

Alvarez v Salvation Army
2026 NY Slip Op 30539(U)
February 5, 2026
Supreme Court, Kings County
Docket Number: Index No. 511250/2025
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 511250/2025
Motion Date: 10-17-25
Mot. Seq. No.: 1

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DENNY BRITO ALVAREZ and NORMA ALVAREZ,

Plaintiffs,

-against-

DECISION/ORDER

THE SALVATION ARMY,

Defendant.

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The following papers, which are e-filed with NYCEF as items 5-13. 19, were read on this motion:

In this action for, inter alia, race discrimination and retaliation, Defendant, The Salvation Army ("TSA"), moves by pre-answer for an Order pursuant to CPLR 3211(a)(2) and CPLR 3211(a)(7) dismissing Plaintiffs' Verified Complaint in its entirety. Specifically, the Defendant seeks dismissal on the grounds of lack of subject matter jurisdiction, failure to state a cause of action, and that the action is barred by the statute of limitations.

I. BACKGROUND

The allegations in Plaintiffs Denny and Norma Alvarez's Verified Complaint can be summarized as follows: Plaintiffs are a married couple of Hispanic origin from Venezuela who commenced employment with TSA in August 2018. After two years of training at the College for Officer Training, they became commissioned officers and worked as Lieutenants at the

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Spring Valley Corps Community Center, where their duties included leading a congregation, conducting Bible studies, fundraising, and community outreach.

Plaintiffs allege that Defendant treated Hispanic employees less favorably than non-Hispanic employees, including forcing them into ESL classes to hinder advancement and providing superior resources to non-Hispanic officers. Plaintiff Dennys Alvarez alleges he complained of "racism" in June 2020 and was subsequently placed on probation. He further alleges he was assaulted by a TSA agent in May 2023, and although he filed a police report, TSA pressured him to drop charges under threat of termination. Plaintiffs were terminated in January 2024 and ordered to vacate their housing.

Plaintiffs also allege they complained about fraudulent financial practices and that they were denied proper minimum wage and overtime pay despite frequently working more than 40 hours per week. The complaint alleges causes of action under the NYSHRL for discrimination and retaliation, under NYLL § 740 for retaliatory termination (Whistleblower Law), and under the NYLL for failure to pay minimum wage and overtime.

II. THE PARTIES' CONTENTIONS

Defendant contends the Complaint must be dismissed because: (1) the claims are barred by the "ministerial exception," depriving the Court of subject matter jurisdiction under CPLR 3211(a)(2); (2) the NYLL claims fail because commissioned ministers are excluded from the definition of "employee" under NYLL § 651(5)(f); (3) certain claims are time-barred; and (4) the NYLL § 740 claims fail to state a cause of action.

Plaintiffs oppose the motion, arguing that the ministerial exception is an affirmative defense rather than a jurisdictional bar. They further assert the exception does not apply because Plaintiffs performed primarily secular duties and contend that Defendant waived its statute of limitations defense.

III. DISCUSSION

A. Ministerial Exception and Subject Matter Jurisdiction

Plaintiffs correctly contend that the Court possesses subject matter jurisdiction to adjudicate this dispute even if the ministerial exception applies. In this regard, the ministerial exception serves as an affirmative defense to be litigated on the merits rather than a jurisdictional bar that precludes the court's power to hear the case (see *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171). Accordingly, that branch of Motion Seq. #1 in which the Defendant seeks dismissal on the ground that the Court lacks subject matter jurisdiction is **DENIED**.

B. THE DISCRIMINATION CLAIMS

The ministerial exception is a doctrine grounded in the First Amendment that protects the right of religious institutions to decide matters of church government, faith, and doctrine free from state interference. See *Hosanna-Tabor*, 565 U.S. 171 (2012); *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020). As stated above, it serves as an affirmative defense to claims governing the employment relationship between a religious institution and certain key employees (see *Ibhawa v. New York State Div. of Hum. Rts.*, 42 N.Y.3d 744). The complaint allegations clearly demonstrate that the relationship between Plaintiffs and Defendant triggered the applicability of the exception (*McClure v. Salvation Army*, 460 F.2d 553; *Schleicher v. Salvation Army*, 518 F.3d 472; *Garcia v. Salvation Army*, 918 F.3d 997). Plaintiffs' contention that there are triable issues of fact as to whether the exception applies since Plaintiffs performed mostly secular labor is without merit. Whether the exception applies turns on whether a key employee performs religious functions rather than analyzing the amount of time that that person spent on performing secular functions versus religious functions (see *Hosanna-Tabor*, 565 U.S. at 193-94). Moreover, performing such an analysis would require the Court to engage in an impermissible inquiry into religious organization spiritual and managerial decisions regarding its ministers (see *Our Lady of Guadalupe*, 140 S. Ct. 2049, *Mills v. Standing Gen. Comm'n on Christian Unity*, 39 Misc. 3d 296; *Fratello v. Archdiocese of New York*, 863 F.3d

190). That branch of Motion Seq. #1 in which the Defendant seeks dismissal of the NYSHRL claims on the grounds of the ministerial exception is therefore **GRANTED**.

C. THE REMAINING CLAIMS

1. Since NYLL § 651(5)(f) expressly excludes commissioned ministers from the definition of an "employee", Plaintiffs' NYLL claims cannot stand. Indeed, Plaintiffs admit that they are commissioned Officers and that they led a congregation. Accordingly, Plaintiffs fall squarely within this statutory exemption.

Plaintiffs' reliance on *Frazier v. FCBC Cmty. Dev. Corp.*, 2023 WL 2970873 (S.D.N.Y. 2023) is misplaced. In *Frazier*, Plaintiff maintained that she had two separate jobs, one as an associate pastor at the First Corinthian Baptist Church for which she was paid a salary and another job with the Defendant for which she wasn't paid at all. Here, Plaintiffs received a comprehensive bi-weekly stipend for their roles as Lieutenants in the TSA with no distinction between their secular and ministerial tasks. The Wage claims are therefore barred even though Plaintiffs' duties encompassed secular tasks (see *Alcazar v. Corp. of the Cath. Archbishop of Seattle*, 627 F.3d 1288). The Wage claims must therefore be dismissed.

2. NYLL § 740 Retaliation Claims

Plaintiffs' whistleblower claims are also barred by the ministerial exception. The Second Circuit has held that the ministerial exception applies to state-law retaliation claims to prevent government involvement in ecclesiastical decisions (see *Fratello*, 863 F.3d 190). Plaintiffs' reliance on *Matter of Lozada v. Elmont Hook & Ladder Co. No. 1*, 151 A.D.3d 860) is unpersuasive as it did not involve the unique ecclesiastical relationship between a church and its commissioned ministers. Likewise, the holding in *DeMarco v. Holy Cross High Sch.*, 4 F.3d 166 (2d Cir. 1993), is distinguishable from the present matter because the plaintiff in that case was a lay teacher whose primary duties were secular in nature. Unlike the teacher in *DeMarco*, the Plaintiffs were commissioned Officers and ordained ministers of TSA, specifically tasked with leading a congregation and performing pastoral functions. While the court in *DeMarco* found that a lay employee's secular role could potentially be isolated from religious doctrine for legal analysis, such a distinction is not applicable here, as the Plaintiffs' status as commissioned

ministers places their employment relationship at the core of the religious institution's ecclesiastical mission. For the above reasons, those branches of Motion Seq. No. 1 seeking dismissal of Plaintiffs' claims for unpaid minimum wage, overtime, and retaliation under the NYLL is **GRANTED**.

Based on the foregoing, it is hereby

ORDERED that the Motion Sequence #1 is **GRANTED** in its entirety.

This constitutes the decision and order of the Court.

PPS

PETER P. SWEENEY, J.S.C. *dtd 2/5/26*

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

FILED

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