

<b>Medina v Fairway Golf Mgt., LLC</b>
2017 NY Slip Op 32923(U)
July 27, 2017
Supreme Court, Nassau County
Docket Number: 607829/15
Judge: Stephen A. Bucaria
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

MELVIN MEDINA, individually and on behalf of others similarly situated,

Plaintiffs,

-against-

FAIRWAY GOLF MANAGEMENT, LLC; MILL POND COUNTRY CLUB CATERERS INC.; JOHN ROSSI; ANTHONY GILLESPIE; ANTHONY J. FRICK; LINDA NUCCITELLI; MICHAEL DANON; AGNES M. FRICK; and any other related entities,

Defendant.

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MOTION DATE: 5/19/17 Motion Sequence 001

The following papers read on this motion:

- Notice of Motion.....X
Affirmation in Support.....X
Memorandum of Law.....X

Motion by plaintiff Melvin Medina for class certification and related relief is granted.

This is an action for unlawful withholding of gratuities pursuant to § 196-d of the Labor Law. Defendant Fairway Golf Management, LLC is engaged in the business of operating golf courses, including the Mill Pond golf course in Medford and Rolling Oaks golf course in Rocky Point. Defendants Agnes and Anthony Frick are members of Fairway.

Fairway manages Mill Pond pursuant to a "turnkey agreement" with the Town of Brookhaven dated March 8, 2007 (deft's ex A). In the agreement, the Town grants the "licensee," i.e. Fairway, a license to operate the golf course and catering hall. Defendant Mill Pond Country Club Caterers Inc. handles the food and beverage catering at Mill Pond pursuant to a management agreement with Fairway dated June 2008. Defendant John Rossi

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is the president of Mill Pond Country Club Caterers. Plaintiff Melvin Medina worked in various food and service capacities at Mill Pond from August to October 2015.

Medina alleges that defendants charge customers a mandatory “service charge” of 19-22% for catered events. Medina alleges that a reasonable customer would believe that the service charge was a gratuity for the catering employees. However, Medina alleges that defendants have engaged in a policy of retaining the service charges rather than paying them to the employees.

This action was commenced on December 4, 2015. Medina asserts one claim for violation of Labor Law § 196-d. Plaintiff seeks to bring the action as a class action on behalf of all similarly situated employees, including waiters, servers, captains, bussers, bartenders, food runners, maitre d’s, bridal attendants, and wait staff.

By notice of motion dated September 20, 2016, plaintiff moves for an order certifying the action as a class action, designating Leeds Brown, P.C as class counsel, and approving publication of the proposed notice of class action and publication order.

Labor Law § 196-d provides that no employer shall “demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee.”

The term “employer” includes any person employing any individual in any occupation, industry, trade, business, or service (Labor Law § 190[3]). To determine whether an individual qualifies an employee, the court must look to the “economic reality,” rather than technical concepts of the relationship (**Carver v New York**, 26 NY3d 272, 279 [2015]). The overarching concern is whether the alleged employer possessed the power to control the workers in question (Id). The relevant factors include whether the alleged employer 1) had the power to hire and fire the employees, 2) supervised and controlled employee work schedules and or conditions of employment, 3) determined the rate and method of payment, and 4) maintained employment records (Id). Mandatory charges may constitute gratuities within the meaning of Labor Law § 196-d, where the employer represented or allowed its customers to believe that the charges were gratuities for its employees.

Plaintiff alleges that defendant Mill Pond employed at least 40 food service employees. The court concludes that the class is so numerous that joinder of all members whether otherwise required or permitted would be impracticable. There are questions of fact or law common to the class, which predominate over questions affecting only individual members, namely whether the service charges charged to banquet customers was a “gratuity”

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within the meaning of Labor Law § 196-d. The claims or defenses of plaintiff Melvin Medina are typical of the class. Plaintiff will fairly and adequately protect the interests of the class. Finally, a class action is superior to other available methods for the fair and efficient adjudication of the controversy (See CPLR § 901[a]).

Plaintiff Melvin Medina's motion for class certification is **granted**. Plaintiff may maintain the action on behalf of all employees who worked as waiters, servers, captains, bussers, bartenders, food runners, maitre d's, bridal attendants, wait staff and in similar capacities from December 4, 2009 to the present. Leeds Brown, P.C is designated as class counsel, and the proposed notice of class action and publication order are approved by the court.

So ordered.

Date:           **JUL 27 2017**          

          *Stephen A. Bueason*            
J.S.C.

**ENTERED**

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NASSAU COUNTY  
COUNTY CLERK'S OFFICE