

Huiping Yan v HungryPanda US Inc.

2024 NY Slip Op 33739(U)

October 8, 2024

Supreme Court, New York County

Docket Number: Index No. 651340/2024

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

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HUIPING YAN, RI XIN JIANG, LIN JIE LU, KAM HOI CHAN,
XIAOHUI HU, BO ZHANG, HONGTAO YU

Plaintiffs,

INDEX NO. 651340/2024

MOTION DATE 06/17/2024

MOTION SEQ. NO. 001

- v -

HUNGRYPANDA US INC.,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for DISMISS.

In this unpaid wage Labor Law action, where plaintiffs allege that as delivery workers for defendant HungryPanda US. Inc (“HungryPanda”), that they were underpaid in violation of multiple New York Labor Laws, defendant moves pre-answer pursuant to CPLR § 3211 to dismiss the complaint as against them arguing that plaintiffs have failed to state a cause of action, that the claims are barred as a matter of law, and that the case should be dismissed based on documentary evidence. Plaintiffs oppose and cross-move to amend their complaint in order to address deficiencies noted in defendants’ motion. Plaintiffs have eight causes of action which all allege violations of New York Labor Law or regulations made by the Commissioner of Labor authorized by New York Labor Law.

DISCUSSION

Dismissal based on Employer Employee Relationship

Defendant argues that the entire complaint must be dismissed because an employment relationship does not exist between plaintiffs and HungryPanda and that HungryPanda as a

technology company, third-party food delivery service, it is regulated by the New York City Department of Consumer and Worker Protection (“DWCP”). Defendant argues that pursuant to regulations promulgated by the DWCP plaintiffs are independent contractors and not employees and thus are not covered workers under New York Labor Law. Defendant also argues that plaintiffs signed Independent Contractor Agreements which refutes their claims of employee status. Finally, defendant relies on decisions by the New York Workers’ Compensation Board determining that workers in similar situations to plaintiffs are independent contractors and therefore disallowing their claims.

Plaintiffs argue that worker status is dependent on a highly fact-intensive inquiry into the economic realities of the workers and their job duties. They argue that defendant has failed to meet its burden under CPLR § 3211(a) which requires unambiguous documentary evidence to warrant dismissal.

“Under CPLR 3211(a)(1), dismissal may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Seaman v Schulte Roth & Zabel LLP*, 176 AD3d 538, 538-39 [1st Dept 2019]). “To constitute documentary evidence, the evidence must be unambiguous, authentic, and undeniable such as judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable” (*Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 [2d Dept 2017]). “Conversely, letters, emails, and, ... affidavits, do not meet the requirements for documentary evidence” (*id.*).

Here, defendant argues that they have submitted documentary evidence establishing that plaintiffs were independent contractors and not employees, and thus cannot be held liable for any of the alleged violations of New York Labor Law that plaintiffs assert.

Plaintiffs assert causes of action based on violations of New York Labor Law §§ 191, 195, 196, and 198, as well as violations of regulations promulgated by the New York Labor Commissioner pursuant to powers authorized by New York Labor Law § 659.

“[I]n order to state a claim under article 6, a plaintiff must first demonstrate that he or she is an employee entitled to its protections” (*Bhanti v Brookhaven Mem. Hosp. Med. Ctr., Inc.*, 260 AD2d 334, 335 [2d Dept 1999]). “‘Employee’ is defined in Labor Law article 6 as any person employed for hire by an employer in any employment” (*Akgul v Prime Time Transp., Inc.*, 293 AD2d 631, 633 [2d Dept 2002]). “This definition excludes independent contractors, and the determination of whether an employee-employer relationship exists for purposes of Labor Law article 6 depends on evidence that the employer exercises either control over the results produced or over the means used to achieve the results” (*id.*). “[T]he determination of whether someone is an independent contractor is a fact-specific question” (*Carlson v Am. Intern. Group, Inc.*, 30 NY3d 288, 301 [2017]). “The determination of whether an employer-employee relationship exists turns on whether the alleged employer exercises control over the results produced, or the means used to achieve the results. Control over the means is the more important consideration” (*Fiscina v Boro Rug & Carpet Warehouse Corp.*, 195 AD3d 998, 999 [2d Dept 2021]).

