STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

CAITLIN FERRARI, on Behalf of Herself and All Others Similarly Situated,

Plaintiff

v.

DECISION
Index No. 804125-2014

STEPHANIE MATECZUN,
CITADEL BROADCASTING COMPANY,
CITADEL COMMUNICATIONS COMPANY, LTD., and
BUFFALO BILLS, INC.

Defendants

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TIMOTHY J. DRURY, J.S.C.

The Court's decision in Jaclyn S. (Index No. 804088-2014) dealt with substantially the same issues as have been raised in the instant motion.

Therefore, the Court decides as follows:

The Plaintiffs have alleged in their Amended Complaint that they were hired as Buffalo Bills cheerleaders, for all or part of the last six seasons. The Buffalo Bills cheerleaders are known as the Buffalo Jills. The Plaintiffs have claimed that they were hired by Citadel Communications Co. Ltd. (Citadel) and Stejon Productions Corp. (Stejon) and the Buffalo Bills Inc. (the Bills) to be employed as cheerleaders. The Plaintiffs have alleged that the Defendants failed to pay them a minimum wage as fixed by the New York Labor Law and failed to pay them in a timely manner, made illegal deductions and kickbacks from their wages, and committed other violations of the Labor Law. The Plaintiffs have also sued alleging unjust enrichment for their services.

The Defendants Bills have moved pursuant to CPLR Section 3211(a)(1) and 3211(a)(7) to Dismiss the Complaint. The Bills have moved prior to filing its Answer to the Complaint. It is the Bills' position as specified in its Motion that the organization was not the Plaintiffs' employer under the Labor Law. The Bills have contended that the organization contracted with Citadel then Stejon to operate the Buffalo Jills and provide cheerleading services. The Bills have contended that the cheerleading squad was within the exclusive control of Citadel and then Stejon. The Bills have argued that Citadel and Stejon were independent contractors and were completely responsible for the functioning of the cheerleading squad. The Bills have argued that any oversight or approval it retained

was only to guarantee the integrity of the Bills brand it licensed Citidal or Stejon to employ in conjunction with the cheerleading squad's performance.

All the parties have cited Zheng v Liberty Apparel Co. (355 F 3d 61) as controlling on the issue of whether a particular entity merits "joint employer" status. Zheng sets forth a 6-factor "economic reality test" to determine this issue. The Plaintiffs and the Bills have argued back and forth as to whether the different factors apply to the instant situation and whether or not the factors support the inference that the Bills had functional control over the Plaintiffs' work. Both sides have made good points. Since it is arguable whether each of the factors apply in the instant situation, this Court determines that there is a question of fact as to the Bills' functional control over the activities of the Bills' cheerleading squad. Therefore, the Bills' Motion to Dismiss the first six causes of action of the Plaintiff's Complaint referring to Labor Law violations is denied.

The Plaintiffs' position as to whether the different factors apply does not depend on proof that has been brought into question by the Bills' evidentiary arguments.

Another factor that supports the Plaintiffs' position involves the issue of whether the individual cheerleaders were independent contractors. The minute control that Citadel and Stejon exercised over the work of the cheerleaders supports the conclusion that they were not independent contractors but employees. The Bills insisted that Citadel and Stejon obtain the agreement from each of the cheerleaders that they were independent contractors and the Bills directed that the agreement be returned promptly to them. These facts are further indications of the control the Bills exercised over the Jills cheerleaders despite the fact that they were in the nominal employment of the subcontractors.

Regardless of the Court's decision based on the Zheng factors, the Plaintiffs have raised the issue that the Bills' Motion is premature since there are witnesses who have not been deposed who are likely to be in possession of "facts essential to justify opposition" (CPLR Section 3211(d)) to the Motion. There has been no discovery as yet. Stephanie Mateczun was employed by both subcontractors as the Jill's supervisor and would possess information as to the Bills' role in the conduct of the Jills cheerleading squad. Ms. Mateczun stated in an e-mail received by Jaclyn S. that the Bills own the Jills...,"...they are committed to helping us run an extremely viable business...they are being incredibly supportive and helpful...I will be working much more closely with the Buffalo Bills...". Counsel for Citadel stated that Ms. Mateczun could not be contacted.

None of the Bills' employees have been deposed. The Bills' employees would obviously possess relevant information as to its relationship with the Bills Jills cheerleading squad. The Plaintiffs have also raised the issue of the redacted provision in the contract between the Bills and Citadel titled "13.0 Authority", which could yield pertinent information.

Therefore, the Bills' Motion is premature and for this reason should be denied in its entirety.

The Bills have claimed that the causes of action for unjust enrichment should be dismissed because the organization did not contract with the Plaintiffs for cheerleading services and that an express agreement precludes recovery under these theories. The Bills have also claimed that the course of conduct between the Plaintiffs and any employer is sufficient to render the contract enforceable as it relates to compensation.

This Court has decided that there is a question of fact as to whether the Bills were a coemployer of the Plaintiffs. The Plaintiffs have also raised a question of fact as to

whether any express agreement between the Plaintiffs and the Bills is valid; there is at least a question of fact as to whether the agreement could legitimately treat the Plaintiffs as independent contractors and whether it is invalid for failure to specify the amount of the employees' compensation.

Therefore, the Bills' Motion to Dismiss the Plaintiffs' Complaint against it is denied in its entirety.

Citadel has moved to dismiss the Complaint against it on the ground that the Plaintiffs were independent contractors. They have also opposed the Bills' Motion to Dismiss the Complaint against it as premature.

Citadel's Motion to Dismiss the Plaintiff's Complaint against it is denied.

SUBMIT ORDER.

Buffalo, New York
July 29, 2014

Hon. Timothy J. Drury, J.S.C.

GRANTED

JUL 31 2014

BY Judith M. Conners
JUDITH M. CONNERS
COURT CLERK