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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

NOTIFIED
3/2/23
NOTICE SENT
BA (4)
44
SUPERIOR COURT
CIVIL ACTION NO. 1984CV2690

SAKIROH TRAN, ABBY HERMANSON, Individually and on behalf of others
similarly situated,

v.

HERB CHAMBERS 1172, INC. & others¹

FINDINGS OF FACT, RULINGS OF LAW, AND
MEMORANDUM OF DECISION AFTER NON-JURY TRIAL

The case was tried without a jury by agreement of the parties to address the limited issue of whether Defendant Herb Chambers 1172, Inc. d/b/a Herb Chambers BMW and Mini of Boston and Defendant Jennings Road Management Corp. were joint employers of Plaintiff Sakiroh Tran.

The Court makes the following findings of fact based on the credible evidence presented at trial on January 25, 2023, and the following rulings of law:

During the trial, the court heard from three witnesses – Sakirah Tran, Natacha Noailles, and Bradford Gomes. During the course of the trial, the parties entered twenty-three (23) exhibits, which the Court has reviewed and considered.

Findings of Fact

Plaintiff Sakiroh Tran (“Plaintiff”) works as a parts advisor at Defendant Herb Chambers 1172, Inc., d/b/a Herb Chambers BMW and Mini of Boston (“the Dealership”). She has worked there for approximately seven years. Her duties

¹ Jennings Road Management Corp., Herbert Chambers, James Duchesneau, and Alan McLaren

include assisting customers and technicians with obtaining parts for their vehicles. She also helps with invoicing. She was previously employed at Herb Chambers Porsche in Boston as a receptionist. She got the job at the Dealership as a result of a good rapport she had with her current manager at the Dealership, John Egan ("Egan"). She asked Egan if he was hiring in his department. Ultimately, she interviewed for her current position and was offered the job. Egan informed Plaintiff what her compensation at the Dealership would be. After she was hired, Plaintiff signed an Employee Acknowledgment Form. A form entitled Compensation Plan was executed September 18, 2015. This states that Plaintiff's salary was \$14.00 an hour and there was "no overtime unless approved". (Exhibit #10). That form was signed by the Department Manager, the General Manager, and Plaintiff. Under the "employee signature" there is a space for a "Jennings's Road" signature. That space is unsigned.

Defendant Jennings Road Management Corporation ("JRM") is a corporation that does business in Massachusetts. Defendant Herbert G. Chambers ("Chambers") is a shareholder, the president, the treasurer, and the sole director of JRM. Chambers is also the Dealership's president and owner. No one at JRM was directly involved in Plaintiff's hiring.

In January 2016, Plaintiff signed an Employee Acknowledgment Form. (Exhibit #14) Included in the language of the form is a passage regarding her employment terms. Specifically, it states, "I have entered into my employment relationship voluntarily and acknowledge that there is no specific length of

employment. Accordingly, either the Dealership or I can terminate the relationship at will, with or without cause, at any time”.

Another compensation plan was executed on September 1, 2016 and again there is a space for the signature of a JRM representative, and that space is unsigned. (Exhibit #11). On July 22, 2018, a pay plan form was executed. This document was again signed by Plaintiff and Egan. There is a space for a signature from a JRM representative, and that space is unsigned. (Exhibit #12). On November 11, 2019, a Compensation Plan was executed. (Exhibit #13). This document does not mention JRM or have a space for a representative’s signature.

Egan is still Plaintiff’s current supervisor, and his job title is parts manager. Egan’s supervisor is Matt Krappe (“Krappe”), the service director. The Dealership manager, who is in charge of all of them, is Melissa Steffy (“Steffy”). Natacha Noailles (“Noailles”) is the controller of the Dealership. Plaintiff would go to Noailles if she had to change her health insurance or discuss FMLA leave.

