

Perez v Nations Constr., Inc.
2026 NY Slip Op 32062(U)
June 1, 2026
Supreme Court, Broome County
Docket Number: Index No. EFCA2026000052
Judge: Eugene D. Faughnan
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court of the State
of New York held in and for the Sixth
Judicial District at the Broome County
Courthouse, Binghamton, New York on the
15th day of May 2026.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

MARCO ANTONIO PEREZ PEREZ, and
JOSE EDUARDO SANCHEZ ARIAS,
on their own behalf and on behalf of others
similarly situated,

Plaintiffs,

vs.

DECISION AND ORDER

Index No.: EFCA2026000052

NATIONS CONSTRUCTION, INC.;;
JRS SERVICES, LLC;
ELIAS OSMIN ALVAREZ PALACIOS
a/k/a Elias Escobar, and
JENNY CAROLINA ALVAREZ,

Defendants.

Counsel for Plaintiffs:

Troy Law, PLLC
By: John Troy, Esq.
41-25 Kissena Blvd. Suite 110
Park Regent Building
Flushing, NY 11355

Counsel for Defendants
Nations Construction, Inc.,
JRS Services, LLC,
Elias Osmín Alvarez Palacios
a/k/a Elias Escobar, and
Jenny Carolina Alvarez:

Danny Grace PLLC
By: Yuting Li, Esq.
225 Broadway, Suite 1200
New York, NY 10007

EUGENE D. FAUGHNAN, J.S.C.

This matter is before the Court to address the Defendants’ motion to dismiss. Defendants have also filed a motion for sanctions against Plaintiffs for frivolous conduct. Counsel for all parties appeared for oral argument on the motion. After due deliberation, this constitutes the determination of this Court.¹

BACKGROUND FACTS

Plaintiffs commenced this action on January 8, 2026 against Defendants alleging violations of the New York Labor Laws (“NYLL”) pertaining to “Defendants’ various willful and unlawful employment policies, patterns and practices” [Plaintiffs’ Complaint, NYSCEF Doc. No. 1 at ¶2] resulting in unpaid, or underpaid, wages and/or overtime compensation due to Plaintiffs. These same parties (and additional parties) were before the Court recently in another case (EFCA2025000158) involving a claim for unpaid wages and/or overtime. That case resulted in a Decision and Order filed on May 18, 2026 that granted the three separate motions to dismiss filed by the various Defendants in that case. The facts are more fully set forth in that Decision and Order and will be highlighted here as pertinent. Plaintiffs and Defendants have also been involved in litigation in federal court (*see, Index No: 20-cv-08010*) over the same basic set of facts. The District Court dismissed the claims under the federal Fair Labor Standards Act (“FLSA”) and declined to exercise supplemental jurisdiction over Plaintiffs’ state law claims.

Defendants’ current motion argues that: 1) the parties are also parties to another action pending in this Court (EFCA2025000158) concerning the same claims²; 2) lack of personal jurisdiction; 3) failure to plead that Defendants constitute an “integrated enterprise”; 4) Plaintiffs made allegations in the federal court action that Jhony Escobar and Escobar Construction, Inc. were Plaintiffs’ employers instead of Defendants, and Plaintiffs should be estopped from making

¹ The Court has considered all the papers filed in support and opposition to the motion, as well as all the other documents contained in the electronic case file.

² At the time Defendants filed their motion, EFCA2025000158 was awaiting a decision on their motion to dismiss in that case. The motion was granted and the Amended Complaint was dismissed, so there is technically no other action pending at this point.

a contrary claim in this case; 5) the class action should be dismissed; 6) the causes of action are barred due to the statute of limitations; 7) the Complaint should be dismissed due to failure to state a cause of action. In support of the motion, Defendants submitted an affirmation of Yuting Li, Esq. with Exhibits and a Memorandum of Law. Plaintiffs filed a Memorandum of Law in Opposition and Exhibits on March 27, 2026, and Defendants filed a Reply Affirmation and Reply Memorandum of Law on May 4, 2026.

The Court will briefly summarize the three cases between these Plaintiffs and Defendants, and the allegations made by Plaintiffs concerning their employment during the relevant times. Basically, Plaintiffs allege that they worked as painters on numerous projects in cities across several states, including New York State, between 2017 and 2019, and that they did not receive all the compensation they were due.

