23-P-780 Appeals Court

SAKIROH TRAN vs. JENNINGS ROAD MANAGEMENT CORP. & others.[1]

No. 23-P-780.

Suffolk. February 8, 2024. – June 13, 2024.

Present: Vuono, Massing, & Toone, JJ.

Massachusetts Wage Act. Labor, Failure to pay wages, Overtime compensation. Motor Vehicle, Dealer. Words, "Joint employer."

Civil action commenced in the Superior Court Department on August 23, 2019.

The issue of joint employment was heard by Katie Rayburn, J., and entry of separate and final judgment was ordered by her.

Joshua M. Davis (Matthew P. Horvitz also present) for the defendants.
James W. Simpson, Jr. for the plaintiff.

TOONE, J. Claiming violations of the Massachusetts wage laws, the plaintiff, Sakiroh Tran, sued not only the car

[1] Herbert Chambers, James Duchesneau, and Alan McLaren. Defendant Herb Chambers 1172, Inc., is not a party to this appeal.

dealership where she works as a parts advisor, but also a company that has a management agreement with that dealership. Following a bench trial in the Superior Court, the judge concluded that the company is a joint employer of Tran under the totality of the circumstances test set forth in Jinks v. Credico (USA) LLC, 488 Mass. 691, 692 (2021), and therefore liable for any violations of the wage laws that Tran can prove. We affirm.

Procedural background. In 2019, Tran sued Herb Chambers 1172, Inc., doing business as Herb Chambers BMW and Mini of Boston (Chambers BMW or the dealership); Jennings Road Management Corp. (JRM); their president and owner, Herbert Chambers; and others on behalf of a proposed class of employees who were paid in whole or in part on a commission basis in the service and parts departments at the dealership and other dealerships owned by Chambers. Tran claims that proposed class members worked in excess of forty hours per week without receiving an overtime premium and were obligated to work on Sundays without receiving Sunday premium pay, in violation of G. L. c. 136, § 6 (50); G. L. c. 149, § 148; and G. L. c. 151, §§ 1, 1A, and 15 (collectively, the wage laws).

While the parties agree that the dealership is an employer of Tran, they dispute whether JRM is a joint employer. After limited discovery, the judge allowed the parties' joint motion to bifurcate the issue of joint employment for a bench trial.

After trial, the judge issued a detailed memorandum of decision in which she concluded that JRM is Tran's joint employer. Acting on the parties' joint motion, the judge directed the entry of separate and final judgment on the joint employer aspect of Tran's wage law claims pursuant to Mass. R. Civ. P. 54 (b), 365 Mass. 820 (1974) (rule 54 [b]). For the reasons set forth in the margin, however, we treat this appeal as having been reported for determination pursuant to Mass. R. Civ. P. 64 (a), as amended, 423 Mass. 1403 (1996) (rule 64 [a]).[2]

[2] The parties' joint motion requested the Superior Court judge either to report her interlocutory decision on the joint employment issue to this court pursuant to rule 64 (a), or, in the alternative, to enter separate and final judgment pursuant to rule 54 (b) on "Tran's claim that [JRM] is her joint employer and, therefore, strictly liable for violations of the Massachusetts Wage Act." The judge allowed the motion, entered a separate and final judgment pursuant to rule 54 (b), and stayed proceedings in the Superior Court. JRM and its executives filed a notice of appeal. Because the judge's decision on the joint employer issue did not involve the final adjudication of any of Tran's Massachusetts Wage Act claims as required by rule 54 (b), see Long v. Wickett, 50 Mass. App. Ct. 380, 385-386 (2000), we exercise our discretion to review the decision pursuant to rule 64 (a). See Institution for Sav. in Newburyport & Its Vicinity v. Langis, 92 Mass. App. Ct. 815, 818-819 (2018) (exercising discretion to review "fully briefed" question arising from interlocutory order, notwithstanding absence of report by trial judge). We agree with the parties that interlocutory review pursuant to rule 64 (a) is appropriate because the question of joint employment bears on class certification and the scope of discovery to follow, among other issues, and therefore "ought to be determined by the appeals court before any further proceedings in the trial court." Mass. R. Civ. P. 64 (a).

Factual background. We summarize the relevant facts as found by the judge, supplemented by the undisputed facts in the record and reserving some details for later discussion.