Plaintiff’s salary is currently a combination of a base salary, commission, and overtime pay (if applicable). Her paycheck is from the Dealership. The payroll service is ADP. There is an “app” that employees can utilize to access their payroll records. Through the same app employees can access policies that can be electronically signed, an employee handbook, and tax forms. In addition to a salary, Plaintiff receives benefits such as health and dental insurance. Those are offered through Herb Chambers. She also participates in a 401(k) plan. On Plaintiff’s W-2 forms, her employer was identified as Herb Chambers BMW of Boston.

Plaintiff has interactions with other Herb Chambers dealerships regarding the purchase of parts. Typically, she prepares the order for the other dealership, and when someone came to pick up the order, the account would already be charged. Plaintiff is unsure how the payment worked.

It is Plaintiff's understanding that all employees of Herb Chambers can use a 20% off discount for parts from a Herb Chambers location. The uniform that Plaintiff wears is a tech uniform with a Herb Chambers BMW logo on it. One of Plaintiff's coworkers from Herb Chambers BMW, a parts advisor, was asked to work at the Herb Chambers Medford location. Herb Chambers Companies have a Master of Excellence awards ceremony at the end of the year, and it is Herb Chambers Company-wide. Herb Chambers Company and JRM are both located in Somerville.

No one from JRM was involved in setting the Plaintiff's work schedule. Plaintiff spoke to Egan regarding her pay rate and any subsequent raises and Steffy had to sign off on that, as well.

Noailles has been employed as a controller for JRM since 2006. She is the controller for multiple dealerships, including Herb Chambers BMW/Mini/Porsche Boston, Herb Chambers Boston and Herb Chambers Medford. She visits those various dealerships weekly or every two weeks. Her duties as controller include producing a monthly financial statement for each of her dealerships. The software that is used to produce the financial statement, called CDK, is software that is used by all the dealerships and other Herb Chambers Companies. The financial statement she prepares is a financial snapshot of a particular dealership at a

particular time. That report is done monthly and is sent to JRM corporate office. She is also responsible for handling some human resource matters for the dealership employees - for example, she talked to Plaintiff about her request for some FMLA leave. Noailles produced paperwork to Plaintiff that Noailles received from JRM lawyers. The dealership employee records are kept at the dealership, with the accounting office, and are accessible to Noailles. Plaintiff would receive e-mails from Noailles if there was a change in policy or procedure within the company. For example, Plaintiff received correspondence on December 29, 2022 from Herb Chamber BMW, signed by Noailles as Controller. (Exhibit #2). This correspondence was about changes in the Massachusetts wage law effective January 1, 2023.

The employee handbook received by Plaintiff is the same employee handbook provided to the employees of JRM. The employee handbook is drafted by JRM attorneys. This handbook is entitled "Employee Handbook" and "The Herb Chambers Companies," with a date of June 2020 on it. The handbook has approximately thirty-four (34) different motor vehicle emblems on it, such as BMW and Porsche. This is the employee handbook for the employees of all of the dealerships of the Herb Chambers Companies, which is the d/b/a name for JRM. The handbook sets out such things as how long an employee must work before he/she is permitted a break. It states, in part, that "Employees may be expected to work overtime in case of emergency or when necessary, in the best interests of the Dealership." (Exhibit #2, page 12 of handbook). It also discusses access to human resource files. The handbook states, in part, that "[T]he record must be reviewed at

the Dealership.” (Exhibit #2, page 11 of handbook). It also lays out vacation eligibility, vacations, and vacation pay. Pursuant to Section 1 of the handbook entitled “Equal Employment Opportunity,” it states, in part, “[q]uestions and/or reports concerning equal opportunity should be directed to: James Duchesneau, the Herb Chambers Companies, 259 McGrath Highway, Somerville. . . [and] Denise Devoe [same address]”. (Exhibit #2, page 6 of the handbook). The information provided is for employees of the Herb Chambers Company, which is the d/b/a of JRM. It is clear that this handbook sets up uniformity amongst all of the dealerships and JRM.