Elias Osmin Alvarez Palacios was the sole shareholder of JRS Services LLC. Jenny Carolina Alvarez was the owner and sole shareholder of Nations Construction, Inc. (“Nations”). In the two prior cases involving these parties there were also other defendants involved in the lawsuit, but Palacios, JRS Services LLC, Alvarez and Nations were collectively referred to as the Nations Defendants. The Court will continue that designation for purposes of this Decision and Order.

1. Federal Court action

The federal court case alleged that Perez was employed by Escobar Construction, Inc., Nations Construction, Inc. and/or Jhony A. Escobar from December 1, 2017 to October 30, 2018 at a worksite in Ithaca, NY. [Document 1 in federal court action]. With respect to Arias, the Complaint in the federal court action alleged that, like Perez, he was also employed by Escobar Construction, Inc., Nations Construction, Inc. and /or Johny Escobar, but his dates of employment were from September 15, 2017 to October 1, 2018. Perez and Arias filed an Amended Complaint in the federal court action to add additional defendants, including Palacios, Alvarez and JRS Services. The parties in the federal court action agreed to dismiss Defendants Escobar Construction, Inc. and Jhony Escobar, due their having obtained discharges in bankruptcy. The case was later dismissed against the remaining Defendants, including Nations.

2. 2025 State Court Action (EFCA2025000158)

In EFCA2025000158, previously before this Court, Plaintiffs alleged that Perez was employed by LeChase Construction Services, LLC (“LeChase”) and/or Greystar Development Services, LLC (“Greystar”) from March 1, 2017 to August 1, 2018 and November 2018 to February 2019; and Arias was employed by LeChase and/or Greystar from March 2017 to October 1, 2018. LeChase and Greystar are not parties to the 2026 case. For both Perez and Arias, the dates overlap the employment dates alleged in the federal court action, but allege different employers than in the federal court action.

3. Current action

Plaintiffs allege that “Perez was employed by defendants [the Nations Defendants] to work as a Construction Worker at numerous construction projects for defendants from on or around March 1, 2017, to August 1, 2018, and then again from November 2018 to February 2019” and that “Arias was employed by Defendants to work as a Construction Worker with defendants at numerous construction projects for defendants from on or around March 2017, to October 01, 2018” (Plaintiffs’ Complaint, NYSCEF Doc. No. 1, at ¶¶ 26, 27). Thus, in the current action, Plaintiffs are now contending that these Defendants were their employer(s), which they specifically avoided alleging in the 2025 state court action, despite the Nations Defendants being involved in that 2025 case.

LEGAL DISCUSSION AND ANALYSIS

Plaintiffs have filed three separate actions alleging underpayments in connection with their employments between 2017 and 2019. The Nations Defendants have been defendants in all three actions, notwithstanding the fact that the 2025 state court case alleged that Perez and Arias were employed by LeChase and Greystar, so Perez and Arias did not actually assert claims against the Nations Defendants in EFCA2025000158. In these three cases, Perez and Arias have made different allegations as to who their employer was. In the two earlier cases, the Plaintiffs’ Complaint was dismissed.

A party can move for judgment dismissing a case on the basis that “the cause of action may not be maintained because of ... collateral estoppel... res judicata [or] statute of limitations” CPLR 3211 (a)(5). “Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action” *Simmons v. Trans Express, Inc.*, 37 NY3d 107, 111 (2021), quoting *Parker v. Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 347 (1999) (other citation omitted). It “precludes reconsideration of all claims which could have or should have been litigated in the prior proceedings against the same party” *Breslin Realty Dev. Corp. v. Shaw*, 72 AD3d 258, 263 (2nd Dept. 2010); see, *In re Hunter*, 4 NY3d 260 (2005); *O’Brien v. Syracuse*, 54 NY2d 353, 357 (1981). New York has “applied a ‘transactional analysis approach’ in determining whether an earlier judgment has claim preclusive effect, such that ‘once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy’” *Simmons v. Trans Express*, 37 NY3d at 112, quoting *O’Brien v. City of Syracuse*, 54 NY2d at 357.

Plaintiffs now bring this case against the Nations Defendants and argue that the case is different from EFCA2025000158, because the current Complaint alleges the Nations Defendants were the employer(s), while EFCA2025000158 alleged the employer(s) were LeChase and Greystar. However, res judicata is broad enough to cover such duplicitous attempts to skirt prior adverse findings. The Nations Defendants were parties to EFCA2025000158, but for some reason Perez and Arias chose not to allege that the Nations Defendants were their employer. There were other Plaintiffs in EFCA2025000158 who alleged an employment relationship with Nations. There is no valid reason why the claims of Perez and Arias against Nations were not advanced in EFCA2025000158. If Plaintiffs desired to bring a claim against Nations, it should have done so in EFCA2025000158.