In Tran's position as a parts advisor at Chambers BMW, she assists customers and technicians with obtaining parts for their vehicles, creates invoices for sales of parts, processes payments, and fields calls from insurance companies and auto body shops regarding parts and repairs. JRM is a Connecticut corporation that is registered and does business in Massachusetts as "The Herb Chambers Companies." Chambers is the president, treasurer, and sole director of JRM. He is also the owner and president of sixty car dealerships in Massachusetts, including Chambers BMW.

In 2000, JRM and Chambers BMW executed a management agreement. Chambers signed the agreement for each party, as the president of JRM and the president of Chambers BMW. Under the agreement, which has been renewed each year since, JRM provides the dealership with accounting, legal, training, human resources, and other services. JRM negotiates and obtains insurance, commercial group benefits, and workers' compensation insurance for Chambers BMW, as well as for JRM itself and the other dealerships owned by Chambers so that it can get the benefit of a group rate. The retirement program available to

Tran and all other employees of JRM and all the dealerships is called "The Herb Chambers Companies Section 401(k) Plan."

Many of JRM's services are provided to Chambers BMW by Natacha Noailles, a JRM employee who works as a controller at Chambers BMW. She also serves as a controller for several other dealerships owned by Chambers. Noailles's duties include working with employees at the dealership's accounting office to produce monthly financial statements, handling human resource matters, documenting employee leave requests, and notifying employees about changes in company policy or the law, such as changes in the wage laws. Employee records for Chambers BMW are kept in its accounting office, and Noailles has access to them. Noailles is not involved in hiring employees like Tran, but does advise Chambers BMW's managers on how to handle employee disciplinary matters.

Employees at Chambers BMW are provided with an "Employee Handbook" (handbook) that has "The Herb Chambers Companies" written in large font on the cover. The same handbook is provided to employees of JRM and the other dealerships owned by Chambers. Drafted by JRM's attorneys, the handbook "highlights many of the programs developed to benefit employees and outlines responsibilities that apply to all Dealership employees."

While JRM is not "directly involved" in setting Tran's salary, and Chambers BMW is the payor on Tran's paychecks, JRM

has a "role" in determining the rate of pay for Tran and other dealership employees. Payroll for Chambers BMW employees is serviced by ADP, a payroll processor selected by JRM and used by JRM and the other dealerships. Employees use an ADP software application to access their payroll records and tax forms. Representatives at JRM review the pay plans for Chambers BMW employees for legal content and form, although not generally for hourly rates or structure. They also review Chambers BMW's monthly financial statements and discuss payroll with the dealership's general manager if it is greater than it should be based on profits. JRM seeks to ensure uniformity in pay across all dealerships, so that, for example, one parts advisor does not earn significantly more than another at a different dealership.

Discussion. 1. Test for determining joint employment. In Jinks, 488 Mass. at 696, the Supreme Judicial Court set forth the appropriate tests for determining "whether an entity is an individual's employer under the wage laws." Ordinarily, only an employee's "direct employer" -- "the entity for whom the individual directly performs services" -- is liable for a violation of the wage laws. Id. at 696-697. The Jinks court, however, recognized three exceptions. Id. at 697-699, 701. Most pertinent here, the court concluded that the term "employer" in the wage laws "includes the concept of joint

employment, which itself is deeply rooted in the common law." Id. at 701.[3]

In enunciating the standard for joint employer liability in Jinks, the Supreme Judicial Court adopted the totality of the circumstances test used by the United States Court of Appeals for the First Circuit and other Federal courts under the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. §§ 201 et seq.[4] See Jinks, 488 Mass. at 692, 703. Under this test, whether a

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[3] In addition to arguing that JRM is her joint employer, Tran contends that JRM is liable for wage law violations that she can prove under the "alter ego" and "end run" exceptions also recognized in Jinks. Under the first exception, company A may be liable for company B's violation if company B is the "alter ego" of company A "pursuant to the narrowly tailored, equitable doctrine of corporate disregard." Jinks, 488 Mass. at 697, citing Attorney Gen. v. M.C.K., Inc., 432 Mass. 546, 555 (2000). Under the second exception, an employment relationship between company A and company B's employees may exist "if company A has engaged in a scheme as an 'end run' around its wage law obligations such that company A . . . is the agent of the [violation]." Jinks, supra at 698. See Depianti v. Jan-Pro Franchising Int'l, Inc., 465 Mass. 607, 624 & n.17 (2013). The judge did not address these exceptions in her decision and, as it is not necessary for our disposition of the issue, neither do we.

[4] The court held that it would be inappropriate to determine joint employment status by using the test for determining whether an individual performing services for another is an employee or independent contractor. See Jinks, 488 Mass. at 702-703 (discussing G. L. c. 149, § 148B). It also rejected the "paycheck" test proposed by the defendant, whereby a company is deemed a joint employer only if the worker receives a paycheck from that company. See Jinks, supra at 701 n.14 (describing paycheck test as "inconsistent with the remedial purpose of the wage laws and this court's recognition that employment statutes merit a liberal construction").

company is a joint employer is determined "by examining the totality of the circumstances of the parties' working relationship, guided by a useful framework of four factors: 'whether the alleged employer (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 employment records.'" Id. at 703, quoting Baystate Alternative Staffing, Inc. v. Herman, 163 F.3d 668, 675 (1st Cir. 1998). This is not "a mechanical determination," and the four factors "are not etched in stone and will not be blindly applied." Jinks, supra, quoting Bonnette v. California Health & Welfare Agency, 704 F.2d 1465, 1470 (9th Cir. 1983). Nevertheless, the four factors "provide a framework that, in many cases, will capture both the nature and structure of the working relationship as well as the putative employer's control over the economic aspects of the working relationship." Jinks, supra at 704. "No one factor is dispositive; instead, it is the totality of the circumstances that will determine whether an entity ought to be considered a joint employer." Id.[5]

[5] The four-factor framework is similar to the "right to control" test previously applied by Massachusetts courts. Jinks, 488 Mass. at 704 n.15. That test asked whether the defendant employer "retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer" (citation omitted). Gallagher

2. Application of the test to JRM. The judge determined that the application of the totality of circumstances test compelled the conclusion that JRM is a joint employer of Tran.[6] We agree.

a. Standard of review. "Where a judge makes findings of fact in a bench trial, we review them for clear error." H1 Lincoln, Inc. v. South Washington St., LLC, 489 Mass. 1, 13 (2022), citing Commissioner of Revenue v. Comcast Corp., 453 Mass. 293, 302 (2009). See Mass. R. Civ. P. 52 (a), as amended, 423 Mass. 1402 (1996). We review the judge's legal conclusions de novo. See H1 Lincoln, Inc., supra, citing T.W. Nickerson, Inc. v. Fleet Nat'l Bank, 456 Mass. 562, 569 (2010).[7]

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v. Cerebral Palsy of Mass., Inc., 92 Mass. App. Ct. 207, 214 (2017).

[6] JRM makes much of a sentence in the judge's decision that suggested, imprecisely, that Tran could proceed under the joint employment theory if she, as the employee, "demonstrate[d] a link between the actual employer and the separate person or entity" (here, between Chambers BMW and JRM). While the joint employment inquiry contemplates a good-faith contractual relationship between company A and company B, its focus is on whether, through that relationship, company A retained "sufficient control over the terms and conditions of employment of company B's employees." Jinks, 488 Mass. at 699. Because the judge focused on that question and correctly applied the test for joint employer liability set forth in Jinks, we do not agree with JRM that the judge conflated joint employment with the doctrine of corporate disregard.

[7] In Jinks, 488 Mass. at 705, the Supreme Judicial Court reviewed the summary judgment record in that case de novo. The court has not had an opportunity to address what standard of review applies when a question of joint employment is decided

b. Control over the nature and structure of the working relationship. The first two factors under Jinks ask whether the defendant company (1) has the power to hire and fire the employee, and (2) supervises and controls the employee's work schedules or conditions of employment. See Jinks, 488 Mass. at 692. These factors "address the extent of a putative employer's control over the nature and structure of the working relationship." Id. at 705, quoting Baystate Alternative Staffing, Inc., 163 F.3d at 675.

Here, JRM exercises substantial control over the conditions of Tran's employment. It authors the handbook that outlines the rules and responsibilities applicable to Tran and other Chambers BMW employees. The handbook covers a broad range of issues, including drug testing, employee classification, attendance, work hours, break hours, overtime, vacation time, incentive programs, benefits, and personal dress and appearance. The handbook is also provided to all employees of JRM and the other Herb Chambers dealerships. As the judge found, "[i]t is clear that this handbook sets up uniformity amongst all of the dealerships and JRM."