One notable portion of the handbook is the Welcome Letter. (Exhibit #2, page 1 of handbook). The Welcome Letter is authored by Chambers as the “Chairman and President”. The letter does not identify what is the president of or what “Chairman” refers to. There was no mention of that term/title anywhere else in the evidence. The term chairman (or chairperson in its gender-neutral form) is defined as “the presiding officer of a meeting, organization, committee or event.” See Chairperson, Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/chairperson>. Given, however, that the front page of handbook bears the name “The Herb Chambers Companies,” an employee could make a reasonable inference that Chambers authored the Welcome Letter as the President and Chairman of The Herb Chambers Companies – the d/b/a of JRM.

Payroll for the employees of the dealership are paid through ADP, just as all of the employees of all Herb Chambers dealerships and JRM. Noailles is responsible for training for the dealerships, such as sexual harassment training.

The JRM lawyers gave her potential dates for such training, and she would pick a date, then inform the employees of the dealerships. The sexual harassment policy contained in the employee handbook is standard across the board for JRM employees and employees of the dealerships. Other policies such as dress code are standard across the board for JRM employees and employees of the dealerships. Noailles and Plaintiff participate in the same 401(k) program. On the 401(k) account overview reports available to Plaintiff, the top right portion of the statement says "The Herb Chamber Companies Section 401(k) Plan." Employee benefits (for all the dealership and JRM employees), such as health insurance are negotiated by JRM, to get the benefit of a group rate. The payment for these benefits is made by the employees' dealership.

Noailles is not involved in the hiring process for parts advisors of the Dealership. She does, however, play a role in whether an employee is disciplined or written up in the course of their employment at the Dealership. The manager of the Dealership might ask her if a warning should be given if, for example, someone is frequently absent and Noailles would ask them to put something in writing and then document it.

If dealerships desire to make commercials, dealerships can run their own commercial that are specific to their brand and their makes and models. Chambers also runs branding commercials that are about the brand and customer service overall, but that is charged to the dealerships and paid for by the dealerships.

JRM reviews the pay plans for the employees of the Dealership for legal content and form, not generally in terms of hourly rates or structure. JRM wants

uniformity across the dealerships, so that one parts advisor does not make significantly more than another for the same service. JRM reviews and consults with the general managers of the dealerships regarding their expenses.

There is a Herb Chamber's Companies website that lists openings across the Herb Chambers Companies, across all the dealerships. Noailles is not involved in the hiring or firing of employees of the dealership, she may play a role in whether or not someone received a warning because they are, for example, frequently absent, or frequently late. This would involve her speaking to the general manager of one of her assigned dealerships.

Bradford Gomes ("Gomes") is the vice president of JRM. He provides support to dealerships owned by Chambers. He has worked for Herb Chambers Companies (a/k/a JRM) for twenty-four (24) years. There are a total of sixty (60) franchises/dealerships in Massachusetts. There is no franchise agreement between JRM and the dealerships. Chambers is the president of all the dealerships in the Herb Chambers Companies. Chambers hires and fires the general managers for all the dealerships. JRM reviews the monthly reports completed by Noailles, and others similarly situated employees, to see the profitability of each dealership. There is a Management Agreement between the Dealership (Herb Chambers BMW) and JMR that was executed on January 1, 2000 and renews every year. (Exhibit #17). The agreement outlines the services that JMR will provide to the dealership. JMR services, include, but are not limited to - accounting, employee benefits, banking, legal, insurance, and human resources.

Gomes described JRM as a management support consultation-type company that provides consultation services to the entities and dealerships that Chambers owns. This was done so that the dealerships Chambers owns run efficiently, effectively, and in a consistent and common way. JRM will review a dealerships total compensation to make certain that it is an appropriate percentage of sales or gross profit and that it is in line with industry standards. That information might then be discussed with the general manager.

JRM does not sell or lease vehicles, or sell automobile parts. JRM does not appear to have any assets, such as vehicles or dealerships.

