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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 14-01990-J

KEVIN FITZGERALD & others[1]

vs.

THE CHATEAU RESTAURANT CORPORATION, INC. & others[2]

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' PARTIAL MOTION TO DISMISS[3]

The plaintiff, Kevin Fitzgerald ("Fitzgerald"), filed this action both individually and on behalf of all others similarly situated against his former employer, The Chateau Restaurant Corporation, Inc. ("Chateau Corp."), The Chateau Restaurant of Andover, Inc. ("Chateau Andover"), The Chateau Restaurant of Burlington, Inc. ("Chateau Burlington"), Joseph Nocera ("Nocera"), and others (collectively the "Sister Corporations"[4]), alleging non-payment of wages as required by G. L. c. 149, §§ 148, 150 (Count I), non-payment of overtime as required by G.L. c. 151, §§ 1A, 1B (Count II), breach of contract (Count III), and unjust enrichment (Count IV). The case is presently before this court on Chateau Andover's Motion to Dismiss Count I of Plaintiff's amended complaint and Chateau Corp. and Sister Corporations' Motion to Dismiss Counts I through IV for failing to state a claim upon which relief may be granted under Mass. R. Civ. P. 12(b)(6). For the following reasons, Defendants' Motion to Dismiss is **DENIED**.

BACKGROUND

For the purposes of the present motion, the court accepts as true all well-pleaded factual allegations of the amended complaint. See Sisson v. Lhowe, 460 Mass. 705, 707 (2011).

[1] Individually and on behalf of all others similarly situated
[2] The Chateau Restaurant of Andover, Inc.; The Chateau Restaurant of Braintree, Inc.; The Chateau Restarant of Burlington, Inc.; The Chateau Restaurant of Norton, Inc.; the Chateau Restaurant of Norwood, Inc.; The Chateau Restaurant of Waltham, Inc.; The Chateau Restaurant of Westboro, Inc.; Noceras Restaurant, Inc.; and Joseph Nocera.
[3] At the hearing on this motion, counsel for the defendants indicated that they were not pursuing the argument that the plaintiff had failed to exhaust his administrative remedies.
[4] The restaurant comprising the "Sister Corporations" are located in Braintree, Norton, Norwood, Waltham, and Westboro. Fitzgerald did not work at any of these locations.

Considered in that manner, the complaint provides the following factual background.[5] Chateau Corp. is the parent corporation of eight restaurants with various locations in Massachusetts. Fitzgerald was hired by The Chateau Burlington and The Chateau Andover as an assistant manager in April of 2011. He was subsequently promoted to restaurant manager and worked at these two locations until his termination in April 2013. At the time of his termination, Fitzgerald's compensation was $21 an hour.

In addition to bringing this action individually, Fitzgerald brings this action on behalf of a class of all persons who were employed by the defendants at any Chateau location as Hourly Managers at any time during the six-year period prior to the commencement of these actions. These Chateau managers ("Hourly Managers") were paid on an hourly basis and automatically had thirty minutes of pay deducted for a meal break for each shift they worked.

Hourly Managers were unable to leave the restaurant for their meal breaks if they were the only manager on site. Similarly, the Hourly Managers were required to be immediately available at all times for any staff or customer issues which might require their oversight or intervention. Hourly Managers were required to respond to these issues and frequently worked shifts where they were the only manager on site. Due to the requirement that managers working as the only manager on site could not leave the restaurant, the Hourly Managers were unable to take their meal break time. Their pay was still automatically deducted to include a half-hour meal break for each shift they worked.

Under these facts, Fitzgerald asserts a claim both individually and on behalf of the Hourly Managers for a violation of the Massachusetts Wage Act, the Massachusetts Overtime Act, breach of contract, and unjust enrichment.

DISCUSSION

In evaluating the sufficiency of a complaint under Mass. R. Civ. P. 12(b)(6), the court must accept as true the allegations of the complaint, as well as any reasonable inferences to be drawn from them in the plaintiff's favor. Sisson, 460 Mass. at 707; Eyal v. Helen Broad Corp., 411 Mass. 426, 429 (1991). The court may consider "the allegations in the complaint . . . orders, items appearing in the record of the case, and exhibits attached to the complaint . . . ." Schaer v. Brandeis Univ., 432 Mass. 474, 477 (2000) (quotation omitted). A plaintiff's obligation to provide the grounds of relief requires more than labels and conclusions. Iannacchino v. Ford

[5] Some facts are reserved for discussion below.

