

**Xiao He Huang Zhang v VMC E. Coast LLC**

2024 NY Slip Op 30865(U)

March 14, 2024

Supreme Court, New York County

Docket Number: Index No. 656032/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

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XIAO HE HUANG ZHANG,

Plaintiff,

INDEX NO. 656032/2020

MOTION DATE 03/12/2024

MOTION SEQ. NO. 007

- v -

VMC EAST COAST LLC d/b/a VMC East Coast;  
ANH MANAGEMENT & CONSULTING LLC d/b/a  
VMC East Coast, K & F TRAVEL & TOUR INC.  
d/b/a VMC East Coast, MARK TRAN, GLENN  
LEDET, ANH T. DUONG, YAYI GUO a/k/a Yvonne  
Guo, and KENT KWAN

Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 94, 95, 96, 97, 98, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 155, 156, 157, 158, 159

were read on this motion to/for JUDGMENT - SUMMARY.

Defendants’ motion for summary judgment is granted in part and denied in part.

**Background**

Plaintiff commenced this Labor Law action based on defendants’ alleged failure to satisfy the minimum wage requirements, overtime rates and earned wages as well as other employer obligations. She insists that defendant did not pay her additional compensation for hours worked in excess of forty hours per week as well as the spread of hours for days in which shifts lasted longer than ten hours. In the complaint, she contends that she worked as a tour guide for defendants from June 1, 2015 through November 27, 2016. Defendants operated a tour bus company that would take passengers from Chinatown and Flushing to the Mohegan Sun casino in Connecticut.

Defendants move for summary judgment on behalf of defendants Anh Management & Consulting, LLC (“Anh”), Ledet, Duong and Guo (collectively, “Moving Defendants”). They contend that the record only shows that defendants VMC East Coast LLC (“VMC”) and Tran were plaintiff’s employer and that the Moving Defendants are not liable as they were not employers under the Labor Law. Defendants observe that defendant Duong works in payroll processing with her company (“Anh”). They observe that plaintiff testified at her deposition that neither Duong nor her company ever exerted any supervisory role over plaintiff.

With respect to defendant Guo, the Moving Defendants contend that she worked for VMC as a tour guide from 2015 to 2017 and then transitioned into a secretarial role. They contend that means that Guo was in the same title as plaintiff during the time plaintiff worked for VMC (June 1, 2015 through November 27, 2016). The Moving Defendants observe that plaintiff never testified that Guo managed her work and therefore Guo cannot be held liable as a matter of law.

The Moving Defendants explain that defendant Glenn Ledet actually worked for another company called Bay Area Consulting Innovations during plaintiff’s employment and that he was simply a consultant for VMC. They insist that plaintiff merely assumed that Ledet was her employer but that there was no evidence adduced during discovery to support this assertion.

In opposition, plaintiff insists that Anh issued checks to VMC employees using Anh’s bank account. She insists that Anh also maintained employment records for employees of VMC. With respect to Guo, plaintiff contends that she had the power to fire people and points to a termination letter she sent to a different employee on November 27, 2017 (NYSCEF Doc. No. 120). Plaintiff insists that Mr. Ledet was a manager and not merely a consultant and points to a

termination letter he sent to her and a warning notice he issued on behalf of VMC to defendant Guo. In all of these letters, Ledet is identified as the director of operations for VMC.

In reply, the Moving Defendants argue that plaintiff failed to raise an issue of fact towards Anh and Duong as she did not show that these defendants exerted any control over her employment. Regarding Guo, the Moving Defendants contend that the termination letter “is neither dated, signed or on VMC letterhead” and that it was not produced in this litigation until the instant summary judgment motion. They also maintain that Mr. Ledet was simply a consultant and not a manager at VMC.

### **Discussion**

To be entitled to the remedy of summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court’s task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably

conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

The primary issue on this motion is whether the Moving Defendants were employers under the Labor Law. “The central inquiry in determining whether one qualifies as an ‘employer’ . . . is whether the alleged employer possessed the power to control the workers in question, with an eye to the ‘economic reality’ presented by the facts of each case. Factors to consider when examining the ‘economic reality’ of a particular situation include whether the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records, though no single factor is dispositive” (*Doo Nam Yang v ACBL Corp.*, 427 F Supp 2d 327, 342 [SD NY 2005] [internal quotations and citations omitted]).