Furthermore, there is no dispute that all three cases arise out of the same series of transactions pertaining to work Perez and Arias claim to have performed and for which they were not properly paid. The undersigned Justice presided over EFCA2025000158 which culminated in a detailed decision on the merits of the case, and concluded that the factual predicate of the federal case and EFCA2025000158 were the same. The Court reaches the same conclusion concerning this case. Due to the parameters of res judicata, Plaintiffs are precluded from asserting claims arising out of the same transactions, even if they believe they are

advancing a new theory or seeking a different remedy. One of the purposes behind res judicata is judicial economy, which is achieved by a court not having to revisit claims and issues which have already been decided. This litigation illustrates the time and resources expended when claims are not brought together. A litigant cannot elect to advance claims against a defendant one at a time when they arise from the same set of facts. The Court concludes that the claims against the Nations Defendants could have, and should have, been brought in EFCA2025000158, especially since they arise out of the same events and transactions.

It is also significant that Plaintiffs have previously filed two other actions where they claimed their employers were entities other than Nations. “[T]he doctrine of estoppel against inconsistent positions precludes a party from framing his pleadings in a manner inconsistent with a position taken in a prior proceeding” *Environmental Concern, Inc. v. Larchwood Constr. Corp.*, 101 AD2d 591, 593 (2nd Dept. 1984) (internal quotation marks, ellipses and end citation omitted). Plaintiffs have failed to offer sufficient explanation for the discrepancy or why they should not be bound by their allegations in the earlier cases. In EFCA2025000158, Plaintiffs specifically argued to this Court that their employer(s) were LeChase and Greystar, which is wholly inconsistent with the claims being made now that the employer was Nations.

Plaintiffs take the position that they had multiple employers under an integrated enterprise theory, but, as discussed above, res judicata precludes raising that against Nations at this point. Even if an integrated enterprise could possibly explain the different allegations as to the Plaintiffs’ employers, that argument not available to Plaintiffs in this case due to the finding in the federal court action, and the findings in EFCA2025000158. The integrated enterprise theory will be discussed below in the context of collateral estoppel.

In addition to res judicata, the Court also concludes that collateral estoppel bars Plaintiffs’ claims. Collateral estoppel focuses on issues, rather than claims [*see, People v. Evans*, 94 NY2d 499 (2000)], and “precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party . . . whether or not the . . . causes of action are the same” *Parker v. Blauvelt Volunteer Fire Co.*, 93 NY2d at 349, *quoting Ryan v. New York Tel. Co.*, 62 NY2d 494, 500 (1984); *see, Simmons v. Trans Express*, 37 NY3d at 112. It can be invoked “only where ‘the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action,’ and the party who is being estopped ‘had a full and fair opportunity to litigate the issue in the earlier

action” *Simmons v. Trans Express*, 37 NY3d at 112, quoting *Parker v. Blauvelt Volunteer Fire Co.*, 93 NY2d at 349 (other citations omitted); see, *Conason v. Megan Holding, LLC*, 25 NY3d 1 (2015). “Issue preclusion applies only to issues *actually* litigated” *Paramount Pictures Corp. v. Allianz Risk Transfer AG*, 31 NY3d 64, 72 (2018) (emphasis in original).

In the federal court action, the District Court found that there was no integrated enterprise between Nations Construction with either Escobar Construction or JRS, as they were not in business at the same time. Nations was not incorporated until November 26, 2018, and Escobar Construction had ceased operations in August 2018, and JRS was dissolved on February 2, 2018. This Court found in EFCA2025000158 that the District Court’s finding of no integrated enterprise was collateral estoppel to the claims in EFCA2025000158. Now, in this case, the Court concludes that the determination of the federal court and the determination in EFCA2025000158 both prevent Perez and Arias from arguing the integrated enterprise theory. That issue has been resolved twice already, and Plaintiffs had a full and fair opportunity to litigate the issue previously.

