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New York Supreme Court
Appellate Division—First Department

RANDY BONITO and BRIAN CESPEDES
on behalf of themselves and all other similarly situated,
Plaintiffs-Appellants,
- v. -
AVALON PARTNERS, INC. and VINCENT AU,
Defendants-Respondents.

BRIEF *AMICUS CURIAE*

for RANDY BONITO and BRIAN CESPEDES on behalf of

National Employment Lawyers Association—New York;
MFY Legal Services, Inc.;
The Legal Aid Society;
Brandworkers International;
The National Employment Law Project;
The Asian American Legal Defense and Education Fund;
The Restaurant Opportunities Center of New York

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Bruce Goldstein, Marc Linder, Laurence E. Norton, II, and Catherine K. Ruckelshaus, "Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment," 46 U.C.L.A. L. Rev. 983, 1136-46 (April 1999) 7-9

INTEREST OF *AMICI CURIAE*

NELA/NY

The National Employment Lawyers Association (NELA) is a national bar association dedicated to the vindication of individual employees' rights. NELA/NY, incorporated as a bar association under the laws of New York State, is NELA's New York chapter. With more than 385 members, it is NELA's largest local chapter. NELA/NY's activities and services include continuing legal education and a referral service for employees seeking legal advice and/or representation. Through its various committees, NELA/NY also seeks to promote more effective legal protections for employees.

MFY LEGAL SERVICES, INC.

MFY Legal Services, Inc. (MFY) envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. MFY provides advice and representation to over 7,500 New Yorkers each year. MFY's Workplace Justice Project advocates on behalf of low-income workers most vulnerable to exploitation at work. On their behalf, MFY regularly litigates

claims for unlawful failure to pay wages, relying on the New York Labor Law's broad definition of "employer" to help low wage workers obtain settlements and judgments.

THE LEGAL AID SOCIETY

The Legal Aid Society is the oldest and largest provider of legal assistance to low-income families and individuals in the United States. The Society's Civil Practice operates in all five boroughs of New York City, providing comprehensive legal assistance in housing, public assistance, and other areas of primary concern to low-income clients. The Society's Employment Law Unit represents low-wage workers in employment-related matters such as claims for unpaid wages. The Unit often litigates against employers that use corporate forms to try to evade responsibility under various labor laws or to make collection of judgments difficult. The broad definition of "employer" under the New York Labor Law is critical to the Unit's ability to enforce that law.

BRANDWORKERS INTERNATIONAL

Brandworkers International is a non-profit organization protecting and advancing the rights of retail and food employees. Brandworkers' members frequently seek to hold individual employers liable for minimum wage and overtime violations to help ensure judgments are honored. Narrowing the employer definition under the New York Labor Law would increase the

likelihood that Brandworkers members would suffer illegal underpayment of wages with no monetary recovery even after a finding of liability.

THE NATIONAL EMPLOYMENT LAW PROJECT

The National Employment Law Project (NELP) is a non-profit legal organization with over 40 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the full protection of labor and employment laws, and that employers are not rewarded for skirting those basic rights. NELP collaborates closely with community-based worker centers and has litigated and participated as *amicus* in numerous cases addressing employee rights. In NELP's experience, an expansive reading of the term "employer" under the New York Labor Law is crucial in ensuring that low-wage workers in particular can fully recover their unpaid wages.

THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

Founded in 1974, the Asian American Legal Defense and Education Fund (AALDEF) is a national non-profit organization that protects and promotes the civil rights of Asian-Americans through litigation, advocacy, education, and organizing. AALDEF represents low-wage workers in actions under the NYLL, and AALDEF's clients have frequently been unable to collect against corporate

defendants, even after a finding of liability, making it critical that these workers are able to recover their unpaid wages from individual employers.

THE RESTAURANT OPPORTUNITIES CENTER OF NEW YORK

The Restaurant Opportunities Center of New York (ROC-NY) is a membership organization of restaurant workers that seeks to improve working conditions in the restaurant industry by conducting research and policy work, providing organizing support to workers who want to change illegal practices in their workplace, and promoting alternative, ethical models of doing business in the industry. Because restaurant workers suffer high rates of wage and hour violations, as well as other forms of labor law violations, New York Labor Law's broad definition of "employer" is crucial for ROC-NY members, who oftentimes need to hold individuals liable for minimum wage and overtime violations in order to make sure that they can collect their unpaid wages.