### **Anh and Duong**

The Court grants the branch of the motion that seeks summary judgment dismissing the claims against these two defendants. The evidence on this record shows that Duong’s company, Anh, was simply the payroll company for VMC. Plaintiff testified that she never talked to defendant Duong about anything or worked with her (NYSCEF Doc. No. 98 at 41). When asked about Anh, plaintiff observed that “when we collect our pay, the check for the employee check and then there were name – that name on the check” (*id.*). Plaintiff admitted that she did not even know what Duong looked like (NYSCEF Doc. No. 108 at 29).

Simply because Duong’s company Anh issued checks for VMC does not raise an issue of fact that either of these defendants was plaintiff’s employer under the Labor Law. Nothing on this record shows that Duong or Anh has the power to hire or fire employees or controlled

plaintiff's work in any way. Plaintiff admitted she never had communications with either of these defendants.

### **Guo**

The Court also dismisses the claims against defendant Guo. The Moving Defendants met their prima facie burden on a motion for summary judgment through the deposition of Guo, where she testified that she was a tour guide for VMC from July 2015 through 2017 (NYSCEF Doc. No. 112 at 15). That means that at the time plaintiff was fired, in 2016, Guo held the same position as plaintiff.

Plaintiff testified that Guo simply relayed information from the big bosses (NYSCEF Doc. No. 108 at 70). She also explained that “whenever I have the work problem or issue and then I spoke to her and then, also, she mention [sic] in our public chat and then when I ask her about how to do some certain job she showed me how to do some certain job from her” (NYSCEF Doc. No. 98 at 40). The Court observes that defendant Tran (whom the Moving Defendants claim was the primary owner of VMC) testified that he spoke with Guo often because his Mandarin was not good and Guo would translate for him (NYSCEF Doc. No. 111 at 28).

Although plaintiff insisted that Guo was a “manager,” there was nothing presented on this record to suggest that she exerted any control over plaintiff's work. For instance, plaintiff did not say that Guo controlled her work schedules, the conditions of her employment, or her rate of pay.

While plaintiff included a termination letter allegedly drafted by Guo, that does not compel a different outcome. Plaintiff did not properly establish a foundation for the admissibility of this letter; the opposition papers are silent as to where this letter came from. The Court observes that the opposition does not contend that Guo was asked about this letter at her

deposition (the Moving Defendants contend in reply that this letter was not produced during discovery).

Even if the Court could consider this letter, it does not show that Guo was plaintiff's employer under the Labor Law. It is addressed to a non-party and is dated November 27, 2017, well after plaintiff's employment ended. That Guo may have been a manager *after* plaintiff left VMC is not a basis to find that she was plaintiff's manager and therefore her employer under the Labor Law.

### **Ledet**

The Court denies the motion to the extent it seeks to dismiss the claims against Ledet. The fact is that at his deposition (NYSCEF Doc. No. 113 at 41-46), Ledet was presented with and recognized two termination letters, dated July 16, 2016 and December 2, 2016 (NYSCEF Doc. No. 124), that appear, on their face, to have been drafted (at least in part) by Ledet. Each letter has VMC letterhead and is from Glenn Ledet as "Director of Operations" (*id.*). The second letter, according to plaintiff, was her termination letter (NYSCEF Doc. No. 114 at 6 [plaintiff's counsel's affirmation]). Although Ledet insisted that it was defendant Mark Tran who made decisions about firing, these letters create an issue of fact concerning Ledet's status as plaintiff's employer.

A fact finder could conclude from these letters that Ledet was an employer because he had the power to fire people in his role as director of operations and that he fired plaintiff. He admitted at his deposition that VMC "did give me a title for multiple reasons" (NYSCEF Doc. No. 113 at 46). The Court recognizes that Ledet insists that he was simply a consultant. But these letters suggest that he did not represent himself as a consultant when communicating with

VMC employees; rather, they show that he was terminating and warning individuals on behalf of VMC as the director of operations for VMC.

Accordingly, it is hereby

ORDERED that defendants' motion is granted only to the extent that the claims against defendants Anh Management & Consulting, LLC Duong and Guo are severed and dismissed and denied with respect to the remaining requests for relief.

3/14/2024

DATE



ARLENE P. BLUTH, 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