

Gen Rong Zhang v 28 St Izumi Japanese Rest. LLC

2025 NY Slip Op 32594(U)

July 3, 2025

Supreme Court, New York County

Docket Number: Index No. 654958/2019

Judge: Lori S. Sattler

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02M

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GEN RONG ZHANG, WEN JIE XU, HONG YOU,

Plaintiff,

- v -

28 ST IZUMI JAPANESE RESTAURANT LLC, ARATA
IUZMI JAPANESE RESTAURANT, INC., YI NAN CAO,
WEN DI LIU, JIAN DONG WANG

Defendant.

INDEX NO. 654958/2019

MOTION DATE 07/20/2024

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

-----X

HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 46, 47, 48, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139

were read on this motion to/for DISMISSAL.

In this action brought pursuant to the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”), Defendants 28 St Izumi Japanese Restaurant LLC (“28 St”), ARATA Iuzmi Japanese Restaurant, Inc. (“Arata”), Yi Nan Cao (“Defendant Cao”), and Wen Di Liu (“Defendant Liu”) move for a summary judgment in their favor, dismissing Plaintiffs’ complaint and any claims against these Defendants with prejudice. Plaintiffs oppose this motion, except for the causes of action for failure to provide meal periods and failure to keep records.

Plaintiffs are former delivery workers employed by Defendants, who worked at a restaurant owned by 28 St and, thereafter, by Arata, located at 139 West 28th Street, New York, NY 10001 (“Restaurant”). 28 St was formed in April 2010 (NYSCEF Doc. No. 130 at 1-2). On May 28, 2010 Defendant Liu entered into an agreement by which he purchased the Restaurant on 28 St’s behalf (NYSCEF Doc. No. 101 at 23-32). In November 2013, 28 St sold the Restaurant to Arata, a company formed a month earlier (NYSCEF Doc. No. 131 at 1-4; NYSCEF Doc. No. 101 at 18-22; NYSCEF Doc. No. 127, Liu Deposition at 126). In May 2018, the Restaurant was sold to a third party (NYSCEF Doc.

No. 101 at 2-15). At the time of this last transaction, Defendant Liu and non-party Yu Xia Wang were the sole shareholders of Arata (NYSCEF Doc. No. 101 at 15). 28 St filed for dissolution in February 2018 (NYSCEF Doc. No. 130 at 4-5). Arata filed for dissolution in July 2019 (NYSCEF Doc. No. 131 at 6-8). Defendant Jian Dong Wang was a manager in the Restaurant supervising Plaintiffs (NYSCEF Doc. No. 123, Complaint ¶¶ 25-27).

Plaintiffs purport that: (i) Plaintiff Gen Rong Zhang from November 1, 2012 to December 31, 2015 was regularly scheduled to work 61.5 hours per week and regularly worked 62.25 hours per week, and from January 1, 2016, to March 31, 2018 was regularly scheduled to work 56.75 to 58 hours per week and regularly worked 57.5 to 58.75 hours per week (NYSCEF Doc. No. 46, Zhang aff ¶¶ 4-10); (ii) Plaintiff Wen Jie Xu from July 1, 2015 to December 31, 2015 was scheduled to work a 61.5 hours a week and regularly worked 62.25 hours a week, and from January 1, 2016 to April 30, 2018 was regularly scheduled 56.75 hours to 58 hours a week and regularly worked 57.5 to 58.75 hours a week (NYSCEF Doc. No. 47, Xu aff ¶¶ 4-11); (iii) Plaintiff Hong You from July 5, 2013 to December 31, 2015 was regularly scheduled to work 61.5 hours per week and regularly worked 67.25 hours per week, and from January 1, 2016 to April 30, 2018 was regularly scheduled to work 56.75 to 58 hours per week and regularly worked 62.5 to 62.75 hours per week (NYSCEF Doc. No. 48, You aff ¶¶ 4-11).

Plaintiffs allege that they had been compensated at a flat rate that did not reflect the hours they worked, that they had not received any overtime or spread-of-hours pay, and that they had not received proper wage notices (Zhang aff ¶¶ 12-24; Xu aff ¶¶ 12-22; You aff ¶¶ 12-26). Plaintiffs claim that they each received checks from the Defendants for approximately \$1,100 but then had to return three weeks of pay in cash, and that further payments were made in cash (Zhang aff ¶¶ 14-15; Xu aff ¶¶ 13-14; You aff ¶¶ 14-15). Plaintiffs further purport that Defendants treated other similarly situated employees the same way (Complaint ¶¶ 115, 121).

Plaintiffs commenced the instant action by filing a Summons with Notice on August 27,

2019, asserting causes of actions for wage violations under the FLSA and NYLL. Plaintiffs' complaint was filed on September 7, 2020, interposing nine causes of actions for failure to pay minimum wages, overtime, and spread-of-hours pay, as well as for failure to provide time of hire wage notices, wage statements and meal periods, and failure to keep records. By order of June 28, 2021, the Court granted plaintiffs conditional collective action status under the FLSA (NYSCEF Doc. No. 56, Order, Love, J.).

Plaintiffs filed their note of issue on March 22, 2024. Defendants now move for summary judgment dismissing claims against all Defendants in their entirety with prejudice (NYSCEF Doc. No. 121, Defendants' Affirmation). Plaintiffs oppose this motion, except for the causes of action for failure to provide meal periods and failure to keep records (NYSCEF Doc. No. 139, Plaintiffs' Memorandum at 5).

On a motion for summary judgment, the movant "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad*, 64 NY2d at 853). Should the moving party make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). At the same time, a court's function on summary judgment is issue finding rather than issue determination (*Kershaw v Hosp. for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013]). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004], quoting *Anderson v Liberty Lobby, Inc.*, 477 US 242, 255 [1986]).

The motion is granted as to the causes of action based on failure to provide meal periods and failure to keep records as unopposed. The motion is denied as to all other causes of action.

The first two causes of action are based on alleged violation of minimum wage requirements prescribed by the FLSA and NYLL. Defendants allege that there is no dispute as to the wage paid to the employees as the documentary records of Arata and the deposition of Defendant Liu confirm that the employees were paid the minimum wage (Defendants' Affirmation at 16; Liu Deposition at 149). However, Plaintiffs present affidavits in which they allege that they had worked longer hours than recorded in the documents (Zhang aff ¶¶ 4-10; Xu aff ¶¶ 4-11; You aff ¶¶ 4-11), and that they were paid a different amount than presented therein, which included a process in which they had to pay back in cash certain sums received by check (Zhang aff ¶¶ 11-16; Xu aff ¶¶ 12-14; You aff ¶¶ 12-18). These are material issues of fact between the parties as to the violation of minimum wage under the FLSA and NYLL, and thus these causes of action cannot be resolved by summary judgment.

Similarly, the motion is denied as to the causes of action for payment for overtime and spread-of-hours pay. While Defendants allege that no employee worked overtime, and no delivery worker worked full-time (Defendants' Affirmation ¶11, Liu Deposition at 147), Plaintiffs allege that they worked between 58 and 67 hours per week and had never been paid for overtime or spread-of-hour pay (Zhang aff ¶¶ 4-10, 17, 23; Xu aff ¶¶ 4-11, 15, 21; You aff ¶¶ 4-11, 19, 25). These are material issues of fact that have not been eliminated by the Defendants' evidence, which precludes a summary judgment on these causes on action.

As to the causes of action for failure to provide time of hire notice, Defendants furnished payment records, pay stubs pertaining to Plaintiffs, W-2 records for the period 2013 to 2018, W-4 forms, their federal tax returns for 2014 to 2017, and copies of NYS 45 forms (NYSCEF Doc. No. 91-108). However, none of these documents appear to be a notice provided to Plaintiffs at the time of hire as required pursuant to NYLL § 195-1(a), and Plaintiffs dispute ever receiving any notice as to their wages (Zhang aff ¶ 18; Xu aff ¶ 16; You aff ¶ 20), precluding a summary judgment on this cause of action.

As to the cause of action for failure to provide wage statements, the pay stubs pertaining to Plaintiffs (NYSCEF Doc. No. 93) are incomplete as they do not cover the entire period of Plaintiffs' purported employment. There is no indication that Plaintiffs ever received them. While Defendants claim that Plaintiffs received these stubs with every monthly check (Defendants' affirmation ¶¶ 16-17, Liu Deposition at 208-209), Plaintiffs allege that they were paid weekly in cash, and never received any information about their hourly rate or tip deductions (Zhang aff ¶¶ 15-16, 18; Xu aff ¶¶ 13-14, 16; You aff ¶¶ 14-15, 20). These are material issues of fact that have not been eliminated by Defendants, and the motion is denied as to the wage statements cause of action.

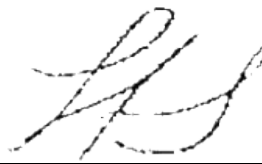
Accordingly, it is hereby:

ORDERED that Defendants' motion is granted as to the causes of action for failure to provide meal periods (count VI) and for failure to keep records (count VII), and that the causes of action for failure to provide meal periods and failure to keep records are dismissed; and it is further

ORDERED that the Defendants' motion is denied as to all other causes of action.

All other relief sought is denied. This constitutes the Decision and Order of the Court.

7/3/2025
DATE



LORI S. SATTLER, 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:

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Motion No. 005

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