PRELIMINARY STATEMENT

Amici, New York-based worker advocacy groups, relying on decades of experience supporting and enforcing wage and hour protections, submit this brief in support of the plaintiffs-appellants, Randy Bonito and Brian Cespedes, in the above-referenced matter. *Amici* urge the Court to impose joint and several liability on corporate entities or individuals who act as employers based on the economic reality of each person's responsibility for wage violations under the New York Labor Law. This case is uniquely important in that defendants-respondents' position, if adopted by this Court, would in many cases effectively bar enforcement of New York's basic wage protections for the most vulnerable worker populations.

For half a century, New York wage and hour law has recognized that a worker's "employer"—responsible to pay wages in accordance with the law and liable for failing to do so—can be "any person, corporation or association" that "suffer[s] or permit[s that person] to work" (Labor Law § 2[7], 190[6]).[1] The statute explicitly sets forth that such an employer can be an "owner, proprietor, agent, superintendent, foreman or other subordinate" (*id.* § 2[6]). The express

[1] S*ee* L. 1956 ch. 539 (enlarging term "employer"); L. 1966 ch. 548 (recodifying Article 6 including the current definition of employer); *Medley v Wasserman*, 26 Misc 2d 253, 254 (NY Dist Ct 1960) (holding that a homemaker employing a domestic worker is an "employer" under 1956 amendments).

intent of this broad language was to reach beyond formal common law employment to hold responsible those with the power to control working conditions, and the unique language derives from New York child labor statutes aimed at stopping altogether children working in prohibited jobs (*see People ex rel. Price v Sheffield Farms-Slawson-Decker Co.*, 225 NY 25 [1918] [Cardozo, J.]). The federal Fair Labor Standards Act also adopted this "suffer or permit" language (29 USC § 203[g]), and courts interpret the scope of individual liability very broadly under that statute. (*Infra* Part II.)

It is thus well settled under the Labor Law that whether a person is an employer depends on the economic reality of that person's relationship with the workers—not on the corporate formalities examined in the common law agency test, or the piercing-the-corporate-veil test (*see* New York Department of Labor Opinion Letter, File No. RO-II-0002, Feb. 8, 2011 (hereinafter, "DoL Opinion Letter"); *Wong v. Yee*, 262 AD2d 254, 255 [1st Dep't 1999]). The broader scope of the Labor Law's protection is essential to ensure that those in a position to know of the work being performed and to set hours and pay do so lawfully and be held accountable when they exploit low-wage workers, even if they are individuals (or corporations, including foreign corporations, who do not acknowledge themselves to be employers).

Individuals like the defendant in this case must be and have been included in this broad definition of employer, because too many corporate employers owing wages seek to evade judgment by pleading poverty, while wages taken unlawfully from the underpaid workers become profits to another individual or entity. Without a broad definition of "employer," the employees are left without redress.

Some examples of the importance of the economic reality test from our experience include:

- Restaurant workers, employed at a restaurant run by a single individual under three different corporate names, sued to recover unpaid tips and overtime. They worked up to 12 or 15 hours per day for an average hourly wage of about $2.00 per hour. The boss hired, fired, set schedules, and paid the employees in cash. The court held him individually liable as an employer under the New York Labor Law.[2]

- Restaurant employees, working up to fourteen hour days, six days a week, sued to recover unpaid overtime and the 35% of their tips that restaurant management took unlawfully. The foreign parent company, whose executives directed the New York restaurants' operations and personnel decisions, attempted to escape liability, but plaintiffs argued that the parent company was liable as an employer under the economic reality test and the matter settled.[3]

[2] (*Hernandez v Punto y Coma Corp.*, 10 CV 3149, 2012 WL 3241131 [ED NY June 13, 2012] *report and recommendation adopted*, 10-CV-3149, 2012 WL 3249881 [ED NY July 31, 2012]).

[3] The settlement was confidential but *amici* counsel have knowledge of the facts.

- A nail salon employee, fired after 16 years because she asked for legally required meal breaks, won back pay and over $25,000 in unpaid overtime. Two corporate defendants failed to pay or respond to subpoenas, but two owners were held individually liable.[4]

- A large restaurant, whose owner personally oversaw the work, closed shop without paying dozens of its workers anything for their last pay period. The restaurant declared bankruptcy in Florida and the owner walked away with substantial personal assets.

