

<b>Griffin v Gregorys Coffee Mgt. LLC</b>
2019 NY Slip Op 31125(U)
April 18, 2019
Supreme Court, New York County
Docket Number: 153397/2018
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X  
NICOLE GRIFFIN, on behalf of herself and all others similarly  
situated,

INDEX NO. 153397/2018

MOTION SEQ. NO. 001

Plaintiff,

- v -

GREGORYS COFFEE MANAGEMENT LLC, f/k/a GREGORYS  
COFFEE MANAGEMENT INC., f/k/a GREGORYS COFFEE INC.,  
d/b/a GREGORYS COFFEE, and GREGORY ZAMFOTIS,  
individually,

DECISION AND ORDER

Defendants:

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11,  
12, 13, 14

were read on this motion for DISMISSAL

Upon the foregoing documents, it is ordered that the motion is **granted**.

In this Labor Law action, defendants Gregorys Coffee Management LLC, f/k/a Gregorys  
Coffee Management Inc., f/k/a Gregorys Coffee Inc., d/b/a Gregorys Coffee ("Gregorys Coffee")  
and Gregory Zamfotis ("Zamfotis") move, pursuant to CPLR 3211(a)(7), to dismiss the class  
claims of plaintiff Nicole Griffin ("Griffin"). Plaintiff opposes the motion. After oral argument,  
and after a review of the parties' papers and the relevant statutes and caselaw, it is ordered that the  
motion is **granted**.

Plaintiff commenced this action on April 13, 2018 by filing a summons and complaint.  
(Doc. 6 at 4-13.) Plaintiff was employed as a barista at defendant Gregorys Coffee from July of  
2015 to January of 2018. (*Id.* at 6.) In the complaint, she alleged that, despite working four to six  
days per week, she was given only one uniform by defendants to wear throughout her shifts. (*Id.*  
at 9-10.) She further alleged that she routinely spent time outside working hours to wash her

uniform and that defendants never reimbursed her for the costs of maintaining the uniform. (*Id.* at 10.) The complaint also sets forth class allegations. In particular, plaintiff attempts to bring this action on her own behalf and on behalf of a class consisting of:

All current and former employees who worked for Defendants in the State of New York during the Class Period who were (a) required as a condition of their employment to wear a uniform that required daily washing and were not furnished in sufficient number or reimbursed by the employer for a sufficient number of uniforms, consistent with the average number of days per week worked by the employee, and were not provided uniform maintenance pay or reimbursement; and (b) required to purchase uniforms and were not reimbursed by Defendants for the total cost of the uniform (collectively the “Class”).

(*Id.* at 7.) Plaintiff claimed in the complaint that the foregoing gives “rise to potentially two classes of plaintiffs intended to be covered by this suit.” (*Id.*) She asserted two causes of action: (1) that defendants’ failure to pay the employees for maintenance of the uniforms violated Article 19 of the New York Labor Law, 12 NYCRR Part 146, and 12 NYCRR Part 137; and (2) that defendants’ failure to reimburse the employees for their purchase of new uniforms violated Article 19 of the New York Labor Law, 12 NYCRR Part 146, and 12 NYCRR Part 137. (*Id.* at 10–12.) In the ad damnum clause, plaintiff requested the following damages:

- a. Actual damages;
- b. Liquidated damages equal to 100% of actual damages; and
- c. Exemplary, punitive, and statutory damages in an amount commensurate with Defendants’ ability and so as to deter future malicious, reckless, and/or intentional where appropriate and permitted by law . . . .

(*Id.* at 12–13.)

Pursuant to CPLR 3211(a)(7), defendants filed a pre-answer motion to dismiss the class claims from the complaint. In support of the motion, they first argue that plaintiff cannot pursue her claims as a class action because, pursuant to CPLR 901(b), a class action cannot be maintained

when a plaintiff seeks relief under a statute that creates a penalty. (Doc. 7 at 6–7.) Although defendants admit that New York Labor Law § 198(1-a) allows the recovery of liquidated damages in certain circumstances, they nevertheless argue that their motion should be granted because that provision does not specifically allow for class actions. (*Id.* at 7.) Second, they argue that her claims are not suitable for class treatment because her claims require individualized proof, which would entail “mini-hearing[s]” on the merits for each employee, because she has no class-wide method of proving damages, and because the class cannot be defined until the case is resolved on the merits. (*Id.* at 7–11.)

