SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Arthur F. Engoron **PART 37**
Justice

GENDRI CASTILLO, et al.,

Plaintiffs,

- v -

BNV HOME CARE, et al.,

Defendants.

INDEX NO. 650726/13
MOTION DATE 7/9/13
MOTION SEQ. NO. 001

The following papers, numbered 1 to 3, were read on this motion to dismiss.

	PAPERS NUMBERED
Moving Papers	1
Opposition Papers	2
Reply Papers	3

In this action, plaintiffs claim that their former employers underpaid their wages. Defendants now move to dismiss, pursuant to CPLR 3211(a) (1) (albeit not mentioned in their notice of motion) and (5), on the grounds of a defense founded upon documentary evidence and release. For purposes of this brief opinion, this Court will assume that all plaintiffs signed releases. The opposition to the motion argues, among other things, that the releases are inoperative because they were obtained by fraud, because they are unconscionable, and because New York State Labor Law wage claims cannot be waived, released, etc. The fraud claim is essentially that plaintiffs were tricked into coming to defendants' office by false pretenses; that they were told they had to sign documents to obtain checks for money they were owed (in at least one case, for a "bonus"); that they do not understand English; that they were not given time to think or consult about the documents defendants presented to them; that they did not realize that they were signing releases; and that they would not have done so had they known the true story.

The instant motion is, narrowly, denied. This Court generally looks askance at claims that releases were obtained by fraud; adults should not sign documents the contents of which they do not understand (albeit the Court does not want to countenance sharp practices). However, given the totality of the circumstances here, and assuming the truth of plaintiffs' affidavits, this Court believes that the better practice is to allow this case to proceed to summary judgment or trial. Substantial rights should not be subverted by an alleged "bait and switch."

Having concluded the foregoing on the fraud issue, the Court need not and does not address the other arguments, except to note that unconscionability is a high hurdle, and defendants apparently have a strong legal argument that New York State Labor Law wage claims can be released (this Court being a strong advocate for the settlement of claims).

Thus for the reasons set forth herein, the instant motion is denied.

Dated: October 17, 2013

Arthur F. Engoron, *J.S.C.*

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION
Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
DATED: J.S.C.