If the courts had used the veil-piercing test that derives from tort and common law rather than the Labor Law with its particular definitional scope, redress for the violations described above would have been difficult or impossible. The well-settled economic reality test is most consistent with the statutory language and history of the Labor Law, and is consistently found in case law interpreting the Labor Law.

ARGUMENT

I. THE ECONOMIC REALITY TEST PROPERLY APPLIES THE BROAD LANGUAGE IN THE STATUTE AND IS NECESSARY FOR AN EFFECTIVE REMEDY FOR VIOLATIONS OF THE LABOR LAW

The purpose of Labor Law Article VI is "to strengthen and clarify the rights of employees to the payment of wages" (*Angello v Labor Ready, Inc.*, 7 NY3d 579, 583 [2006][citation omitted]). Article VI imposes obligations on any "person, corporation, or association" who employs an employee (Labor Law § 190[6]). The statute defines an employer as "the person employing any

[4] *Do Yea Kim v 167 Nail Plaza*, 05 CV 8560 (SD NY)

[employee] whether the owner, proprietor, agent, superintendent, foreman or other subordinate" (Labor Law § 2[6]). It defines "employed" to include "permitted or suffered to work" (Labor Law § 2[7]). It is intended to sweep broadly, and to include individuals where they are found to be an "employer" as defined under the law (*see infra* Part II).

Law without enforcement has little value, and Section 198 of the Labor Law recognizes that either an employee or the Commissioner of Labor may bring a civil action against to remedy violations of Article VI. Section 198 of the Labor Law "reflect[s] a strong legislative policy aimed at protecting an employee's right to wages earned" (*P & L Group, Inc. v Garfinkel*, 150 AD2d 663, 664 [2d Dept 1989]). The legislature enacted the Labor Law with this policy in mind, and to accomplish that goal it codified the "permitted or suffered to work" definition—the broadest definition of employer that has ever been included in any Act [*see United States v Rosenwasser*, 323 US 360, 362 [1945] ("A broader or more comprehensive coverage of employees within the stated categories would be difficult to frame.")[5]]. *Amici* respectfully submit that the long-established economic reality test is needed to interpret this broad statutory definition to

[5] *Rosenwasser* discussed language in the Federal Fair Labor Standards Act that is substantially identical to (and drawn from the same source as, *see infra* Part II) the definition in Section 2(7) of the New York Labor Law (323 US at 362 ["[T]he term 'employ' is defined . . . to include 'to suffer or permit to work.']").

determine who is an "employer" subject to the fair pay obligations found in the Labor Law.

The economic reality test incorporates factors that echo the "suffered or permitted to work" definition and capture the situation facing low-wage workers who are attempting to enforce their right to wages earned. The Department of Labor has listed some of the factors that are relevant to the case at bar:

> [W]hether 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

(DoL Opinion Letter at 2 [quoting *Herman v RSR Sec. Servs. Ltd.*, 172 F3d 132, 139 (2nd Cir. 1999)]). These factors are illustrative, and no one factor is dispositive.[6] In any event, plaintiffs in this case have made a demonstration, more than sufficient to defeat a motion to dismiss, that defendant Vincent Au met each one of these factors, a showing that is more than necessary to establish his liability as an employer (Cespedes Aff. ¶¶ 2-8).

[6] *See, e.g. Rodriguez v. Metropolitan Cable Communications, Inc.*, 2011 N.Y. Slip Op. 33287(U), 2011 WL 6738850 (Sup Ct Qns Cty July 26, 2011) (either formal or functional control can suffice)*; Zheng v Liberty Apparel Co. Inc.*, 355 F3d 61, 69 (2d Cir 2003) (factors not exclusive).

While other factors may be important in the appropriate case,[7] factors like those enumerated in the DOL Opinion Letter impose liability on a person (or entity) who chooses to profit from an unlawful wage scheme. Thus, the longstanding economic reality test correctly accounts for factors relevant under a suffer or permit definition to make an individual or entity an "employer" within the meaning of the New York Labor Law, jointly and severally liable for its violation.