This Court finds that the motion to dismiss must be granted. “CPLR 901(b) provides that an action to recover a penalty may not be maintained as a class action.” (*Hauptman v Helena Rubinstein, Inc.*, 114 Misc 2d 935, 936 [Sup Ct, NY County 1982]; *Downing v First Lenox Terrace Assocs.*, 107 AD3d 86, 89 [1st Dept 2013] (same); *see also* CPLR 901[b] (“Unless a statute creating or imposing a penalty, or a minimum measure of recovery specifically authorizes the recovery thereof in a class action, an action to recover a penalty, or minimum measure of recovery created or imposed by statute may not be maintained in a class action.”).) New York courts have held that a plaintiff’s request for liquidated damages precludes class action relief. (*See Ballard v Community Home Care Referral Serv.*, 264 AD2d 747, 748 [2d Dept 1999].) However, if the statute relied on specifically authorizes such recovery in a class action, then the plaintiff may proceed with the class action lawsuit. (*See Carter v Frito-Lay, Inc.*, 74 AD2d 550, 550 [1st Dept 1980].) Although not mentioned in the complaint, New York Labor Law § 198(1-a) allows a plaintiff to recover liquidated damages but does not provide that liquidated damages can be recovered in a class action. (*See* Labor Law § 198[1-a].) “Liquidated damages under the Section 198 of the Labor Law are considered a penalty for purposes of CPLR 901(b) and, accordingly,

absent anything more, an action to recover wages and liquidated damages is not maintainable as a class action.” (*Krebs v Canyon Club, Inc.*, 22 Misc 3d 1125, \*10 [Sup Ct., Westchester County 2009].) Moreover, plaintiff’s ad damnum clause in the complaint specifically requests for punitive damages. (Doc. 6 at 12–13.)

Plaintiff’s arguments to the contrary are not persuasive. Plaintiff asserts that liquidated damages are no longer considered punitive under New York’s Wage Theft Prevention Act, which was passed in 2009. (Doc. 10 at 3.) In support of this contention, however, plaintiff cites nearly all Second Circuit caselaw. (*Id.* at 2–4.) The one New York State case that she does cite, *Ryan v Kellogg Partners Inst. Servs.*, 19 NY3d 1 (2012), did not hold that liquidated damages are not punitive, but only decided that a 2009 amendment to Labor Law § 198(1-a) shifted the burden to employers to prove “a good faith basis to believe that its underpayment of wages was in compliance with the law” to avoid liquidated damages. (*Id.* at 10, n 8.) Indeed, New York State cases after 2009 have continued to hold that “[l]iquidated damages under NYLL are intended to be punitive in nature.” (*Islam v Hossain*, 44 Misc 3d 1216, \*8 [Civ Ct, New York County 2014]; see also *Divljanovic v Saks & Co.*, 2018 NY Slip Op 30236 at \*12 [Sup Ct, New York County 2018] (holding that liquidated damages under the New York Labor Law “are considered a penalty, and may not be sought in a class action without statutory authority.”).)

For the foregoing reasons, it is hereby:

**ORDERED** that the motion by defendants Gregorys Coffee Management LLC, f/k/a Gregorys Coffee Management Inc., f/k/a Gregorys Coffee Inc., d/b/a Gregorys Coffee and Gregory Zamfotis to dismiss the class claims of plaintiff Nicole Griffin is granted; and it is further

ORDERED that, within 30 days of the uploading of this order to NYSCEF, defendants' counsel is directed to serve a copy of this order, with notice of entry, on plaintiffs' counsel and on the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)]; and it is further

ORDERED that the parties are to appear for a preliminary conference on June 27, 2019, at 80 Centre Street, Room 280, at 2:15 PM; and it is further

ORDERED that this constitutes the decision and order of this Court.

4/18/2019  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE