

<b>Carroll v Tangier, LLC</b>
2015 NY Slip Op 30734(U)
May 4, 2015
Supreme Court, New York County
Docket Number: 158134/14
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

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THOMAS E. CARROLL,

Plaintiff,

Index No. 158134/14

-against-

**DECISION/ORDER**

TANGIER, LLC and PATRICK FAHEY,

Defendants,

-----x

**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmations in Opposition.....	<u>2</u>
Reply Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

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Plaintiff Thomas E. Carroll commenced the instant action to recover unpaid wages pursuant to Article 6 of New York’s Labor Law (“Labor Law”). Plaintiff has brought the present motion for an Order (1) severing certain causes of action against defendant Tangier, LLC (“Tangier”); (2) granting him judgment thereon; (3) awarding him attorney’s fees pursuant to Labor Law § 198(1-a); (4) awarding him costs and disbursements; and (5) providing that, pursuant to Labor Law § 198(4), if any amount on the judgment issued herein remains unpaid upon the expiration of ninety days following the issuance of the judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent. For the reasons set forth below, plaintiff’s motion is granted.

The relevant facts and procedural history are as follows. From 2004 through 2007, plaintiff worked at the restaurant/lounge known as “Sugar” located at 311 Church Street, New York, New York, which is owned and operated by defendants. Plaintiff alleges that at various times throughout his employment, defendants failed to pay him his weekly wages. Thus, on or about December 30, 2009, plaintiff commenced an action against defendants by filing a Summons and Complaint in New York Civil Court under Index No. 61504-2009 seeking his alleged unpaid wages pursuant to New York Labor Law § 198. At the time the action was commenced, plaintiff sought damages in the amount of \$13,635, together with reasonable attorney’s fees pursuant to New York Labor Law § 198(1-a).

Thereafter, plaintiff moved for summary judgment, which the Civil Court denied in its entirety. Plaintiff then appealed the portion of the Civil Court’s decision which denied his motion for summary judgment on the seventh through eleventh and thirteenth through nineteenth causes of action. While the appeal was pending, plaintiff moved this court for an Order pursuant to CPLR §§ 3025(b) and 325(b) to amend the *ad damnum* clause of his complaint and to transfer the action from Civil Court to Supreme Court on the ground that plaintiff had accumulated attorney’s fees that were in excess of the jurisdictional limits of the Civil Court. In a decision dated October 6, 2014, this court granted plaintiff’s motion and transferred the action to Supreme Court.

On or about March 2, 2015, the Appellate Term, First Department issued its decision on appeal, reversing in part the Civil Court’s decision and awarding plaintiff summary judgment against defendant Tangier on the complaint’s seventh, eighth, tenth, eleventh, sixteenth, seventeenth, eighteenth and nineteenth causes of action for unpaid wages. Plaintiff now moves

for an Order (1) severing those causes of action against Tangier; (2) granting him judgment thereon pursuant to the Appellate Term, First Department's decision; (3) awarding him attorney's fees; (4) awarding him costs and disbursements; and (5) providing that, pursuant to Labor Law § 198(4), if any amount on the judgment issued herein remains unpaid upon the expiration of ninety days following the issuance of the judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent.

As an initial matter, that portion of plaintiff's motion for an Order severing certain causes of action against Tangier is granted. Pursuant to CPLR § 603, "[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue." Additionally, pursuant to CPLR § 3212(e)(1), "[t]he court may...direct...that the cause of action as to which summary judgment is granted shall be severed from any remaining cause of action." Here, that portion of plaintiff's motion to sever the complaint's seventh, eighth, tenth, eleventh, sixteenth, seventeenth, eighteenth and nineteenth causes of action as against defendant Tangier is granted based on the Appellate Term, First Department's decision granting plaintiff summary judgment against Tangier on those claims.

Additionally, that portion of plaintiff's motion for judgment on the above causes of action against Tangier is granted pursuant to the Appellate Term, First Department's decision granting plaintiff summary judgment on those claims against Tangier. Defendants' assertion that this court should deny plaintiff's motion for judgment against Tangier on the above causes of action on the ground that the entry of any judgment would prejudice defendants because they intend to challenge the decision rendered by the Appellate Term, First Department, is without merit. It is

undisputed that plaintiff is entitled to judgment on the above causes of action against Tangier at this time pursuant to the Appellate Term, First Department's decision. This court's decision in no way deprives defendants of their right to seek review of the Appellate Term, First Department's decision if they wish to do so.

Further, that portion of plaintiff's motion for an Order granting it reasonable attorney's fees is granted. Pursuant to Labor Law § 198(1-a),

In any action instituted in the courts upon a wage claim by an employee or the commissioner in which the employee prevails, the court shall allow such employee to recover the full amount of...all reasonable attorney's fees, prejudgment interest as required under the civil practice law and rules....

As plaintiff, an employee of defendants, has prevailed on the above eight causes of action for unpaid wages against defendant Tangier, plaintiff is entitled to recover his reasonable attorney's fees incurred in this action.

Finally, that portion of plaintiff's motion for an Order providing that, pursuant to Labor Law § 198(4), if any amount on the judgment issued herein remains unpaid upon the expiration of ninety days following the issuance of the judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, is granted. Pursuant to Labor Law § 198(4),

In any civil action by an employee or by the commissioner, the employee or commissioner shall have the right to collect attorney's fees and costs incurred in enforcing any court judgment. Any judgment or court order awarding remedies under this section shall provide that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent.

Based on the foregoing, plaintiff's motion is granted. It is hereby

ORDERED that the complaint's seventh, eighth, tenth, eleventh, sixteenth, seventeenth, eighteenth and nineteenth causes of action against defendant Tangier are severed and the action shall continue as to the remaining claims; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendant Tangier on the complaint's (1) seventh cause of action in the amount of \$700.00, with interest thereon at the statutory rate from May 21, 2006; (2) eighth cause of action in the amount of \$700.00, with interest thereon at the statutory rate from June 25, 2006; (3) tenth cause of action in the amount of \$700.00, with interest thereon at the statutory rate from August 13, 2006; (4) eleventh cause of action in the amount of \$700.00, with interest thereon at the statutory rate from August 27, 2006; (5) sixteenth cause of action in the amount of \$700.00, with interest thereon at the statutory rate from February 11, 2007; (6) seventeenth cause of action in the amount of \$700.00, with interest thereon at the statutory rate from April 15, 2007; (7) eighteenth cause of action in the amount of \$700.00, with interest thereon at the statutory rate from June 17, 2007; and (8) nineteenth cause of action in the amount of \$700.00, with interest thereon at the statutory rate from June 24, 2007, together with costs and disbursements; and it is further

ORDERED that the portion of plaintiff's action that seeks the recovery of attorney's fees against defendant Tangier is severed and the issue of the amount of reasonable attorney's fees plaintiff may recover against defendant Tangier is referred to a Special Referee to hear and report unless the parties agree that the Special Referee may hear and determine. Within thirty (30) days from the date of this order, counsel for plaintiff shall serve a copy of this order with notice of

