*, 70 NY2d at 387), or ensuring public safety (*see Hodgson v City of New York*, 2013 WL 840874, *6 [SD NY, Mar. 7, 2013, No. 12CV1634 (HB)]).

To the extent that the court's order referencing an unpled breach of contract claim is inconsistent with its analysis on plaintiff's unpaid wages claim under the Labor Law, the order contains an inadvertent error, which is apparent from the record, and which we now correct (*Woolfalk v New York City Hous. Auth.*, 36 AD3d 444, 444 [1st Dept 2007]; CPLR 5019[a]). In addition, considering that there are "no meaningful differences" between the Labor Law and the Fair Labor Standards Act (FLSA) (*Vega v CM & Assoc. Constr. Mgt., LLC*, 175 AD3d 1144, 1146 [1st Dept 2019] [internal quotation marks and citation omitted]), the court properly analyzed plaintiff's Labor Law claim, notwithstanding its references to the FLSA.

Plaintiff is entitled to summary judgment on liability for liquidated damages since defendant failed to establish a good faith basis for failing to pay plaintiff a minimum wage. Defendant's CEO admitted that defendant did not conduct any research or consult with the Department of Labor about the legality of employing plaintiff as a live-in caretaker without pay (*see Ramirez v Lin*, 830 Fed Appx 672, 675 [2d Cir 2020]).

However, the court should have directed that plaintiff's nonmonetary compensation in the form of rent-free lodging and free utilities be calculated to offset the amount of unpaid wages defendant owed, rather than offsetting any liquidated damages award (*see* Minimum Wage Orders [12 NYCRR] §§ 142-3.5[a][1], [2][i][b]); *see e.g. Mohammadzadeh v Safani*, 1978 WL 22261, *3 [Sup Ct, Queens County 1978]).

Considering that plaintiff conceded in his affirmation in support of his motion that his claims, to the extent that they accrued before February 6, 2017, were foreclosed by the applicable six-year statute of limitations (*see* Labor Law § 198[3]), the court should have granted defendant's motion for summary judgment dismissing those claims.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: July 2, 2026

A handwritten signature in black ink, appearing to read 'Susanna M. Rojas', written in a cursive style.

Susanna Molina Rojas
Clerk of the Court