II. THE ECONOMIC REALITY TEST DERIVES FROM THE ORIGINAL PURPOSE OF NEW YORK LABOR LAW TO PROVIDE WORKPLACE PROTECTION BROADER THAN COMMON LAW

The Labor Law's broad definitions are rooted in New York's history of statutory labor and employment protection. This history led to the provisions that broke with the common law to define "employer" as including an "owner, proprietor, agent, superintendent, foreman or other subordinate" and "employed" as including "permitted or suffered to work" (Labor Law §§ 2[6], [7]). Beginning in the nineteenth century, legislators deliberately sought to reach beyond common law agency tests to protect vulnerable workers. New York set a standard ultimately followed by Federal law, as set forth in a comprehensive law review

[7] *See* Bruce Goldstein, Marc Linder, Laurence E. Norton, II, and Catherine K. Ruckelshaus, "Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment," 46 U.C.L.A. L. Rev. 983, 1136-46 (April 1999)(hereinafter "Enforcing Fair Labor Standards").

article detailing the history of the statutory departure from common law tests ("Enforcing Fair Labor Standards," *supra* n.3, at 1032-33).

For example, in 1881, New York enacted a statute providing that "[a]ny person who shall suffer or permit any child under the age of sixteen years to play any game of skill or chance in any place wherein, or adjacent to which, any beer, ale, wine or liquor is sold, shall be guilty of a misdemeanor" (*id.* at 1032, citing Act of June 13, 1881, ch. 496, sec. 2, 1881 N.Y. Laws 669, 669). A few years later, the legislature used the suffer or permit language to regulate the employment of women and children in manufacturing (*id.* at 1032-33, citing Act of May 18, 1886, ch. 409, sec. 4, 1886 N.Y. Laws 629, 629). New York reformers also included the suffer or permit language to regulate labor by women and children in the early years of the 20th century. This language eliminated the "easy evasions" of existing law to hold owners liable regardless of their formal relationship to the worker employed under unlawful conditions (*id.* at 1033).

Judge Cardozo's decision in *People ex rel. Price v Sheffield Farms-Slawson-Decker Co.*, 225 NY 25 (1918), continues to set a national standard. (*See, e.g., Zheng*, 355 F3d at 78) In *Sheffield*, Judge Cardozo held that a milk factory owner could not escape liability for unlawful child labor simply by claiming the children were employed by his drivers rather than him. The Court held that the owner of the business "must neither create nor suffer in his business the prohibited

conditions" and that "[w]hat is true of employment, must be true of the sufferance of employment (*Bond v. Evans*, L. R. 21 Q. B. D. 249)." *Sheffield*, 225 NY at 29-30. The Court interpreted the suffer or permit to work language to apply to the owner directly regardless of what person or entity hired the children at issue.

In sum, the Labor Law's broad language that defines an employer as "the person employing any [employee] whether the owner, proprietor, agent, superintendent, foreman or other subordinate" (§ 2[6]), and includes "permitted or suffered to work" (§ 2[7]), was crafted many years ago to bring all responsible within its coverage. We urge the Court to follow Judge Cardozo and reject the narrow limitation of liability that petitioners urge, preserving the "economic reality" test that follows this long established statutory language.

III. THE PIERCING THE CORPORATE VEIL TEST THAT RESPONDENTS ADVOCATE DOES NOT ALLOW EFFECTIVE ENFORCEMENT OF THE NEW YORK LABOR LAW

A. "Piercing the Corporate Veil" Is Not the Appropriate Test for Employment Under Statutes with a Suffer or Permit Definition

The New York Labor Law thus incorporated the economic reality test as an aid to interpreting its broad statutory definition of "employer," which differs from the common law test, often characterized as a "piercing-the-corporate-veil" test. Generally, the veil-piercing test requires a showing that "(1) the owners exercised complete domination of the corporation *in respect to the transaction attacked*; and (2) that such domination was *used to commit a fraud or wrong against the*

plaintiff which resulted in plaintiff's injury" (*Morris v New York State Dept. of Taxation and Fin.*, 82 NY2d 135, 141 [1993]), emphasis added). This test, like the economic reality test, recognizes that the underlying reality of control may not match formal designations. Piercing the corporate veil, however, derived from tort and common law as an exception to the general rule of corporate liability and therefore focuses on abuse of the corporate form rather than ability to control wage violations (*see Shisgal v Brown*, 21 AD3d 845, 848 [1st Dept 2005]). It is after a different kind of wrongdoing—relevant to investors rather than workers—and the laws that use it describe a completely different scope and violations. The veil-piercing test does not impose liability on all "employers," as the Labor Law requires.

