

Ramirez v Floral Settings
2026 NY Slip Op 31588(U)
April 8, 2026
Supreme Court, Kings County
Docket Number: Index No. 514208/2023
Judge: Anne J. Swern
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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 8th day of April 2026.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

BRESTON RAMIREZ,

Plaintiff(s),

-against-

FLORAL SETTINGS AND ANROM BRACH,

Defendant(s).

DECISION & ORDER

Index No.: 514208/2023

Motion Seq.: 003

Return Date: 03/19/2026

Recitation of the following papers as required by CPLR 2219(a):

**NYSCEF
Papers
Numbered**

Notice of Motion and Supporting Documents	31-36
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Upon the foregoing papers, the decision and order of the Court is as follows:

This is an action to recover damages arising out alleged employment discrimination, retaliation, unpaid overtime, unlawful deductions [from plaintiff’s salary] and violations of the Wage Theft Protection Act [see NYLL § 193, NYLL § 198 (1-b) and (1-d), and NYLL §652]. Specifically, it is alleged that defendants failed to provide a wage notice at the time of hire and issue compliant paystubs from 10/2021 through 12/2022. Plaintiff alleges that he regularly worked more than 40 hours per week but was not paid the required 1.5 times his regular salary.

Defendants previously moved for an order per CPLR § 3211 [a] [7] dismissing the complaint, arguing that plaintiff’s complaint failed to state a cause of action. The motion was denied, and the plaintiff was granted leave to serve a motion for an order permitting the plaintiff to amend the complaint [NYSCEF 17]. By an order dated 1/23/2025, plaintiff’s unopposed

motion for leave to file an amended complaint was granted [NYSCEF 36]. Defendants served an answer to the amended complaint setting forth eleven (11) affirmative defenses [NYSCEF 34 & 35].

Now, plaintiff has moved for an order per CPLR § 3211 [b] to dismiss defendants' affirmative defenses, arguing that all of them fail to state a meritorious defense. In opposition to the motion, defendants withdrew their second and fifth affirmative defenses. Therefore, plaintiff's motion as to the remaining defenses is denied in part and granted in part as follows:

The motion is denied with leave to renew upon the completion of discovery as to the first and eighth affirmative defenses of failure to state a cause of action because a post-answer motion on this ground can be made irrespective of whether a pre-motion was served or asserted in the answer since a motion to dismiss on this ground can be made at any time (*Butler v Catinella*, 58 AD3d 145, 151 [2d Dept 2008]). The motion is also denied with leave to renew upon the completion of discovery as to the ninth affirmative defense [plaintiff was paid in accordance with the New York Labor Law], fourth [paid in full], and seventh affirmative defense [double recovery of wages] (see CPLR § 3018 [b]. A party shall plead all matters which, if not pleaded, would be likely to take the adverse party by surprise. "The application of this subdivision shall not be confined to the [affirmative defenses] enumerated.").

The motion is granted as to the third affirmative defense that plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel, laches, unclean hands, after-acquired evidence, and waiver. Defendants failed to allege in their answer facts demonstrating the manner and to what extent they relied on specific inconsistent conduct by plaintiff to their detriment [estoppel]; and that any delay by plaintiff in commencing this action resulted in a disadvantage to defendants, *i.e.*, a change of position, loss of evidence or some other prejudice resulting from the

alleged delay (see *Bank of America, N.A. v 414 Midland Ave. Assoc., LLC*, 78 AD3d 746, 750 [2d Dept 2010]). The defenses are also dismissed on the basis that defendants merely pleaded conclusions of law without any supporting facts (*Fireman's Fund Ins. Co. v Farrell*, 57 AD3d 721, 723 [2d Dept 2008]).

The tenth and eleventh affirmative defenses [reservation of rights] are dismissed because a reservation of rights is not an affirmative defense. To amend the answer to assert additional affirmative defenses and counterclaims, defendants must seek leave of Court per CPLR § 3025 [b]. Therefore, defendants “cannot employ a catch-all provision to preserve any and all defenses for future use.” (*Scholastic Inc. v Pace Plumbing Co.*, 129 AD3d 75, 79 [1st Dept 2015], citing *Matter of Kowalczyk v Monticello*, 107 AD3d 1365, 1366 [3d Dept 2013]). Further, “neither plaintiff nor the court ought to be required to sift through a boilerplate list of defenses or be compelled to wade through a mass of verbiage and superfluous matter” (*Scholastic Inc. v Pace Plumbing Co.*, 129 AD3d 79). For these same reasons, the sixth affirmative defense [good faith] is also dismissed (*id.*).

The Court has considered the parties' remaining arguments and found them to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for an order per CPLR § 3211 [a] [7] dismissing defendants' FIRST, FOURTH, SEVENTH, EIGHTH, and NINTH affirmative defenses is DENIED without prejudice and with leave to renew upon the completion of discovery, and it is further

ORDERED that plaintiff's motion for an order per CPLR § 3211 [a] [7] dismissing defendants' THIRD, SIXTH, TENTH and ELEVENTH affirmative defenses is GRANTED, and it is further

ORDERED that plaintiff's motion for an order per CPLR § 3211 [a] [7] dismissing defendants' SECOND and FIFTH affirmative defenses is DENIED as defendants have withdrawn these defenses.

This constitutes the decision and order of the Court.

E N T E R:



Hon. Anne J. Swern, J.S.C.

Dated: 4/8/2026