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after an evidentiary hearing. Assuming that the application of the totality of the circumstances test is a mixed question of law and fact, de novo review still applies, and our result is the same. See Hume Lake Christian Camps, Inc. v. Planning Bd. of Monterey, 492 Mass. 188, 195 (2023), quoting McCarthy v. Slade Assocs., Inc., 463 Mass. 181, 190 (2012).

The handbook begins with a welcome letter authored by Chambers as "[c]hairman and [p]resident." Although the welcome letter does not specify what entity Chambers is speaking on behalf of as president, or what the title "[c]hairman" refers to, a Chambers BMW employee would reasonably infer that Chambers authored the letter as chairman and president of The Herb Chambers Companies -- the "doing business as" name of JRM -- because that entity appears prominently on the handbook's cover. There is no indication that the policies in the handbook are "recommendations" that the dealership is "free to reject," In re Enterprise Rent-A-Car Wage & Hour Employment Practices Litig., 735 F. Supp. 2d 277, 343 (W.D. Pa. 2010), aff'd, 683 F.3d 462 (3d Cir. 2012), much less suggestions that employees may disregard. To the contrary, Chambers's welcome letter explains that the handbook is intended for "all employees" because "[w]orking under the same guidelines and principles as presented in this [h]andbook will unify us as a team to better serve our customers' interests."

In addition, pursuant to its management agreement, JRM administers human resources at Chambers BMW, primarily through its employee Noailles. Among other duties, Noailles administers workplace trainings for dealership employees, notifies employees about changes in company policy or procedure or wage law, and documents employee leave requests. If Chambers BMW employees

wish to ask questions or file a complaint about equal opportunity or workplace harassment, they must contact a designated employee at JRM.

JRM argues that it cannot be a joint employer of Tran because neither Noailles nor any other JRM representative participated in the decision to hire Tran, and it does not assign Tran tasks or supervise her daily activities at the dealership. JRM also points to an "Employee Acknowledgment Form" that Tran signed in 2016, which states that Chambers BMW may terminate her employment at will. While these facts confirm an employment relationship between Chambers BMW and Tran, they do not foreclose a finding that JRM is a joint employer. See Baystate Alternative Staffing, Inc., 163 F.3d at 676 ("the absence of direct, on-site supervision does not preclude a determination" that temporary employment agency was joint employer "within the broad definition of the FLSA"). The supervisory authority of managers at the dealership must be exercised consistently with the employment policies established by JRM and set forth in the employee handbook. For example, while Tran typically asks her direct supervisor whether something is appropriate to wear at work, the employee handbook provides that employees at all dealerships must comply with the dress code established by JRM. Similarly, while Tran's supervisor at Chambers BMW sets her work schedule and approves

her requests for vacation and sick days, those approvals must conform to the handbook's policies on time and pay, work hours, and vacation time.

Noailles is also involved in disciplinary decisions for Chambers BMW employees. For example, dealership managers consult with Noailles about potential disciplinary decisions, and she directs them to put warnings for certain violations (such as employees being late or absent) in writing. JRM argues that Noailles's general involvement in employee discipline does not prove that she took part "in any decisions as to whether Tran was written up or disciplined," but such evidence is not required to show that a company has retained "sufficient control" of the terms and conditions of the plaintiff's employment. Jinks, 488 Mass. at 699. Cf. Gallagher v. Cerebral Palsy of Mass., Inc., 92 Mass. App. Ct. 207, 214 n.15 (2017), quoting Peters v. Haymarket Leasing, Inc., 64 Mass. App. Ct. 767, 774 (2005) (under similar common-law approach for determining joint employment, "[i]t is the right to control, as opposed to actual control, that is determinative"). Having proven that JRM establishes workplace rules for Chambers BMW employees and advises dealership managers on how to handle discipline, Tran was not required to further show specific applications of JRM's control over her in order to meet her burden of demonstrating that JRM is a joint employer.

c. Control over the economic aspects of the working relationship. The next two factors in the Jinks framework ask whether the defendant company (3) determines the rate and method of the employee's payment, and (4) maintains employment records. Jinks, 488 Mass. at 692. These factors "address the extent of a putative employer's control over the economic aspects of the working relationship." Id. at 706, quoting Baystate Alternative Staffing, Inc., 163 F.3d at 676.

