

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JACLYN S. and GINA B.,

Plaintiffs,

ORDER

vs.

Index No. 804088/2014

THE NATIONAL FOOTBALL LEAGUE,
BUFFALO BILLS, INC., CUMULUS RADIO COMPANY
f/k/a CITADEL BROADCASTING COMPANY,
STEPHANIE MATECZUN, and STEJON PRODUCTIONS
CORPORATION,

Defendants,

UPON the filing and reading of plaintiffs' notice of motion dated March 18, 2016, seeking partial summary judgment pursuant to CPLR §3212, and upon all the papers submitted in support of plaintiffs' motion; and

UPON the filing and reading of all defendants' papers submitted in opposition to plaintiffs' motion for partial summary judgment, and

UPON the filing and reading of the Decision of Hon. Timothy J. Drury, J.S.C. granted on July 1, 2016, and

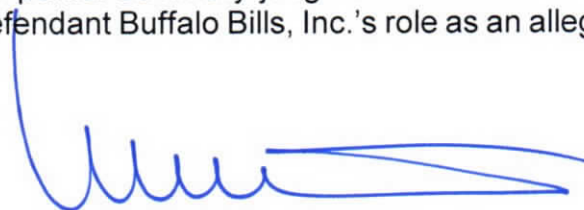
UPON the administrative Order of the Chief Administrative Judge of the Courts dated January 12, 2017, designating Hon. Timothy J. Drury as a Judicial Hearing Officer for Supreme Court, Erie County, and

UPON all parties' consent to have Hon. Timothy J. Drury, J.H.O. render a decision upon plaintiffs' motion for partial summary judgment, it is hereby

ORDERED, that this Court will adhere to the conclusion of the attached Referee's Decision from Hon. Timothy J. Drury, J.H.O./Referee, and it is therefore further

ORDERED, that plaintiffs' motion for partial summary judgment is granted to the extent that, as a matter of law, plaintiffs' were non-exempt employees mis-classified as independent contractors and defendants Cumulus Radio Company f/k/a Citadel Broadcasting Company, Stejon Productions Corporation and Stephanie Mateczun were plaintiffs' joint employers, and it is further

ORDERED, that plaintiffs' motion for partial summary judgment is denied to the extent that there is a question of fact as to defendant Buffalo Bills, Inc.'s role as an alleged joint employer of plaintiffs.




Hon. Mark A. Montour, J.S.C.

GRANTED:

GRANTED

MAY 18 2017

BY 
LORI A. MOTAK
COURT CLERK

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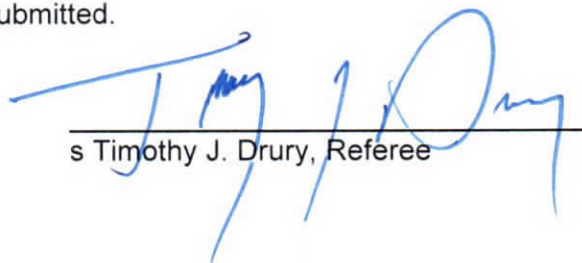
Defendants,

REFEREE'S DECISION

The undersigned is the judicial hearing officer assigned to evaluate and determine plaintiffs' motion for summary judgement and to submit it to the Court having jurisdiction over the instant case. Accordingly, based on this officer's prior decision, all the briefs submitted and depositions taken, and all the prior proceedings and submissions, and with due deliberation having been had thereon, this officer reaches the same conclusion as it did in its original decision, except that it now finds that there is a question of fact as to the Bills' role as an alleged joint employer of the plaintiffs. In other words, this officer finds that the cheerleaders' agreements that they are required to sign as a condition of their participation on the team are unenforceable and that the plaintiffs were non-exempt employees mis-classified as independent contractors. Further, this officer finds that the Citadel, Stejon Productions Corporation (Stejon) and Stephanie Mateczun were the plaintiffs' joint employers.

The Bills in their submission have been able to minimize their involvement with the plaintiffs' participation. However, the Bills' agreement with the Citadel and Stejon which incorporated the cheerleaders' agreements are sufficient to sustain the plaintiffs' initial burden of proof. However, this issue raised by the Bills that the 2005 Agreement which contains the controversial independent contractor language was incorporated at the insistence of Citadel and not the Bills, is sufficient to raise questions of fact as the Bills status as a joint employer. The fact that the Bills enforced their agreement from 2005 until 2014, especially their attempt to compel the plaintiffs to indemnify them, is an important consideration, but the question of fact remains.

The above is herewith submitted.



s Timothy J. Drury, Referee