

**Summary of SC93379, *Andro Tolentino v. Starwood Hotels & Resorts Worldwide Inc., et al., Westin Hotel Management LP***

Appeal from the Jackson County circuit court, Judge W. Brent Powell

Argued and submitted November 14, 2013; opinion issued August 19, 2014

**Attorneys:** Tolentino was represented by Matt J. O’Laughlin and Amy P. Maloney of Holman Schiavone LLC in Kansas City, (816) 283-8738; and the hotel was represented by Elaine Drodge Koch, Timothy J. Davis, Elizabeth Carver and Thomas E. Nanney of Bryan Cave LLP in Kansas City, (816) 374-3200.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A temporary hotel housekeeper appeals the summary judgment (judgment on the court filings, without a trial) awarded to a hotel on his claims that the hotel violated the minimum wage law. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. State law imposes an individual statutory duty on each employer to pay the minimum wage. A genuine issue of material fact remains whether, under state law, the hotel is the housekeeper’s “employer” in addition to the temporary staffing agency.

**Facts:** Starwood Hotels & Resorts Worldwide Inc. operates the Westin Crown Center hotel in Kansas City (collectively, the hotel). The hotel contracts with temporary staffing agencies such as Giant Labor Services Inc. (GLS) to provide housekeepers on an as-needed basis. Under the contract, the hotel paid GLS \$5 for each room cleaned, and GLS was responsible for paying the housekeepers in accordance with the law. In January 2008, federal law enforcement officials notified the hotel that GLS was under investigation for certain crimes, and for about two years, the hotel cooperated with law enforcement officers in investigating and prosecuting GLS and its owners. In February 2008, GLS assigned Andro Tolentino to work at the hotel as a housekeeper, paying him \$3.50 per room cleaned. In April 2008, the hotel told GLS it no longer wanted Tolentino to work there as a housekeeper because he failed to complete his work on time. GLS reassigned Tolentino to a different hotel. During the last two-week pay period Tolentino worked at the hotel, he cleaned 122 rooms and earned \$427 in gross pay. After taking out the standard deductions, GLS then deducted the entire net pay amount from Tolentino’s paycheck for visa fees, leaving him no take-home pay. A federal court ultimately ordered the GLS principals to pay Tolentino restitution for the amounts withheld as visa fees. An April 2010, Tolentino sued in state court, alleging the hotel and GLS were his “employers” under state law and were responsible for paying him the minimum wage. The circuit court granted the hotel’s motion for summary judgment (judgment on the case filings, without a trial), concluding that the hotel and GLS adequately compensated Tolentino, that the only reason he did not receive the minimum wage was because of the illegal visa-fee deductions and that, even if the hotel was Tolentino’s “employer,” it cannot be held responsible for GLS’ criminal activity. Tolentino appeals.

**REVERSED AND REMANDED.**

**Court en banc holds:** The state’s minimum wage law, in chapter 290, RSMo, imposes an individual statutory duty on each employer to pay the minimum wage.

The law defines “employer” as “any person acting directly or indirectly in the interest of an employer in relation to an employee” and requires employers to pay their employees the minimum wage for all hours worked. Both the hotel and GLS could be viewed as Tolentino’s “employer” under this definition because they acted in one another’s interest with respect to Tolentino – the hotel received his cleaning services, and GLS profited by being able to place him at the hotel. The state law does not define or use “joint employer,” but certain factors indicate the existence of joint employment. In a case in which summary judgment was granted, this Court must view the record in the light most favorable to Tolentino as the non-moving party. The record supports a finding that the hotel retained substantial control over the rate and method of pay, but there remain genuine, material factual disputes regarding the other factors: the hotel’s authority to hire or fire Tolentino; the extent of the hotel’s supervision and control over Tolentino’s work conditions; and whether the hotel maintains work records.

Applying the minimum wage law to the hotel does not hold the hotel responsible for illegal wage reductions by GLS but simply requires the hotel to comply with its independent statutory duty as a joint employer to pay a minimum wage. As a remedial statute, the minimum wage law must be construed broadly to effectuate its purpose of ensuring that employees receive the legally mandated minimum wage, and common-law principles of agency and strict liability do not operate to insulate the hotel from this obligation. If the hotel is found to be Tolentino’s employer along with GLS, it individually is responsible for paying a minimum wage. This result is consistent with federal authority holding joint employers jointly liable for complying with minimum wage laws. The hotel’s duty to pay a minimum wage was not contingent on acts or omissions by GLS. Each has an independent statutory duty to pay Tolentino a minimum wage, regardless of any acts or omissions by the other.