

BLOGS

Employment

North Carolina Federal Court Partially Grants Franchisor's Motion for Summary Judgment on Joint Employer Claims

A federal court in North Carolina granted in part and denied in part a franchisor's motion for summary judgment because the franchisee's owner and her employee-spouse could not demonstrate that they were jointly employed by their franchisor. *Elsayed v. Family Fare LLC*, 2020 WL 4586788 (M.D.N.C. Aug. 10, 2020). We previously reported on the court's denial of the franchisor's motion to dismiss in Issue 251 of The Franchise Memorandum. Family Fare entered into a franchise agreement for a gas station convenience store with Almy, LLC, a company owned by plaintiff Lola Salamah and which employed plaintiff Amro Elsayed. Family Fare's business consultant, Pilcher, served as a day-to-day liaison with Almy. Pilcher discovered that a store clerk had stolen thousands of dollars of lottery tickets from the convenience store. When Salamah could not repay the company's share of the losses, Family Fare terminated the franchise agreement. Salamah and Elsayed then each sued Family Fare asserting claims for unpaid overtime under the Fair Labor Standards Act, discriminatory firing under Title VII, racially discriminatory contractual interference pursuant to 42 U.S.C. § 1981, and other claims relating to wrongful eviction. While the court denied Family Fare summary judgment as to the wrongful eviction and other related claims, it granted the motion with regard to the FLSA, Title VII, and Section 1981 claims.

Both the FLSA and Title VII claims turned upon the court's finding that Family Fare was neither Elsayed nor Salamah's employer. The court began by recognizing that the Department of Labor's 2020 rule establishing a new joint employer standard was inconsistent with a previous decision of the Fourth Circuit Court of Appeals, and therefore refused to apply DOL's new joint employer rule. The court concluded, however, that even if it were to apply the new standard, the outcome would not change its determination. First, the court recognized that most courts have not imposed joint employer liability on franchisors and that no court had imposed joint employer liability on a franchisor in the FLSA context. Next, the court evaluated a number of factors to assess whether joint employer liability attached to Family Fare. Looking at control, the court determined that even though Pilcher acted on behalf of Family Fare at Almy's store on a regular basis, his role related to enforcing brand standards and not extensive control over workers' daily experiences. Family Fare neither had the ultimate authority to hire or fire any employees of the store, nor did it control payroll and taxes of Almy's employees. Similarly, Salamah was Family Fare's independent contractor, and not its employee, because she controlled the key aspects of her work such as her

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schedule, she determined her store's profits and losses, she maintained a managerial role which required significant skills, and she considered herself the employer of the workers at the store. Lastly, Elsayed was unable to prove the Section 1981 claim, because even if the evidence showed that Pilcher had a discriminatory attitude, it did not show that Pilcher had authority to terminate the franchise agreement.