Motor Co., 451 Mass. 623, 636 (2008). Factual allegations must be enough to raise the right to relief above the speculative level. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

Employment Status of Chateau Corp. and the Sister Corporations (Counts I, II, III, IV)

Chateau Corp. and the Sister Corporations move to dismiss all claims on the grounds that Fitzgerald has failed to establish the existence of an employment relationship with these parties. Fitzgerald contends the complaint sufficiently asserts an employment relationship through either a "single integrated employer" or a "joint employment" theory.

While Massachusetts courts have provided some guidance on how to assess single integrated enterprise or joint employment relationships in claims brought under the Fair Labor Standards Act ("FLSA"), there exists little case law on the applicability of these tests to the Massachusetts Wage Act.[6] Under the single integrated enterprise theory, "nominally separate companies may be so interrelated that they constitute a single employer." Torres-Negron v. Merck & Co., 488 F.3d 34, 41 (1st Cir. 2007). Courts examine four factors to assess single-employer status: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership. Romano v. U-Haul Int'l, 233 F.3d 655, 662 (1st Cir. 2000).

Similarly, under the joint employment theory an employee is able to bring a claim against a person or entity who is not his/her actual employer if the employee can show a link between the actual employer and the alleged separate entity. Indeed, in Baystate Alternative Staffing, Inc. v. Herman, 163 F.3d 668 (1st Cir. 1998), the First Circuit adopted a four-factor test to determine whether a joint employment relationship exists. These four factors to consider are: "whether the alleged employer (1) had the power to hire and fire the employees; (2) supervised and controlled employee work schedules or conditions of employment; (3) determined the rate and method of payment; and (4) maintained employment records." Baystate Alternative Staffing, Inc. v. Herman, 163 F.3d at 675 (citations omitted).

Both parties submit that at least one federal case, Joyce v. Upper Crust, LLC, 2012 U.S. Dist. LEXIS 103101 (D. Mass. July 25, 2012), has applied the joint employment test to a Massachusetts Wage Act claim. In Joyce, a plaintiff brought FLSA and state retaliation claims

[6] Indeed, neither the plaintiff's nor the defendants' motion materials cite a Massachusetts state court case supporting the use of either a joint or single enterprise employment test for claims under the Massachusetts Wage Act. Similarly, the court found no such state law cases either.

under the Massachusetts Wage Act against his direct employer as well as a management company which was listed as the plaintiff's employer with the Department of Labor. The plaintiff survived the management company's motion to dismiss. Indeed, citing to Baystate, the Joyce court held that it was "reasonable to infer that [the management company] and [plaintiff's direct employer] [were] so integrated with one another that [the management company] [was] liable for the conduct as a joint employer or under other similar theory of liability for the conduct alleged in the complaint." Joyce, 2012 Dist. LEXIS 103101 at *27. Furthermore, the court provided that the complaint which alleged the management company's "operations [were] closely intertwined with [plaintiff's direct employer]" and that the management company was "owned by the same three individuals who own [plaintiff's direct employer]" was sufficiently pled to permit reasonable inferences of an integrated or joint employment between the two separate corporate entities. Id.

Chateau Corp. and the Sister Corporations argue that while Joyce established an employment relationship between the plaintiff-employee and non-direct employer management company, it solely used the joint employment test and Baystate factors to find this relationship. Fitzgerald argues that the language in the Joyce decision supports the use of not only the joint employment test, but also the single integrated enterprise theory. Specifically, Fitzgerald points to the language from Joyce which holds that it was "reasonable to infer that [the two corporations] [were] **so integrated with one another** that [the management company] [was] liable for the conduct as a joint employer or under **similar theories of liability** for the conduct alleged in the complaint" as providing multiple vehicles for establishing an employment relationship on Massachusetts Wage Act claims. Id. (emphasis added). The court agrees with Fitzgerald's analysis of the Joyce decision.

The holding in Joyce specifically makes reference to the "closely intertwined" nature of the two corporations' operations as well as the fact that the management company was "owned by the same three individuals who own[ed] [plaintiff's direct employer]." Id. This language tracks closely with two of the four factors enumerated in Torres-Negron for determining whether entities are a single employer – "interrelation between operations" and "common ownership." Torres-Negron v. Merck & Co., 488 F.3d at 42. Furthermore, Chateau Corp. and the Sister Corporation's argument that the single integrated enterprise theory is not intended to create an employment relationship, thus imposing liability on the alleged employer, does not align with the

holding from Joyce. Indeed, the court held specifically that the two corporations were integrated to a degree that the management company "was **liable** for the conduct as a joint employer or under similar theories of **liability** for the conduct alleged in the complaint." Joyce, 2012 Dist. LEXIS 103101 at *27 (emphasis added).