Here, defendant notes that because it is a covered business under New York City Admin Code § 20-1522, which required it to get a license as a “third-party food delivery service” and that this section “only applies to the food delivery workers engaged as independent contractors by a third-party courier service or third-party food delivery service that is required to be licensed

pursuant to section 20-563.1” (*Uber Tech., Inc. v New York City Dept. of Consumer and Worker Protection*, 80 Misc 3d 1221(A) [NY SC 2023], lv to appeal dismissed, 41 NY3d 935 [2024]).

Defendant argues that since it is required to adhere to these regulations that this is essentially a judicial admission that all their workers are independent contractors and not employees.

However, as stated above whether an individual worker is an employee or an independent contractor is a fact specific inquiry that requires an analysis of the relationship between worker and company. Indeed, the regulations which defendant is subject to as a “third-party food delivery service” regulates its relationship and offers protections to its independent contractor workers. It does not, however, determine that every person working for a company recognized as a “third-party food delivery service” is an independent contractor without further inquiry.

Therefore, HungryPanda’s designation and license recognizing it as a “third-party food delivery service” alone cannot satisfy its high burden of establishing that its workers are not employees.

This requirement of a fact-specific inquiry also defeats defendant’s argument that rulings by the New York State Workers’ Compensation Board, which determined that workers hired by similar companies to HungryPanda, were independent contractors, means this court must make the same determination as to plaintiffs absent further evidence. Again, “whether an actor is an independent contractor or an employee” is a factual issue usually for trial (*Fiscina.*, 195 AD3d at 999).

Neither does the fact that plaintiffs signed an agreement labeled “Independent Contractor Agreement” alone establish the workers designation. Indeed, in *Carlson v Am. Intern. Group, Inc.* the Court of Appeals recognized that “the fact that the [contract workers signed a contract] label[ing them] an ‘independent contractor; is not dispositive of the issue of control, but is a factor to be weighed with others” (*Carlson v Am. Intern. Group, Inc.*, 30 NY3d 288, 301 [2017]).

Therefore, defendant has not established a defense as to the claims in this matter by documentary evidence, nor has it established “as a matter of law, [that plaintiffs have] failed to manifest any cause of action cognizable at law” (*id.*).

Barred as to Class Action – Amended Complaint

Defendant also argues that plaintiffs complaint must be dismissed because they seek to recover statutory penalties under NY Labor Law § 195 which are unauthorized through a class action suit. Plaintiff opposes and argues that they should be permitted to amend their complaint to clearly state they intend to waive statutory penalties if the class action is certified.

CPLR § 901(b) states that “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 as a class action.”

However, plaintiffs will be afforded an opportunity to file an amended complaint that complaint clearly states that statutory damages will be waived upon class certification. Plaintiffs’ proposed amended complaint (NYSCEF Doc No 34) does not currently contain this required language so plaintiffs’ cross-motion will be granted to the extent that they will be afforded an opportunity to file an amended complaint in accordance with this order and the current proposed complaint will not be deemed served as it still contains deficiencies.

However, as for plaintiff’s request to amend their complaint to add a cause of action under NYC Admin Code § 20-1511, this must be denied as “A civil action under this section shall be commenced within two years of the date the person knew or should have known of the alleged violation” and the instant action was commenced at least four years after plaintiffs stopped working for defendant. Additionally, this section was enacted on April, 22, 2022 and

should not “be applied retroactively absent a plainly manifested legislative intent to that effect” (*People v Behlog*, 74 NY2d 237, 240 [1989]).

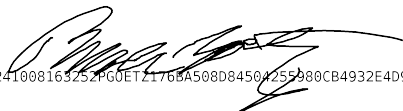
Accordingly it is,

ORDERED that defendants’ motion to dismiss the complaint is denied; and it is further

ORDERED that plaintiffs’ cross-motion to amend their complaint is granted only to the extent that the plaintiffs cure their deficiencies as indicated above; and it is further

ORDERED that the portion of plaintiff’s cross-motion to amend their complaint to add a cause of action under NYC Admin Code § 20-1511 is denied; and it is further

ORDERED that plaintiffs shall serve the amended complaint on defendant within 21 days of this order.


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10/8/2024
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: