IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JULIO REYNOSO, **LUIZ GONZALEZ**, and **MANUEL GONZALEZ**, on behalf of themselves and all other plaintiffs similarly situated, known and unknown,	)	
Plaintiffs,	)	
v.	)	Case No. 13 C 5004
MOTEL LLC, an Illinois Limited Liability Company, d/b/a **MOTEL BAR**, and **HERBERT GREENWALD**, an individual,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Julio Reynoso, Luis Gonzalez and Manuel Gonzalez have sued their employer Motel LLC ("Motel") and its managing member, Herbert Greenwald ("Greenwald"), charging that Motel and Greenwald violated the Fair Labor Standards Act ("FLSA," 29 U.S.C. §§ 201 et seq.[1]) and the Illinois Minimum Wage Law ("Wage Law," 820 ILCS 105/1 to 105/15) by failing to pay them overtime. Plaintiffs now move for summary judgment on all counts under Fed. R. Civ. P. ("Rule") 56. Defendants admit Motel's liability but argue that Greenwald is not individually liable, that liquidated damages should not be assessed under the FLSA because defendants acted reasonably and in good faith, that any violations of the FLSA were not willful or in bad faith and that plaintiffs' damages calculation is incorrect.

[1] All further references to the FLSA will take the form "Section --," using the Title 29 numbering rather than the statute's internal numbering.

For the reasons stated below, plaintiffs' motion is granted as to Greenwald's liability and as to liquidated damages but denied as to defendants' purported willfulness. As for the calculation of damages, this Court finds that defendants have not raised any issue of fact as to the amount owed to Luis Gonzalez (apart from the willfulness question) or as to the amount owed to Manuel Gonzalez, but they have put the amount due to Reynoso in dispute. Accordingly plaintiffs' motion is granted in part and denied in part as to damages.

Factual Background

What follows is a summary of the undisputed (except where noted) facts.[2] Motel operates a bar and restaurant where Manuel and Luis Gonzalez work currently (P. St. ¶¶ 23, 33) and where Reynoso worked until July 9, 2013 (P. St. ¶ 48). All three regularly worked many more than 40 hours per week (P. St. ¶¶ 25, 28, 34, 49). Motel did not pay plaintiffs at the statutorily mandated overtime rate of 1-1/2 times the regular rate of pay for plaintiffs' work in excess of 40 hours per week[3] until plaintiffs filed this lawsuit in June 2013 (P. St. ¶¶ 30, 45, 61).

Greenwald is the managing member of Motel LLC and had ultimate authority over plaintiffs' work and wages throughout the relevant time period of June 30, 2010 through June 30, 2013 (Greenwald Dep. at 28:9-28:11, 32:19-36:17). Robert Van Bruggen ("Van Bruggen") was Motel's financial manager and bookkeeper during that time, and he shared with Greenwald the

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[2] LR 56.1 requires parties to submit evidentiary statements and responses to such statements to highlight which facts are disputed and which facts are agreed upon. This opinion identifies plaintiffs' and defendants' respective submissions as "P." and "D." followed by appropriate designations: LR 56.1 statements as "St. ¶ --," responsive statements as "Resp. St. ¶ --," and memoranda as "Mem.--," "Resp. Mem.--" and "Reply Mem.--."

[3] Both the FLSA and the Wage Law mandate that overtime payment (Section 207(a)(1) and 820 ILCS 105/4a(1)).

responsibility for paying Motel's employees (D. St. ¶ 13).[4] Matt Sokol ("Sokol") was Motel's general manager, with responsibility for overseeing non-kitchen staff and reporting all employee work-hours to Van Bruggen (P. St. ¶ 9, D. St. ¶ 4). Reynoso was the kitchen manager, although the parties dispute the extent to which his duties were really managerial (P. Resp. St. ¶ 5). Luis and Manuel Gonzalez were kitchen workers (P. St. ¶ 10).

Greenwald and Sokol attested, and plaintiffs dispute, that Van Bruggen was solely responsible for the decisions (1) not to pay plaintiffs overtime and (2) to pay them partially in cash so as to avoid reporting their hours accurately to public authorities (D. St. Ex. A ¶¶ 12-13, Ex. B ¶¶ 14-16). Defendants assert that Van Bruggen's actions on that score were just one part of a scheme, born out of personal hatred for Greenwald, under which Van Bruggen intentionally mishandled Motel's finances -- either to drive down Motel's value so that he could purchase it or to revenge himself on Greenwald for obscure reasons (D. Resp. Mem. 8-9). Plaintiffs point to sworn statements of their own that Greenwald, not Van Bruggen, instituted the part check, part cash payment system (P. Resp. St. Ex. C ¶ 12, Van Bruggen Dep. at 18:15-19:6).

As for Reynoso, he was also responsible for cleaning in addition to his work cooking and managing the kitchen (P. St. ¶ 49). He did that every day (all seven mornings each week) and was paid a flat weekly fee of $250 in cash for cleaning, a payment that was over and above his hourly pay for kitchen work (P. St. ¶ 60). It is unclear how much time Reynoso spent in cleaning each week: He attested that he spent about 14 hours a week on that work (P. St. Ex. C ¶ 7),

[4] Defendants' attempts to relieve Greenwald of liability on the theory that he delegated his authority over employee wages to Van Bruggen (e.g., D. Resp. St. ¶¶ 7-8) are unavailing, as will be seen.

while a fair reading of defendants' confused submissions is that that Motel's hodgepodge of wage records reflects the true amount of time that Reynoso spent in cleaning.[5]

Legal Standard

Every Rule 56 movant bears the burden of establishing the absence of any genuine issue of material fact (Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)). For that purpose courts consider the evidentiary record in the light most favorable to nonmovants (here the defendants) and draw all reasonable inferences in their favor (Lesch v. Crown Cork & Seal Co., 282 F.3d 467, 471 (7th Cir. 2002)). Courts "may not make credibility determinations, weigh the evidence, or decide which inferences to draw from the facts" in resolving motions for summary judgment (Payne v. Pauley, 337 F.3d 767, 770 (7th Cir. 2003)). But a nonmovant must produce more than "a mere scintilla of evidence" to support the position that a genuine issue of material fact exists, and "must come forward with specific facts demonstrating that there is a genuine issue for trial" (Wheeler v. Lawson, 539 F.3d 629, 634 (7th Cir. 2008)). Ultimately summary judgment is warranted only if a reasonable jury could not return a verdict for the nonmovant (Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)).

[5] In response to plaintiffs' statement that Reynoso worked about 14.5 hours per week in cleaning, defendants aver that they "do not have information sufficient to either admit or deny" the statement (D. Resp. St. ¶ 58) -- a bastardized version of Rule 8(b)(5)'s pleading disclaimer that would be rejected as a Rule 56 submission even if it were framed properly. Defendants have also agreed to plaintiffs' statement that Reynoso "averaged" 14 hours per week in his cleaning work (D. Resp. St. ¶ 49). This Court might essay to treat those responses as totally sinking defendants' effort to dispute Reynoso's estimate of the hours that he spent in cleaning (Rule 56(e)(3)). But defendants are saved by a footnote in their memorandum (D. Resp. Mem. 15 n.9) that refers to a separate attestation from Greenwald that Reynoso clocked in when he cleaned, so that Motel's time logs accurately record the hours Reynoso actually spent cleaning before his kitchen shift started at 9:30 a.m. (Greenwald Dep. at 40:22-41:6).

Is Greenwald an Employer?

Plaintiffs and defendants first lock horns over Greenwald's status: Does he qualify as an "employer" under the FLSA -- so that he can be held personally liable to plaintiffs -- or not?[6] Certainly the FLSA's definition of "employer" is capacious: "any person acting directly or indirectly in the interest of an employer in relation to an employee" (Section 203(d)). That is an invitation for courts to consider the full spectrum of "economic realities" in determining whether a particular individual is an employer within the FLSA meaning (see Reyes v. Remington Hybrid Seed Co., 495 F.3d 403, 407-09 (7th Cir. 2007) for a thorough exploration of the so-called economic realities "test"). And the statute includes "an individual" in its definition of "person" (Section 203(a)).

Hence there is no question that an individual such as Greenwald can be liable for FLSA violations. Joint liability, in which more than one employer is liable for the same underpayment of wages, is also contemplated by the FLSA (see generally Section 791.2). Thus, as Donovan v. Agnew, 712 F.2d 1509, 1511 (1st Cir. 1983) (citing numerous cases) said some 30 years ago:

> The overwhelming weight of authority is that a corporate officer with operational control of a corporation's covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages.

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[6] As for the Wage Law, it uses essentially the same definition of "employer" as the FLSA (see 820 ILCS 105/3(c)). Because the Illinois Supreme Court appears never to have addressed the meaning of "employer" head-on, this opinion's analysis of the term within the meaning of the FLSA will hold for the Wage Law too. As Lewis v. Giordano's Enters., Inc., 397 Ill. App. 3d 581, 588, 921 N.E.2d 740, 746 (1st Dist. 2009) teaches in that respect:

> Therefore federal cases interpreting the FLSA, while not binding on this court, are persuasive authority and can provide guidance in interpreting issues under the Wage Law.

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