While the FLSA includes both a jurisdictional coverage requirement and a requirement that an employment relationship be established in order for a plaintiff to have standing to bring suit against a defendant-employer, the court emphasized that it was reasonable to infer that the management company could be held liable for the conduct as a joint employer – not merely that the jurisdictional coverage requirement under the FLSA was met. Similarly, the court in Joyce was explicit that this liability was found "as a joint employer or under other similar theories of liability" for the conduct alleged in the complaint. This plural language, "theories," expressly provides that multiple vehicles exist for establishing an employment relationship under Massachusetts Wage Act claims, rather than solely the joint employment test. Therefore, this court finds that the single integrated enterprise factors may be used by Fitzgerald to establish that Chateau Corp. and all Chateau restaurant locations are a single employer for purposes of liability under the Wage Act.

As discussed above, the factors considered in determining whether two or more entities are a single employer are: "(1) common management; (2) interrelation between operations; (3) centralized control over labor relations; and (4) common ownership." Torres-Negron, 488 F.3d at 42. Furthermore "[a]ll four factors...are not necessary for single-employer status...[r]ather, the test should be applied flexibly, placing special emphasis on the control of employment decisions." Id. Fitzgerald has alleged in the amended complaint that Joseph Nocera is the president and treasurer of the Chateau Corporation and all Chateau restaurant locations. Similarly, all of the Chateau restaurant locations as well as the Chateau Corporation are incorporated in Massachusetts with a principle office located at the same address in Waltham. The complaint also alleges that all Hourly Managers at Chateau restaurants had thirty minutes of pay automatically deducted and were unable to leave the work site for their meal breaks if they were the lone Hourly Manager on duty. Finally, the Chateau Corp. is a self-described "holding company" with a stated business purpose of "conduct[ing] a restaurant business."

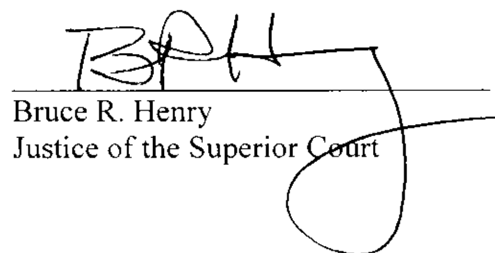
The allegations contained herein closely mirror allegations from the complaint in Joyce which stated "operations [of the two corporations were] closely intertwined" and the two

corporations were "owned by the same three individuals." Joyce, 2012 Dist. LEXIS 103101 at *27. Here, the same individual is the president and treasurer of each of the Chateau restaurant locations, as well as the Chateau Corporation which operates as a holding company – all of which are principally located at the same address. Similarly, Hourly Managers across each of the Chateau restaurants all had pay automatically deducted and were not able to leave the work site for real breaks if they were the lone Hourly Manager on duty. These factual allegations provide a basis for a reasonable inference that there is common management and common ownership of Chateau Corp. and the Chateau restaurants. Additionally, the allegations that Hourly Managers across all locations are subject to the same automatic deduction for lunch pay and are unable to leave the worksite if they are the only Hourly Manager on duty permits a reasonable inference that there is, at least to some degree, centralized control of each of the Chateau restaurants.

Therefore, from the factual allegations provided in the complaint, it is reasonable to infer that Chateau Corp. and the Sister Corporations are integrated with one another to the degree that liability may be imposed upon these parties alongside the other defendants. Indeed, Rule 12 imposes a relatively low standard for survival of a motion to dismiss, see Marram v. Kobrick Offshore Fund, Ltd., 442 Mass. 43, 45 (2004), and doubt as to whether a particular cause of action may be proved is not a proper basis for dismissal under Rule 12, see Ciardi v. Hoffmann-La Roche, Ltd., 436 Mass. 53, 65 (2002). Here, Fitzgerald has sufficiently pled facts to establish that the Chateau Corp. and all the Chateau corporations are a single employer for purposes of the Massachusetts Wage Act.[7]

ORDER

For the reasons stated herein, it is ordered that the motion of the Chateau Corp. and the sister corporations to dismiss (Paper #22) is **DENIED**.



Bruce R. Henry
Justice of the Superior Court

Dated: January 4, 2016

[7] As Fitzgerald sufficiently set forth a claim under the single integrated enterprise theory, the court does not address in detail the joint employment test briefed by the parties. That claim is sufficiently set forth in the amended complaint and would provide an additional basis for denial of the motion to dismiss.