Rulings of Law

In accordance with the foregoing findings of fact, the Court hereby issues the following rulings of law:

The Plaintiff contends that JRM is a joint employer of Plaintiff for purposes of the Massachusetts Wage Act. In interpreting the Massachusetts Wage Act, Massachusetts courts are guided by federal caselaw interpreting the Fair Labor Standards Act ("FLSA"). See *Whyte v. Suffolk County Sheriff's Department*, 2017 Mass. App. Unpub. LEXIS 565, *2 (2017) (Rule 1:28 decision) ("We are guided in the interpretation of our wage laws by Federal case law interpreting the Fair Labor Standards Act (FLSA)."). "The FLSA's definition of 'employee', 'employer,' and 'employ' are broad, and 'comprehensive enough to require [their] application to many persons and working relationship' that were not considered employment at common law." *Bah v. Enter. Rent-A-Car Co. of Bos. LLC*, 2020 U.S. Dist. LEXIS 212581 *18 (2020); *Baystate Alternative Staffing, Inc. v. Herman*, 163 F.3d 668, 675

(1st Cir. 1998), quoting *Rutherford Food Corp v. McComb*, 331 U.S. 722, 729 (1947). “Two or more employers may jointly employ someone for the purposes of the FLSA.” *Bonnette v. Cal. Health & Welfare Agy*, 704 F.2d 1465, 1469 (9th Cir. 1983). “All joint employers are individually responsible for compliance with the FLSA.” *Id.*, citing 29 C.F.R. §791.2(a) (1981); see also DOL Rule 29 C.F.R. §791.2(f).

Under a joint employment theory Plaintiff may bring a claim against an individual or entity who is not her ostensible employer if Plaintiff, as the employee, can demonstrate a link between the actual employer and the separate person or entity. “The basis of the [joint employer] finding is simply that one employer while contracting in good faith with an otherwise independent company, has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer.” *Jinks v. Credico LLC*, 488 Mass. 691, 699 (2021), quoting *Swallows v. Barnes & Noble Book Stores, Inc.*, 128 F.3d 990, 993 n. 4 (6th Cir. 1997); see 2 B. Lindemann & P. Grossman, *Employment Discrimination Law* 1312 (3d ed. 1996); see also *Boire v. Greyhound Corp.*, 376 U.S. 473, 481 (1964)(describing inquiry whether bus company had ‘sufficient control over the work of the employees’ of another company).

When applying the FLSA in determining whether an entity is a joint employer – one is an employer if it: “(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 work records.” *Baystate Alternative Staffing, Inc.*, 163 F.3d at 675. “The four factors . . . provide a useful framework for analysis . . . , but they are not etched in

stone and will not be blindly applied. *Jinks*, 488 Mass. at 703, quoting *Bonnette*, 704 F.2d at 1470. “[I]n deciding if a defendant is an ‘employer,’ the First Circuit has instructed the courts to ‘look[] . . . to the economic reality of the totality of the circumstances bearing on whether the putative employee is economically dependent on the alleged employer.’” *Bah*, 2020 U.S. Dist. LEXIS 212581, *19, quoting *Baystate*, 163 F.3d at 675 (internal quotations omitted).

Chambers, who is both the president of the Dealership and JRM, had the power to hire and fire the general manager of the Dealership, although not the employees under general manager. Now, whether Chambers has the power to hire and/or fire a general manager as the president of the Dealership or the president of JRM is unclear to this Court. Noailles, an employee of JRM who is physically working at dealerships, while not involved in hiring or firing, is involved in the decision making of whether or not someone is written up or disciplined. She also has the responsibility of setting up some trainings, such as the sexual harassment training which is set up and scheduled by JRM. Noailles is not responsible for setting Plaintiff's schedule or the schedule of other Dealership employees. JRM does have some say in the Dealership employee's salaries. JRM received monthly financial statements from the dealerships. Noailles, a JRM employee, prepared each month's statement for the Dealership and sent it to JRM. JRM representatives would review the monthly reports to see the profitability of each dealership. JRM might discuss with the general manager of a particular dealership their thoughts if payroll was more than it should be, based upon profits. So, although not directly involved in setting Plaintiff's salary there is evidence that

JRM played a role in determining the Plaintiff's rate of payment. The Dealership's employment records are accessible to JRM, through Noailles and through Chambers. JRM and the dealerships are intrinsically tied together. Chambers is the president of all of the dealerships, specifically his Dealership and JRM. JRM lawyers are responsible for the handbook for the employees of JRM and each of the dealerships. That handbook sets out important parts of employment such as breaks, vacation, and overtime.

