

Second Circuit Imposes Individual Liability on New York Mayoral Candidate for Fair Labor Standards Act Settlement

SheppardMullin

Article By

[Kevin J. Smith](#)

[Brian D. Murphy](#)

[Sheppard, Mullin, Richter & Hampton LLP](#)

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On July 9, 2013, the United States Court of Appeals for the Second Circuit issued its opinion in ***Torres et al. v. Gristedes Operating Corp. et al.***, Case No. 11-4035, affirming the Southern District of New York's imposition of individual "employer" liability on New York City mayoral candidate and supermarket owner and executive John Catsimatidis for settlement payments arising from a Fair Labor Standards Act ("FLSA") class action litigation. The issue the Court faced was whether Catsimatidis was an "employer" within the meaning of Section 203(d) of the FLSA or Section 190(3) of the New York Labor Law ("NYLL").

The case began in 2004 when a putative class of Department Managers and Co-Managers working at Gristedes Supermarkets sued various corporate and individual defendants, contending, *inter alia*, that they were misclassified as exempt under the FLSA and NYLL and improperly denied overtime. After two years of litigation, the District Court granted the plaintiffs' motion for summary judgment concerning liability and scheduled a hearing to determine damages. On the eve of the hearing,

the parties agreed to settle the matter for \$3.5 million, with \$425,000 paid up front, and 27 monthly installments thereafter.

The corporate defendants defaulted on their payment obligations under the settlement and sought to have it modified. The District Court denied their request and the plaintiffs moved for partial summary judgment seeking the ability to enforce the settlement against Catsimatidis personally. The District Court granted the motion on the grounds that Catsimatidis exercised significant control over the operations of the Gristedes Supermarkets and thus qualified as an “employer” under the FLSA and NYLL.

On appeal, Catsimatidis stressed that he was a high-level executive – chairman, president and chief executive officer – who made only general corporate or symbolic decisions, and argued that an FLSA “employer” must exercise decision-making in a “day-to-day” capacity. The Court agreed insofar as it stated that “[e]vidence that an individual is an owner or officer of a company, or otherwise makes corporate decisions that have nothing to do with an employee’s function,” is insufficient to demonstrate ‘employer’ status.” However, the Court stressed the breadth of the FLSA and its remedial purposes and endorsed an “operational control” and “totality of the circumstances” test to determine whether an individual owner or officer is an “employer.” Continuing, the Court held, that “a person exercises operational control over employees if his or her role within the company, and the decisions it entails, directly affect the nature of conditions of the employees’ employment.”

Reviewing the evidence, the Second Circuit held that Catsimatidis exercised “operational control” to such an extent that it affected the nature of the plaintiffs’ employment. Specifically, the Court found that in addition to making general managerial decisions, Catsimatidis visited the stores with frequency, interacted with managers, made changes to local promotions and marketing strategies, and held ultimate responsibility for decisions with respect to the plaintiffs’ wages. That he made decisions with respect to some of these more granular matters “only occasionally” was of no moment, in the Second Circuit’s view, given his overall control of the company. Accordingly, the Court held that he qualified as an “employer” within the meaning of the FLSA and was therefore personally responsible for the outstanding settlement payments. The Court remanded the issue of whether Catsimatidis was an “employer” within the meaning of the NYLL to the District Court finding that the District Court did not sufficiently explicate its decision in that regard.

The decision is notable for its expansive definition of the term “employer” under the FLSA, though not cause for alarm for employers. According to the evidence before the Court, Catsimatidis exercised far more control over managerial decisions directly affecting the employment of the plaintiffs than a typical owner or executive. Further, the Court only reached the issue because the corporate defendant defaulted on the settlement agreement. Nevertheless, District Courts within the Second Circuit may apply this analysis in other contexts that may give it more teeth.

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