

<b>Santana v Arts in Common LLC</b>
2022 NY Slip Op 32322(U)
July 15, 2022
Supreme Court, New York County
Docket Number: Index No. 651365/2021
Judge: Barbara Jaffe
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. BARBARA JAFFE PART 12

Justice

-----X

LAURA SANTANA,

Plaintiff,

- v -

ARTS IN COMMON LLC, HARLEM JAZZ ENT
LLC, RICHARD PARSONS, ALBERTO CRIBIORE,
RONALD PERELMAN, VINCENT MAI, KENNETH
LERER, ED LEWIS, RONALD LOUDER, NANCY
ANGELONE, MARK BENAVIDES, MIZAN AYERS,
THE NEW YORK CITY HOUSING
DEVELOPMENT CO,RPORATION, THE NEW
YORK STATE LIQUOR AUTHORITY, RAPHAEL
BACCUS

Defendants.

-----X

INDEX NO. 651365/2021

MOTION DATE

MOTION SEQ. NO. 001

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6-15, 17-20
were read on this motion to dismiss.

By pre-answer notice of motion, defendant Harlem Jazz Enterprises LLC (Jazz) moves
for an order dismissing all claims against it, and defendant Arts in Common, LLC (Arts) moves
for an order dismissing the first and third through tenth claims against it. Plaintiff opposes.

I. PERTINENT PROCEDURAL BACKGROUND

In this action, plaintiff sues defendants for their failure to pay her overtime wages during
her employment with them. She advances as her causes of action: (1) defendants' violation of the
Fair Labor Standards Act (FLSA) by failing to pay her properly for her overtime work;
(2) defendants' violation of the New York Labor Law (NYLL) by failing to pay her properly for
her overtime work; (3) defendants' violation of their implied-in-fact agreement with her by
failing to pay her overtime; (4) defendants' violation of their quasi-contractual arrangement with

plaintiff; (5) defendants are equitably estopped by virtue of their failure to pay her; (6) defendants fraudulently induced her to provide services without intending to pay her for them, thereby entitling her to compensatory and punitive damages; (7) defendants' conduct caused her extreme emotional distress; (8) defendants' conduct was extreme and malicious and constitutes a *prima facie* tort; (9) the premises at issue is leased to Jazz, and the lease requires it to comply with all applicable laws, which it failed to do by engaging in discrimination and having a judgment entered against it in an unrelated matter, thus requiring cancellation of the lease; and (10) as defendants' conduct also violated the liquor license obtained for the premises, it must be cancelled. (NYSCEF 1).

On May 13, 2021, defendants filed a notice of removal of the case to federal court (NYSCEF 3), and by stipulation dated November 11, 2021, the parties agreed that the case would be remanded to this court, and that "all Federal claims that Plaintiff asserted or could have asserted against all of the Defendants, including those pursuant to the Fair Labor Standards Act, are Dismissed with Prejudice and the Complaint will be deemed amended to exclude any Federal claims." (NYSCEF 5).

## II. MOTION TO DISMISS

### A. FLSA Claim (first cause of action)

Discontinued. (NYSCEF 17).

### B. NYLL claim against Jazz (second cause of action)

Jazz establishes that it is solely the leaseholder for the premises at issue and that it had no employment relationship with plaintiff (NYSCEF 7), which plaintiff does not rebut. There is thus no basis for holding Jazz liable for the failure to pay plaintiff overtime wages.

C. Implied-in-fact contract (third cause of action); quasi-contract (fourth cause of action); equitable estoppel (fifth cause of action); prima facie tort (eighth cause of action)

Dismissed as duplicative of plaintiff's NYLL claim. (*See Ethelberth v Choice Sec. Co.*, 91 F Supp 3d 339 [ED NY 2015] [dismissing plaintiff's common law claims for breach of contract and unjust enrichment seeking overtime wages as duplicative of FLSA and NYLL claims for same]).

Moreover, an at-will employment relationship, such as that between plaintiff and defendants, is not subject to a quasi-contract principles. (*See Campbell v Self Initiated Living Options, Inc.*, 134 AD3d 757 [2d Dept 2015] [at-will employee failed to state claim for implied contract]; *Grebinar v Consolidated Edison of New York, Inc.*, 12 AD3d 277 [1st Dept 2004], *lv denied* 4 NY3d 708 [2005] [at-will employment precluded claims for breach of contract and implied contract]). Equitable estoppel is also inapplicable (*Raphael v Vintage Grape & Grog, Ltd.*, 187 AD3d 672 [1st Dept 2020], *lv denied* 37 NY3d 903 [2021], *rearg denied* 37 NY3d 1084 [2021] [equitable estoppel does not apply to at-will employment relationship as employer owes no fiduciary duty to at-will employee]), as is *prima facie* tort (*Ullman v Norma Kamali, Inc.*, 207 AD2d 691 [1st Dept 1994] [dismissing *prima facie* tort in at-will employment context as improper attempt to circumvent at-will employment rules]).

D. Fraud (sixth cause of action)

Dismissed as duplicative of plaintiff's NYLL claim. (*See, e.g., Kaur v Royal Arcadia Palace, Inc.*, 643 F Supp 2d 276 [ED NY 2007] [dismissing fraud claim as duplicative of FLSA claim for same unpaid wages]).

E. Intentional infliction of emotional distress (seventh cause of action)

Dismissed as insufficiently pleaded absent allegations of extreme and outrageous conduct. (*See eg, Karupaiyan v CVS Health Corp.*, 2021 WL 4341132 [SD NY 2021] [failure to

pay wages does not constitute IIED]; *Langone v Facsimile Communication Indus., Inc.*, 2019 WL 367712 [Sup Ct, New York County 2019] [dismissing IIED based on allegations that defendant employer discriminated against plaintiff and failed to pay him wages]).

F. Claims related to lease and liquor license (ninth and tenth causes of action)

Plaintiff pleads no facts from which it may be inferred that she has standing to pursue the cancellation of defendants' lease and/or liquor license, nor does she plead a viable claim related thereto.

III. CONCLUSION

Accordingly, it is hereby

ORDERED, that movants' motion is granted to the extent of severing and dismissing:

(1) all claims against defendant Harlem Jazz Enterprises LLC; and (2) the first and third through tenth claims against Arts in Common, LLC, and the clerk is directed to enter judgment accordingly.

7/15/2022

DATE

20220715095112B/AFFE9346D9FF33094B6CBCAD1F678A264361

BARBARA JAFFE, 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