Additionally, while no one at JRM actually signed the Compensation Plans and Payment Plan executed by the Plaintiff and her General Manager, there is a space for a representative of JRM to sign. This demonstrates that JRM plays some role in the compensation of employees, otherwise there would be no need to include the name on said forms.

In utilizing the four factors discussed in *Baystate Alternative Staffing, Inc.*, 163 F.3d at 675 and adopted by the Court in *Jinks*, 488 Mass. at 703, this Court finds that JRM was the Plaintiff's joint employer.

The Plaintiff makes mention in her proposed rulings to utilize the "integrated enterprise theory". Under this theory, two companies can be integrated to a degree that the management company "was liable for the conduct as a joint employer or under similar theories of liability for the conduct alleged in the complaint." *Joyce v. Upper Crust, LLC*, 2012 U.S. Dist. LEXIS 103101, *27 (D. Mass. July 25, 2012). The factors in determining whether two or more entities a single employer are: "(1) common management; (2) interrelation between operations; (3) centralized control

over labor relations; and (4) common ownership.” *Torres-Negron v. Merck & Co., Inc.*, 488 F.3d 34, 42 (1st Cir. 2007).

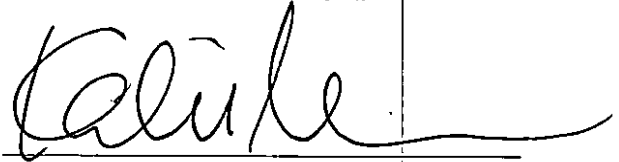
It is not clear that the “integrated enterprise test” has been adopted in Massachusetts or that it applies in the FLSA context. The Court in *Torres-Negron* did not apply this test in the FLSA context. There are a number of Federal cases (although not First Circuit) that do apply this test in the FLSA context (as well as several Massachusetts Superior Court matters). In *Bah v. Enter.Rent-A-Car Co. of Bos., LLC*, 2020 U.S. Dist. LEXIS 212581, the Court stated, in part, that the “integrated enterprise test” is used to determine Title VII liability, Family Medical Leave Act liability and FLSA jurisdictional coverage. *Id.* at *19; see, e.g., *Torres-Negron*, 488 F.3d at 41; *Engelhardt v. S.P. Richards Co.*, 472 F.3d 1, 4 n.2 (1st Cir. 2006); *Cavallaro v. UMass Mem’l Health Care, Inc.*, 971 F.Supp. 2d 139, 148 (D.Mass. 2013).

As this Court has found that JRM is a joint employer of the Plaintiff, this Court does not need to consider the “integrated enterprise test”. This Court would state, however, that should it consider the factors set out in *Torres-Negron*, 488 F.3d at 42, and should Massachusetts adopt this test and determine it is applicable in the FLSA context, it would find that JRM and the Dealership constitute an integrated enterprise.

Order for Partial Judgment

Based on these Findings of Fact and Rulings of Law, it is hereby **ORDERED** and **ADJUDGED** that Defendants Herb Chambers 1172, Inc. d/b/a Herb Chambers

BMW and Mini of Boston and Defendant Jennings Road Management Corp. were,
at all times relevant hereto, joint employers of Plaintiff Sakiroh Tran.

A handwritten signature in black ink, appearing to read 'Katie Rayburn', written over a horizontal line.

Katie Rayburn
Associate Justice of the Superior Court

Date: February 28, 2023