The veil-piercing factors related to general corporate governance, such as voting, capitalization, and the like, do not bear on whether a person is an "employer" who must follow the requirements of Article VI of the New York Labor Law. The specific factors that this court has explained warrant veil-piercing include:

> (1) the absence of the formalities and paraphernalia that are part and parcel of the corporate existence, i.e., issuance of stock, election of directors, keeping of corporate records and the like, (2) inadequate capitalization, (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes, (4) overlap in ownership, officers, directors, and personnel, (5) common office space, address and

> telephone numbers of corporate entities, (6) the amount of business discretion displayed by the allegedly dominated corporation, (7) whether the related corporations deal with the dominated corporation at arms length, (8) whether the corporations are treated as independent profit centers, (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group, and (10) whether the corporation in question had property that was used by other of the corporations as if it were its own

(*id.* [quoting *Passalacqua Bldrs. v. Resnick Devs. S.*, 933 F2d 131, 139 (2d Cir.1991)]). Such inquiries about corporate finance shed little or no light on whether an individual has the power to control work hours or pay. The economic reality test better details the factors, concerning work and pay, applicable to the violations in the Labor Law and the proper scope of those responsible for its violation.

By making any "person, corporation, or association" who employs an employee liable (Labor Law § 190[6]), the Labor Law dispenses with a veil piercing analysis. Any person who permits or suffers another person to work is to be jointly and severally liable with any corporate employer for any wage and hour violations.

B. Other Laws Recognize the Need for a Different Labor Law Test

The Business Corporation Law provides additional remedies to certain workers (*see* N.Y. Bus. Corp. L. § 630; *Wong*, 262 AD2d at 255 [dismissing BCL

§ 630 claim but holding that individuals may be liable as employers under New York Labor Law]), but is not a comprehensive alternative to the economic reality test. Under this law, the ten largest shareholders of a closely-held, New York corporation are liable for unpaid wages (*id.*). This remedy complements but does not supplant the remedies under the Labor Law.

Recognizing the special status of wage debts, Business Corporation Law § 630, like the Labor Law's definition of "employer" (Labor Law § 190[6]), was "designed to . . . provide a safeguard for employees who would otherwise be left without recourse in the event of the corporation's insolvency" (*Sasso v Vachris*, 66 NY2d 28, 31 [1985]). This provision provides an important supplement to the Labor Law in the case of closely-held, New York corporations. However, because the provisions are not coextensive, the Business Corporations Law provision does not substitute for the Labor Law provision. Just as the Employee Retirement Income Security Act (ERISA) does not preempt Business Corporation Law § 630 (*id.*), Business Corporation Law § 630 does not preempt the Labor Law's definition of "employer" and the economic reality test.

While this provision demonstrates New York's recognition of the differences between workers and general creditors, it is not in itself sufficient protection. First, Business Corporation Law § 630 does not apply to other entities, such as publicly-traded companies, or to entities not structured as

corporations, like limited liability partnerships. Second, it provides no protection to New York employees of foreign corporations (*Stuto v Kerber*, 18 NY3d 909 [2012]). Finally, it requires notice of the claim to the shareholders within a very short 180-day time frame, far shorter than the Labor Law's six-year statute of limitations (*Wong*, 262 AD2d at 255). In Business Corporation Law § 630, the legislature provided a limited additional remedy for certain employees, but to receive full protection against unlawful wage schemes workers also need the New York Labor Law's broader economic reality test to define an "employer."

CONCLUSION

In the experience of *amici* New York-based worker advocacy groups, the decades-long rule of holding an employer liable under the economic reality test, rather than the more restrictive piercing the corporate veil standard, is essential to effective enforcement of the provisions of Article VI of the New York Labor Law. Anyone, whether an individual or a corporation, who holds all or most of the authority examined in each of the factors of the economic reality test is, in our experience, an "employer" who is able to control whether workers are paid according to the law, and who should be held accountable if they are not. We urge the Court to reverse the contrary decision below.

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