Here, too, JRM exercises substantial control over Tran's employment. Although JRM does not directly set Tran's salary, it "play[s] a role" in determining her rate of pay and that of other Chambers BMW employees. JRM reviews the pay plans for dealership employees for legal content and form. Noailles prepares each month's financial statement for Chambers BMW, and JRM relies on those reports in discussions with the dealership's general manager regarding possible payroll adjustments. JRM also seeks to ensure that employees in the same position in different dealerships (such as Tran's parts advisor position) earn generally the same pay. JRM argues that the fact that its managers review and retain the right to adjust Chambers BMW's payroll does not prove that JRM "ever discussed Tran's salary or compensation with anyone," but, again, the Jinks test does not require evidence at that level of specificity to establish a

party's control of the terms and conditions of employment. See Jinks, 488 Mass. at 706-707.

JRM is also fully responsible for the benefits offered to Tran and other employees at Chambers BMW. It negotiates and obtains insurance, commercial group benefits, and workers' compensation insurance for the dealership, for other Herb Chambers dealerships, and for JRM itself, so that it can obtain the benefit of a group rate. The 401(k) retirement program offered to Tran is similarly established through JRM and referred to as "The Herb Chambers Companies Section 401(k) Plan." All employees participate in the same 401(k) plan and other benefit programs because, as JRM's vice president explained at trial, "Mr. Chambers wants the same benefits for any employee that works for any of his entities."

Finally, JRM has access to and at least some control over Tran's employment and payroll records. See Baystate Alternative Staffing, Inc., 163 F.3d at 676 (company's handling of "paperwork, bookkeeping, record keeping, [and] payroll costs" supported finding that it was joint employer). JRM selected the payroll service used by Chambers BMW and the other Herb Chambers dealerships, and employees access their payroll records and tax forms through a software application administered by that company. Chambers BMW's employee records are kept at the dealership's accounting office and are accessible to Noailles.

While the parties dispute the extent to which JRM "maintains" employee records at Chambers BMW, the record shows that Noailles directs dealership managers to document disciplinary decisions and that she submits the paperwork for, and JRM lawyers approve, family and medical leave requests.

d. The totality of the circumstances. As discussed, "it is the totality of the circumstances, and not any one factor, which determines whether a worker is the employee of a particular alleged employer." Baystate Alternative Staffing, Inc., 163 F.3d at 676. See Jinks, 488 Mass. at 704. Here, we agree with the trial judge that JRM "retained for itself sufficient control of the terms and conditions of employment" for employees at Chambers BMW like Tran. Id. at 699, quoting Swallows v. Barnes & Noble Book Stores, Inc., 128 F.3d 990, 993 n.4 (6th Cir. 1997). JRM exercises control over the nature and structure of Tran's employment through detailed employment policies set forth in the handbook and through a JRM employee who works at the dealership, handles human resources and workplace trainings, and participates in decisions about employee discipline. JRM exercises control over the economic aspects of Tran's employment by setting and administering the benefits available to Chambers BMW employees, handling payroll records and other employment-related paperwork, and reviewing and adjusting employee salary levels. While JRM argues that it

is merely an independent "management consulting company" that provides "back-office" services to the dealerships in exchange for fees, the record shows that JRM's purpose is not just to provide administrative and managerial support to the dealerships, but also to exercise control over the terms and conditions of the employees who work there.[8]

Conclusion. The interlocutory order of the Superior Court judge dated February 28, 2023, determining that JRM is Tran's joint employer for the purposes of Tran's wage law claims, is affirmed.

So ordered.

[8] Because we affirm the judge's decision that JRM is a joint employer under the totality of circumstances test in Jinks, we need not consider the judge's alternative conclusion that JRM and the dealership are integrated to a degree that JRM is liable for the dealership's conduct. See Torres-Negrón v. Merck & Co., 488 F.3d 34, 40-41 (1st Cir. 2007) (under "single employer" or "integrated employer" test, "two nominally separate companies may be so interrelated that they constitute a single employer subject to liability under Title VII"). As the judge recognized, it is far from clear that the "integrated enterprise test" applies in the FLSA or Massachusetts Wage Act context. The Supreme Judicial Court did not address this test in Jinks, but rather reiterated that "corporations are generally to be regarded as separate from each other" absent a showing of factors that permit disregard of the corporate form. Jinks, 488 Mass. at 697-698, quoting My Bread Baking Co. v. Cumberland Farms, Inc., 353 Mass. 614, 618 (1968). See Sebago v. Boston Cab Dispatch, Inc., 471 Mass. 321, 328 (2015) (listing factors that courts must analyze in applying doctrine of corporate disregard).