Similarly, a finding was made by the District Court that none of the four Defendants (JRS Services, Nations, Palacios and Alvarez) were involved with the Ithaca project. The District Court observed that Perez and Arias conceded in their papers that “Palacios and Alvarez did not play a role in the Ithaca project” (District Court Decision at p.15) and that Plaintiff failed to show any of the remaining Defendants (including JRS and Nations Construction) played a role in the Ithaca project. This Court also adopted those findings in EFCA2025000158. The issue of whether the Nations Defendants were involved in the Ithaca project has been resolved and collateral estoppel prevents Plaintiffs from raising it again.

Thus, based on res judicata and collateral estoppel, there is no valid claim by Perez and Arias against JRS Services, Nations, Palacios and Alvarez. The Plaintiffs cannot show an employment relationship against the Nations Defendants for work at the Ithaca project.

In any event, the statute of limitations bars the current Complaint. As discussed in the Decision and Order in EFCA2025000158, the Statute of Limitations to recover for unpaid wages and overtime under NYLL is 6 years. Due to the Covid-19 pandemic there was also a toll from March 20, 2020 through November 3, 2020, a period of 228 days. The last project in the State of New York to which Plaintiffs’ claims could possibly apply was the Ithaca project, which ended

in August 2018.³ Assuming an accrual date of August 31, 2018, and adding 6 years, 228 days results in a date of April 16, 2025. The current case was not commenced until January 8, 2026, which makes it untimely. The Plaintiffs are not entitled to a toll under CPLR § 205(a). As discussed in the Decision and Order in EFCA2025000158, the toll is not appropriate because the federal court action was dismissed on the merits.

Based on the forgoing, and, in particular, the principles of res judicata and collateral estoppel, as well as this Court's independent conclusions concerning the allegations of the Complaint in the instant case, Plaintiffs' Complaint is DISMISSED, WITH PREJUDICE.

Defendants also seek sanctions against Plaintiffs for frivolous conduct. "Conduct is frivolous where an argument advanced by a party is ... 'completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law'" *U.S. Bank N.A. v. Livingston*, 199 AD3d 964, 966 (2nd Dept. 2021), quoting 22 NYCRR 130-1.1 [c] [1]; see, *Deutsche Bank Natl. Trust Co. v. LeTennier*, 2026 NY App. Div. LEXIS 46, *8 (3rd Dept. 2026) "The decision whether to impose costs or sanctions against a party for frivolous conduct, and the amount of any such costs or sanctions, is generally entrusted to the court's sound discretion" *Cassagnol v. Village of Hempstead*, 214 AD3d 766, 769 (2nd Dept. 2023, quoting *Strunk v. New York State Bd. of Elections*, 126 AD3d 779, 781 (2nd Dept. 2015); *Matter of Tina X. v. John X.*, 156 AD3d 1152 (3rd Dept. 2017). The Court concludes that sanctions are not appropriate in this instance. Although Plaintiffs have brought multiple cases for essentially the same claims, the federal court action did not address the state law claims, and EFCA2025000158 did not allege a direct employment relationship between Perez, Arias and the Nations Defendants. Further, this Court had not yet rendered a determination in EFCA2025000158 by the time that Plaintiffs filed the current action, so the arguments being advanced by Plaintiffs had not yet been resolved. Although the Court is finding against the Plaintiffs, it cannot conclude that Plaintiffs' actions have risen to the point of being sanctionable.

³ The District Court's finding regarding employment dates was also consistent with the allegation in Plaintiffs' federal court Amended Complaint, which alleged employment dates of: the "1141 University Club" project in Binghamton, New York (which subsumed the Elmira, New York work site) (March through June 2017); Elmira, New York (July 2017 through August 2017); Kansas City, Kansas (August 2017 through September 2017); Binghamton, New York (September through October 2017); Columbus, Ohio (October 2017); the "Maplewood" project in Ithaca, New York (November 2017 through August 2018); New Albany, Ohio (September 2018, MARCO ANTONIO PEREZ only) and the "Chauncey" project in Lafayette, Indiana and Huntington, Indiana (November 2018 through February 2019). The duration of some of the projects, like Kansas City and Ohio was for two or three weeks only" (Plaintiffs' Second Amended Complaint, 20-cv-08010, Doc. No. 213 at ¶ 12).

CONCLUSION

Accordingly, based on all the foregoing and after due deliberation, it is hereby

ORDERED, that Defendants' motion is GRANTED, and Plaintiffs' Complaint is dismissed.

THIS CONSTITUTES THE DECISION AND ORDER OF THIS COURT.

ENTER:

Dated: June 1, 2026
Binghamton, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice