

FILED

MAY 17 2022

Prepared by the Court

<p>VERONICA VILLALOBOS and JOEL ESQUIJAROSA</p> <p>Plaintiffs</p> <p>vs.</p> <p>BEAST COAST MOVING LIMITED LIABILITY COMPANY, BENJAMIN BRETTER and AMOS BRETTER</p> <p>Defendants</p>	<p>SUPERIOR COURT OF NEW JERSEY, S.C. ESTELA M. DE LA CRUZ, J.S.C.</p> <p>LAW DIVISION: BERGEN COUNTY</p> <p>Docket No.: L-815-20</p> <p>Civil Action</p> <p>ORDER OF JUDGMENT</p>
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This matter having been brought before the Court by of Trial, scheduled before this Court and took place on the record, on April 4, 5, and 6, 2022; and Stephen R. Bossin, Esq., appearing on behalf of the plaintiffs Veronica Villalobos and Joel Esquijarosa; Daniel B. Needle, Esq., of Needle & Silverman, Esqs., appearing on behalf of defendants Beast Coast Moving Limited Liability Company, Benjamin Bretter and Amos Bretter; and the Court having heard all testimony and reviewed all evidence; and for the reasons set forth on in the 20-page decision issued on this day; and for good cause shown,

It is on this 17th day of May 2022:

1. **ORDERED THAT** judgment is hereby entered in favor of plaintiff Joel Esquijarosa, and jointly and severably as against Defendants Beast Coast Moving LLC, Benjamin Bretter and Amos Bretter in the total amount of \$67,500; and it is further
2. **ORDERED THAT** judgment is hereby entered in favor of plaintiff Veronica Villalobos, and jointly and severably as against Defendants Beast Coast Moving LLC, Benjamin Bretter and Amos Bretter in the total amount of \$47,262.13.



HON. ESTELA M. DE LA CRUZ, J.S.C.

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<p>VERONICA VILLALOBOS and JOEL ESQUIJAROSA</p> <p>Plaintiffs</p> <p>vs.</p> <p>BEAST COAST MOVING LIMITED LIABILITY COMPANY, BENJAMIN BRETTER and AMOS BRETTER</p> <p>Defendants</p>	<p>SUPERIOR COURT OF NEW JERSEY, J.S.C. LAW DIVISION: BERGEN COUNTY Docket No.: L-815-20</p> <p>Civil Action</p> <p>Decision Pursuant to Bench Trial</p>
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Stephen R. Bosin, Esq., appearing on behalf of plaintiffs Veronica Villalobos and Joel Esquijarosa
Daniel B. Needle, Esq., Kohn, Needle & Silverman, Esqs. appearing on behalf of defendants Beast Coast Moving Limited Liability Company, Benjamin Bretter and Amos Bretter

Decision issued: May 17, 2022

DE LA CRUZ, J.S.C.

The matter comes before the Court as a bench trial which this Court held on April 4, 5, and 6, 2022. This is a decision in an earnest effort to satisfy Rule 1:7-4(a).

Plaintiffs filed their complaint on February 4, 2020 with the following counts:

- Count I – violation of Wage Act by Defendant Beast Coast Moving
- Count II – violation of Wage Act by Defendant Benjamin Bretter
- Count III – violation of Wage Act by Defendant Amos Bretter
- Count IV – breach of contract

Plaintiffs contend that during the period between February 2019 and November 19, 2019, they each were employed by Beast Coast Moving and that they were not paid the wages and costs that they were entitled to. Each Plaintiff has their own individual damage claim, and each seeks liquidated damages as a penalty permitted by the New Jersey Wage Act, along with costs and reasonable attorney's fees pursuant to N.J.S.A. 34:11-4.10(c).

Additionally, Plaintiffs contend that Defendants have not rebutted the legal presumption that they each were an employee of Beast Coast during the pertinent time period and that the two

individually named Defendants were agents of Beast Coast Moving since they undisputedly had management and control of the Defendant entity, and as such, they are deemed to be the employers who would be subject to the penalties imposed by statute pursuant to N.J.S.A. 34:11-4.1(a).

Plaintiff Veronica Villalobos contends that she was employed by the Beast Coast as a foreperson and crew leader and that during that period of time, her duties as an employee included coordinating and supervising the relocation of residential clients, both local and long distance, and completing all pertinent documentation and connected with the customer and obtained payments from them for Beast Coast. Ms. Villalobos additionally contends that her duties included assisting in packing, wrapping and loading of the customer's belongings and helping the moving truck driver in the haul as well. Ms. Villalobos contends that Amos Bretter agreed to pay her a daily rate when she was on the road, plus expenses and a 15% commission on the markup for the supplies sold and used by customers. Ms. Villalobos contends that Defendants owe her \$14,850 in wages based on the daily \$200 rate while on the road, plus \$1,818.13 for expenses and \$894 a commission fee earned.

Plaintiff Joel Esquijarosa contends that he was employed driving a box truck for the Defendant. He maintains that the truck he used in providing the Defendants services was provided by Beast Coast, with the company logo visible on the outside of the truck. Mr. Esquijarosa contends that never used any other truck other than one provided by Beast Coast and that he does not own any truck of his own. His duties included driving to and from the customers residents, driving through point of pickup to point of delivery, packing and wrapping the customer's furniture and belongings, and he also was responsible for the maintenance of the truck during the trip, including weighing the truck at designated scales and stopping at all check points. Mr. Esquijarosa was entrusted with Beast Coast equipment for all the deliveries that he performed on their behalf through November 19, 2019 and he concedes that although Defendants did pay him \$8,160 for

some of the services provided during the disputed time period, \$22,500 still remains unpaid to date for work done during that period of time.

Plaintiffs maintain that they were employees of the Defendant Company and were directed and controlled by the owner and manager of the company. Since Plaintiffs have not been paid their lawful wages, they contend that they are entitled to liquidated damages of 200 percent of the wages lost or unpaid, together with costs and reasonable attorney's fees, pursuant to N.J.S.A. 34:11-4.10(c). In total, Plaintiff Joel Esquijarosa claims \$67,500, which is \$22,500 plus 200 percent of that amount. Plaintiff Veronica Villalobos claims \$14,850 plus 200 percent of that unpaid wage plus additional monies for commission and expenses.

Defendants contend that Mr. Esquijarosa was an independent contractor when he performed services for Beast Coast, and that Plaintiff Ms. Villalobos had no status with the Beast Coast. Defendants contend that she was instead along for the ride voluntarily, just to spend time with Mr. Esquijarosa on the long-haul trips. Defendants further contend that they satisfy the three prongs of the "ABC Test" to rebut the legal presumption that Mr. Esquijarosa was not an employee of Beast Coast, but was instead an independent contractor. Finally, Defendants admit that some amount of compensation is due Mr. Esquijarosa only, and that Defendants' payment of that amount was intercepted and never made because the Plaintiffs filed a lawsuit against them.

EVIDENCE PRESENTED AT TRIAL

At trial, the Court heard sworn testimony from three witnesses: both Plaintiffs Veronica Villalobos and Joel Esquijarosa and defense witness, Benjamin Bretter. No other witnesses appeared at trial to present testimony.

Additionally, the following exhibits were moved into evidence:

- Plaintiff Binder Exhibit A, Subpart #2, Calculations with dates, locations and job # prepared by Plaintiff Veronica Villalobos
- Plaintiff Exhibit A, Subpart #3, Supporting Data with Email dated July 1, 2020 and includes an "Unpaid Expenses" summary list plus supporting receipts

- Plaintiff Binder Exhibit B, Certificate of Formation for Beast Coast Moving LLC dated February 24, 2016

DISCUSSION OF THE EVIDENCE PRESENTED

Plaintiff Veronica Villalobos testified that she was hired in August of 2019 by Defendant Amos Bretter, at his home in Fair Lawn, who agreed to pay her \$200 a day for her work in assisting with the moves, plus a 15% commission on the mark up of the packing supplies sold to the customers, and expenses while on the road during long hauls. Ms. Villalobos testified that she kept inventory of the supplies used and that she was promised by Amos Bretter to receive a 15% commission as an upcharge to clients for the packing materials that she would actually obtain while on the road as a work related expense item. Her work not only included packing, but also maintaining records and communicating with Amos or Benjamin Bretter during the hauls.

Ms. Villalobos testified that her duties included being the foreman which involved customer inventorying, communications, packing, helping loading the truck and billing the client once at the site, and sending credit card information back to Beast Coast's central offices. Ms. Villalobos testified that there was no written contract with the Defendant, but that Amos Bretter issued to her a Chase debit card to use as an expense account while on the road and that he had authorized the expense card when he hired her to go on these hauls with Mr. Esquijarosa.

During the time that she was on the road, Ms. Villalobos testified that she did not work for anyone else and was exclusively an employee of Beast Coast. She testified that she discussed the terms of her compensation with Amos Bretter at his home in Fairlawn, New Jersey, as he had summoned her to his home to discuss the terms of the employment during the disputed time period. Ms. Villalobos testified that she considered both Amos and his son Benjamin Bretter as her bosses and that she did what they requested and expected.

This time period in dispute for unpaid wages followed a previous period where Plaintiff Villalobos testified that she provided services to Beast Coast. Beast Coast and that the Plaintiffs parted ways abruptly and temporarily until February 2019, because they were summarily fired by Amos Bretter. In February of 2019, they were summoned back to help with the company business. Eventually she and Joel Esquijarosa were rehired to conduct hauls, and the hauls expanded into long distance hauls through November 16, 2019, most of which were out-of-state.

During this time period, they were not paid their wages in full as they were earned, and both Amos and Benjamin Bretter avoided Plaintiffs or made bold promises of payment that were never kept. According to Ms. Villalobos, Plaintiffs were promised their payment when they returned to New Jersey, but only after and if they returned Beast Coast's truck back from Florida. Once they returned to New Jersey one week before Thanksgiving and returned the truck, they were shunned, almost to the point of banishment from Beast Coast, and were never given a reason for nonpayment. Throughout the course of time before returning to New Jersey in November of 2019, Ms. Villalobos would transmit documentation of expenses and made requests for payment, which was never made. Ms. Villalobos testified that the amount she has requested for payment has never been disputed or challenged and Defendants gave false promises to her pay her, but have outrightly refused to pay both her and Mr. Esquijarosa.

Ms. Villalobos testified that she has been paid \$5,350, but the rest has been flat-out ignored, and that Defendants have received the benefit of all of her labor without payment of her wages. Plaintiff Veronica Villalobos claims a total of \$14,850 owed to her for pay, not including commissions and expenses. Ms. Villalobos testified that she worked approximately 101 days without full payment of her wages. She would call Amos Bretter for the money and the last time she spoke to Amos Bretter, he "blew up" at her and demanded that she immediately return to New Jersey. They did return to New Jersey but has been shunned by the Bretters since then.

Ms. Villalobos calculates the \$14,850 at \$200 a day for approximately 101 road days. She calculates expenses at \$1,818.13, which is documented in her "Unpaid Expenses" summary, which is in evidence as Plaintiff Binder Exhibit A, Subpart #3 at page 4. Additionally, Ms. Villalobos claims \$894 in commissions owed, which is 15% of the upcharge of the packing materials purchased by Plaintiff and used for the customer's packing needs during these various jobs.

Plaintiff Joel Esquijarosa testified with the assistance of an AOC-appointed Spanish interpreter Joan Reyna. Mr. Esquijarosa testified that he was rehired by Defendant Amos Bretter as a driver, and that with this, he was also required to wrap furniture, load it onto trucks, along with safely transporting the belongings to the client's new destination. Plaintiff Mr. Esquijarosa testified that he would go wherever Beast Coast directed him to go based on their agreed upon rate of compensation, which was increased from the initial \$200 per day rate to \$300 per day rate for long hauls.

Although he did not have a written employment contract with the Defendant, he testified that he worked exclusively for the Defendant and always only used Beast Coast Movers' trucks when he was a driver/mover for Beast Coast. Mr. Esquijarosa testified that he worked under the control both Benjamin and Amos Bretter and complied with all of their requests on how to handle a job and where to go. He did the same work for a local move as for a long haul, but for the long hauls, he would be out on the road in unknown territory exclusively to perform services for Beast Coast Moving using their trucks.

Mr. Esquijarosa testified that he does not own any truck of his own, that he never has owned any trucking or moving business, and that he worked exclusively for Beast Coast Moving during the time period in dispute. Additionally, Mr. Esquijarosa testified that he could not have done the work without Veronica Villalobos performing foreman duties, not only because his English is extremely limited, but also because she helped with the packing, the loading, the

management of the documents during the travel periods, the billing with the clients and communications back with homebase to their bosses Benjamin and Amos Bretter.

Mr. Esquijarosa testified that he spoke with Amos Bretter about money payments with Ms. Villalobos' help, and he always spoke to him with the understanding that Amos Bretter was the owner of the company and that his son Benjamin Bretter was the company's general manager. Mr. Esquijarosa testified that Amos Bretter agreed to pay him \$300 a day while he was out on the road doing Beast Coast's business. Plaintiff concedes that Beast Coast partially paid him \$8,160 but that the Defendants still owe him \$22,500 for the services provided during the time period in dispute.

With regard to the Defendants' contention that Mr. Esquijarosa was to pay Veronica Villalobos out of his pay, Mr. Esquijarosa unequivocally denied that is true. Mr. Esquijarosa testified that he agreed with the company owner Amos Bretter to perform these moving hauls for the company at \$300 a day for his services and Amos Bretter never included or mentioned that he, Mr. Esquijarosa, was to pay Ms. Villalobos out his wages.

Plaintiff Mr. Esquijarosa testified that at first during this disputed time period he was performing short trips to Pennsylvania, Connecticut or upstate New York. These destinations were considered short trips, although in reality they are not. When he first began to work for Beast Coast in February of 2019, Amos Bretter paid him \$18 an hour, or a maximum of \$200 a day if the \$18 an hour rate exceeded \$200 per day. Mr. Bretter wanted to cap the pay when the hourly rate exceeded \$200 per day. Plaintiff Esquijarosa testified that the Defendant did not want to pay him in excess of \$200 a day. However, when Plaintiff returned to work in September after having been fired for the first time by the Defendants sometime in the summer of 2019, Mr. Esquijarosa testified that he started doing local deliveries up until the point that the Defendant asked him to do longer hauls. There came a point where the \$200 a day for his hauls was increased to \$300 a day for long

distance hauls. For the long-distance hauls, Amos Bretter agreed to pay him \$300 a day and that Veronica Villalobos would go along as the foreperson on these jobs.

Mr. Esquijarosa described Benjamin Bretter as the main contact during the different jobs performed during the disputed period where Benjamin Bretter would give Veronica the paperwork which instructed the information about the client and where to go. Benjamin Bretter would issue the Plaintiffs the jobs, direct them where to go, and expected of them appropriate behavior and service to the client upon arrival. Mr. Esquijarosa testified that both Benjamin and Amos Bretter knew and agreed to Veronica Villalobos assist because they knew he could not be expected to make the hauls without the assistance and services she provided. He testified that whenever Beast Coast Movers paid him, they would direct his wages through Veronica, for her to issue to him, as well as pay Veronica her wages. Mr. Esquijarosa was adamant and repeated several times that \$8,160 was all he has been paid for the services rendered from August 8, 2019 through November 19, 2019. However, he testified that this payment is incomplete and that the Defendants know and have admitted it is incomplete. Further Mr. Esquijarosa testified that he agrees with the calculations showing that \$22,500 in wages remain unpaid through November 19, 2019.

Mr. Esquijarosa testified that the entire period of employment was constant evasion and that payments were typically in fragments, and not paid when they were due or earned. The Defendant paid, but paid through Veronica since she handled the monies through Western Union. He acknowledged that Plaintiffs were issued an expense credit card for their haul long-distance trips, but were only expected to use the card to refuel the truck. Mr. Esquijarosa was visibly annoyed in describing that process because the card usually had to be funded with additional monies to cover the gas upon arriving at the pumping station. In other words, the card appears to be a debit card where the Defendant Company would replenish funds into the account for the Plaintiffs to use, but only upon reporting the need and amount in real time. Mr. Esquijarosa denied

that the card was ever used to withdraw any cash monies and that Veronica kept meticulous records on its usage.

Upon returning the New Jersey on November 19, 2019, Plaintiff was expecting to be paid for his wages through November 19, 2019. Upon reaching New Jersey and returning the truck in November 2019, Mr. Esquijarosa testified that instead of getting paid, he got fired by a visibly annoyed Amos Bretter when Plaintiff demanded that Amos Bretter pay for their wages still due. Instead of paying their wages, Mr. Bretter flat out and alarmingly fired him, basically threw him out on the street. The only recourse Plaintiff had was to file this lawsuit, since Defendants never completed paying him the balance of his wages due.

Defendants presented one witness, that being Benjamin Bretter, who did not testify credibly. The Defendants have not disputed the fact that both Plaintiffs were hauling shipments and cargo for Beast Coast Moving LLC between August and November 19, 2019. Although both Plaintiffs testified that they were hired and employed by Amos Bretter, the owner, Amos Bretter did not appear at trial. There was no explanation at all as to why Amos Bretter did not appear at trial, and indeed it is indeed his complete absence from this trial is a void that the one Defendant witness Benjamin Bretter could not, and did not, fill.

Benjamin Bretter testified that while both Plaintiffs were hired in April of 2019, they were let go in June of 2019 because Plaintiffs brought in their domestic problems and drama to work. Mr. Bretter, contrary to what both Plaintiffs testified, testified that the Plaintiffs were paid by the hour without any maximum. However, it was not Benjamin Bretter who paid the Plaintiffs, but his father Amos Bretter. It was not Benjamin Bretter who struck a deal with the Plaintiffs as to their compensation. Benjamin Bretter testified that his father, Amos, rehired Plaintiff Joel Esquijarosa and paid him \$200 per job for pickup and delivery and that Joel Esquijarosa was not paid when he was not working.

Notably, Mr. Bretter maintains that Veronica was not rehired at all, although Mr. Bretter was aware that Veronica did go on the long hauls with Mr. Esquijarosa in the truck and was communicating all along the way back with the company homebase of Beast Coast Moving. Benjamin Bretter denies that the company had agreed to pay Plaintiff Veronica any commissions or expenses, although he acknowledged that his father had spoken to the Plaintiffs about their compensation.

Mr. Bretter testified that "we'd send them jobs via email". Benjamin Bretter directly testified that the Plaintiffs were sent jobs via email, meaning that they were assigned their destinations and directed where to go via email from the company Beast Coast Moving. In this statement, he also acknowledged that the company would notify both Plaintiffs about jobs via email.

Mr. Bretter went through direct examination reviewing some of the exhibits of documentation for moving road trips that the Plaintiff had presented in evidence and questioned the driver's daily logs in several entries as not indicating any activity for that day. Mr. Bretter's testimony is that the payments were for days that the Plaintiff Mr. Esquijarosa was actively working for the company, but not days in between where he was not moving any particular customer. However, Benjamin Bretter acknowledged that the Plaintiff truck driver would be away from home on long hauls and would be interconnected with other jobs that were either along the way or on the way back. He expected Mr. Esquijarosa to provide the best customer service, to be on time for pickup and delivery and not to be late. Mr. Bretter also testified that he expected Mr. Esquijarosa to do the pickups himself after hauling the Beast Coast logoed truck to the customers location.

Mr. Bretter testified that the company's relationship with the Plaintiff ended in November of 2019 at a time when Defendant had not paid Plaintiff Joel Esquijarosa all of the monies even though there was some still due him, but the filing of the lawsuit intervened the Defendants' payment to Plaintiff. That is quite shocking to hear since this Complaint was filed on February 4,

2020, and to date no additional monies have been paid or at least identified as due to the Plaintiff Joel Esquijarosa.

APPLICABLE LAW

Plaintiffs have filed this action under the New Jersey Wage Payment Act, N.J.S.A. 34:11-4 seeking payment of wages from the time period of August to November 19, 2019. Both Plaintiffs maintain that they were employees of the Beast Coast Moving, and that they were hired and their work load was controlled by the owner and managers of the company, Benjamin and Amos Bretter. Plaintiffs believe that Beast Coast Moving LLC is no longer in business, but they argue that co-Defendants Benjamin and Amos Bretter are personally liable as employers pursuant to N.J.S.A. 34:11-4.1(a).

N.J.S.A. 34:11-4.1(a) defines an employer as follows:

a. "Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State.

For the purposes of this act the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.
(Emphasis added)

Pursuant to N.J.S.A. 34:11-4.10, subpart (c), if any employer fails to pay the full amount of wages to an employee, that employee may recover in a civil action the full amount of wages due, plus an amount of liquidated damages equal to not more than 200% of the wages lost or of the wages due, together with costs and reasonable attorney's fees which may be allowed by the court. The statute is worded as follows:

c. If any employer fails to pay the full amount of wages to an employee agreed to or required by, or in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), the employee may recover in a civil action the full amount of any wages due, or any wages lost because of any retaliatory action taken

in violation of subsection a. of this section, plus an amount of liquidated damages equal to not more than 200 percent of the wages lost or of the wages due, together with costs and reasonable attorney's fees as are allowed by the court, except that if there is an agreement of the employee to accept payment of the unpaid wages supervised by the commissioner pursuant to section 9 of P.L.1965, c.173 (C.34:11-4.9) or R.S.34:11-58, the liquidated damages shall be equal to not more than 200 percent of wages that were due prior to the supervised payment.
(Emphasis added)

Plaintiffs rely on the analysis provided in the New Jersey Supreme Court decision of Carpet Remnants Warehouse, Inc. vs. NJ Department of Labor, 125 N.J. 567 (1991) which held that the Department of Labor's classification must establish the existence of all three criteria of the "ABC test" and the failure to satisfy any one of the three criteria results in an "employment" classification as defined by statute. The Supreme Court held then that the determination by the trial court is fact sensitive and requires an evaluation in each case of the substance, not the form, of the relationship. Carpet Remnants Warehouse, 125 N.J. at 581.

In 2015, the Supreme Court of New Jersey again addressed the "ABC test" derived from the New Jersey Unemployment Compensation Act that governs whether a plaintiff is an employee or an independent contractor for purposes of resolving a wage payment or wage-an-hour claim to determine a plaintiff's employment status for purposes of New Jersey Wage Payment Law. Hargrove vs. Sleepy's LLC, 220 N.J. 289 (2015). The Hargrove Supreme Court held:

The "ABC" test presumes an individual is an employee unless the employer can make certain showings regarding the individual employed, including:

- (A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and
- (B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
- (C) Such individual is customarily engaged in an

independently established trade, occupation,
 profession or business.
[N.J.S.A. 43:21-19(i)(6).]
 "[T]he failure to satisfy any one of the three criteria
 results in an 'employment' classification." Carpet
Remnant Warehouse, Inc. v. N.J. Dep't of Labor, 125
 N.J. 567, 581(1991).
Hargrove, 220 N.J. at 305.

DISCUSSION

The Defendants have proceeded on the premise that Plaintiffs were both independent contractors and therefore the New Jersey Wage Payment Act is not applicable, as are penalties associated with any such violation. Defendants argue that the Plaintiffs were independent contractors and were not under the control of any of the Defendants at the time that services were provided to the Defendants.

The defense presented in this trial is shockingly weak and not credible. Incredibly, although the Defendants maintain that they owe Plaintiffs some amount of money, there was no testimony presented as to how much, just that the Defendants admit they do owe the Plaintiffs some amount. There is no contestation of the receipts presented and there is no evidence that the jobs that are alleged to have been performed by the Plaintiffs were invalid or not paid by those respective customers. In other words, the Plaintiffs completed all of the assigned hauls whether short or long distance to the clients' satisfaction. Plaintiff Veronica Villalobos collected the monies for the Defendant all along the way and transmitted those credit card numbers back to homebase at Beast Coast Moving. So, while the Plaintiffs were out on the road hauling moves on behalf of the Defendant, payments were coming into the Defendant's offices electronically through the credit card billings that Plaintiff Veronica Villalobos was processing and handling. While Defendant Benjamin Bretter acknowledged that Veronica may have accompanied Mr. Esquijarosa on these hauls throughout the period of time in questions, Mr. Bretter testified that Joel Esquijarosa was hired alone, not with Veronica.

On cross-examination Benjamin Bretter testified that Joel did sign up as an independent contractor and the company used a 1099 tax form for him. However, he admitted that Plaintiff Joel Esquijarosa did not own his own truck and that he was instructed on where and how to proceed for Beast Coast Moving customers. Defendants only maintain a hollow claim that they owe him, and only him, some monies for the services he rendered as an independent contractor in November of 2019, but because this lawsuit was filed, the filing of Plaintiffs' lawsuit disrupted that payment. That defense argument makes absolutely no sense and is conflicting with all of the other evidence presented.

In this trial, Plaintiffs both claim they were employed by Beast Coast Moving, having been hired directly by the company owner Amos Bretter and which business was managed by Benjamin Bretter. The evidence undisputedly shows this to be true. Mr. Bretter's testimony matched the Plaintiffs' allegations that Beast Coast Moving controlled the Plaintiffs' activities.

However, Mr. Bretter had no firsthand knowledge of the salaries or wages negotiated by his father, and his father, Amos Bretter, did not appear at trial. No explanation was given for Amos Bretter's nonappearance and the matter proceeded to trial simply without his testimony. The fact that Amos Bretter did not testify, and that no explanation was presented for the nonappearance of a named Defendant, raises the unavoidable inference that had Amos Bretter testified, his testimony would have been adverse to the Defendants' interests. The Defendants did not present any evidence of what amount is owed to one or both Plaintiffs.

Defendants denied Veronica Villalobos was employed at all and that if she worked providing services to Beast Coast, that her labor was voluntary and gratuitous, apparently just to spend time with Joel Esquijarosa. This argument is nonsense and is belied by all of the other testimony and evidence presented, including the meticulous record-keeping that Veronica made. As Mr. Esquijarosa described, he could not perform all of the services during these hauls, most

of which were long hauls, relocating customers belongings from one destination to another and speaking to the clients in English, without the assistance of Veronica Villalobos. She communicated with the clients and the company fluidly and equally, maintained thorough records, helped with the packaging, the loading and unloading of the truck, and assisted in Plaintiff Joel Esquijarosa's communications since his use of English was limited. At trial, Mr. Esquijarosa used a court-appointed AOC-approved Spanish interpreter.

It is the conclusion of this Court that the Plaintiffs each have presented their testimony credibly and consistently. While Plaintiff Joel Esquijarosa did lose his temper while on the witness stand, it appeared to be understandable since he was flat out fired by the Defendant a first time, and then again, after he was recalled back to work in August of 2019 and eventually fired on November 19, 2019 because he demanded full payment for the services he had rendered from both Bretters, father and son.

The Defendants maintain that Plaintiff Joel Esquijarosa was an independent contractor and that Plaintiff Veronica Villalobos was not hired at all. It makes absolutely no sense that Veronica Villalobos would voluntarily engage in all this arduous and unlustrous work gratuitously. Indeed, she managed the money flow from customers to Beast Coast Moving during the course of the entire time period in dispute. Why would Beast Coast Movers enable Veronica Villalobos to have access to the company issued Chase expense card or records if she was not authorized to do so? Beast Coast Moving cannot have it both ways, on the one hand claiming that Veronica Villalobos was never an employee, nor even an independent contractor, but instead gratuitously provide these services that she provided, and on the other hand, Benjamin or Amos Bretter communicating with her fluidly, and even sending payment meant for Joel Esquijarosa through Veronica Villalobos during Veronica's alleged "voluntary" time period.

Applying the “ABC test” factors as detailed in the Hargrove Supreme Court decision, I conclude that the Defendants have not met their burden. Hargrove places the burden on the Defendants to make certain showing regarding the individual that is presumably employed:

The "ABC" test presumes an individual is an employee unless the employer can make certain showings regarding the individual employed, including:

- (A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and
- (B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
- (C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

The evidence presented shows that both Plaintiffs were controlled over their performance of services. Benjamin Bretter reaffirmed what he expected from Joel Esquijarosa, that being to make the assigned deliveries or moves, to provide the best customer service, to be on time and never be late, and to accommodate the pickups and drop-offs as required by the customer. The services provided by both Plaintiffs were not outside the usual course of business for which the services were performed, but rather the services provided by both Plaintiffs were exactly what was required by the Defendant moving company and its manager and owner. The Plaintiffs were in constant contact with home office in New Jersey while they were away reporting on their movements and expenditures and so on. There is no evidence in this record that shows Plaintiffs deviating from what was expected from them. There is no evidence showing malperformance or failure to perform any of the specific hauls that Plaintiffs’ claim they did perform for the Defendants. These findings address (A) and (B) of the “ABC test”.

Finally, as to evidence of the third factor (C) of the “ABC test”, Defendants have not met their burden in this respect either. Neither Plaintiff is customarily engaged in any independently established trade or business of moving. Both Plaintiffs worked for Beast Coast Moving exclusively, and at their direction.

“The failure to satisfy any one of the three criteria results in an “employment” classification” Carpet Remnant Warehouse, 125 N.J. at 581. The retention of each of the two Plaintiffs and their hiring was effectuated by Amos Bretter, who did not testify at trial. There is no evidence in this record that conflicts with Plaintiffs’ testimony that they specifically spoke to Amos Bretter, at his Fairlawn home, to finalize the details of their employment. Hargrove presumes that an individual is an employee unless the employer shows with competent evidence to at least each of the three factors in the “ABC test”. Defendants have failed to make any showing as to any of the three factors.

Additionally, there is no evidence in this record presented by the defense that conflicts with the Plaintiffs’ calculations of damages resulting from the Defendant company’s failure to pay their wages. This Court finds Joel Esquijarosa’s testimony credible and convincing that he spoke to Amos Bretter directly and Mr. Bretter in August of 2019 first offered to pay him \$200 per day for local jobs and increased the pay to \$300 per day for long distance jobs, no matter how long that particular workday would have been. This Court finds Veronica Villalobos testimony credible that she, too, was rehired by Amos Bretter in August of 2019 at \$200 per day to assist and coordinate those jobs where Joel Esquijarosa would drive the haul.

Defendants have not shown what credits should be applied for any monies paid by the Defendants through November 2019, and what the balance due Mr. Esquijarosa is. This Plaintiff testified that he was paid \$8,160, not directly, but through Veronica, for the relevant time period, and that those payments were unusually, and frustratingly, fragmented. The documentation

provided by Plaintiffs is listed in Plaintiffs' Binder Exhibit A, Subpart #2 includes calculations with dates, locations and job numbers prepared by Plaintiff Veronica Villalobos and Plaintiffs' Exhibit A, Subpart #3 that includes supporting data with email dated July 1, 2020 and which includes an "Unpaid Expenses" summary list plus supporting receipts are both detailed and straightforward. Subpart #2 is meticulous and is documented with receipts and itemizations, including the documentation for the unpaid commissions total of \$894.74 and Subpart #3 calculates the total of unpaid expenses in the grand total of \$1,818.13. To the contrary, there is zero evidence presented by Defendants that raises any dispute to Plaintiffs' meticulous and detailed calculations prepared by Veronica and testified to by Mr. Esquijarosa.

With respect to Joel Esquijarosa, this Court concludes that the evidence credibly supports his claim to \$300 per day for his services on the long hauls requested and directed by the Defendant Beast Coast Moving through their management, for a total of \$22,500. This Court further concludes that Veronica Villalobos she is owed \$14,850, not including commissions and expenses. Ms. Villalobos maintained a record and kept receipts of all of the activities throughout the 101 days out on the road. Aside from \$14,850, calculated at \$200 a day, Veronica testified that she is owed \$1,818.13 in expenses and \$894 in commissions. The \$1,818.13 in expenses is detailed in Plaintiff Binder Exhibit A, Subpart #3, at its page 4. All of the receipts are attached to that running list of expenses.

Plaintiffs' evidence documenting the formation of Beast Coast Moving, LLC is in its Plaintiff Binder Exhibit B, the Certificate of Formation for Beast Coast Moving, LLC documents its formation on February 24, 2016. The Certificate of Formation shows the registered agent as Ben Bretter and its registered offices in Fairlawn, New Jersey. It also lists the members/managers as Ben Bretter and he also served to sign off as the authorized representative for the formation of the entity. However, during Benjamin Bretter's testimony, he testified that it was his father, Amos,

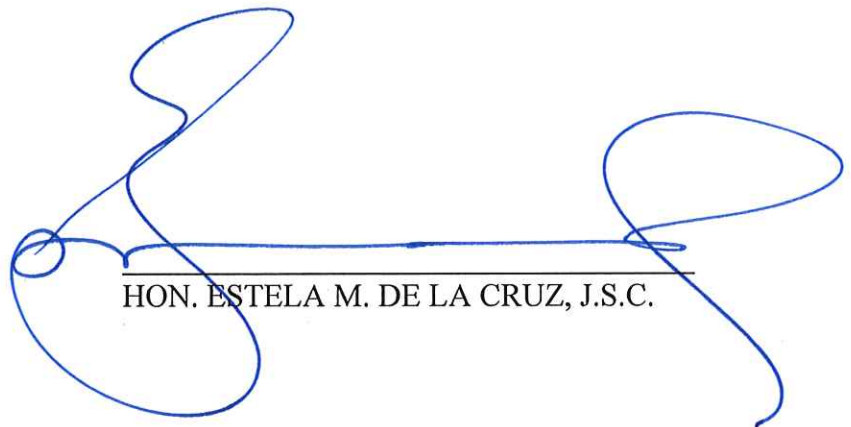
who rehired Plaintiff Joel and provided him with compensation through Western Union wire transfers. Benjamin Bretter acknowledged that his father Amos Bretter was the operations manager of the company. Both Plaintiffs testified consistently that they understood Amos Bretter, the senior one, to be the real owner of the company, and that he controlled his son, Benjamin, who was the registered agent in corporate activities.

Defendants' attempt to disrupt any focus on Amos Bretter as management is unsuccessful, as Benjamin Bretter testified that Amos was operations manager of the company and both Plaintiffs testified that Amos Bretter was the one that hired them out of his own home in Fairlawn, New Jersey. It is the conclusion of this Court for purposes of this action both individually named Defendants were agents that had management of such corporation and they as a matter of law are deemed to be the employers of these two Plaintiff employees of Beast Coast Moving. N.J.S.A. 34:11-4.1 provides that for the purposes of the act, the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation. The two individually named Defendants are deemed to be employers of the Plaintiffs pursuant to the act. As such, they are held to the standard as an employer in the event of nonpayment of wages.

This Court concludes that Plaintiff Joel Esquijarosa is owed \$22,500 in unpaid wages. This Court further concludes Veronica Villalobos is owed \$14,850 as unpaid wages, plus \$894 in commission monies, plus \$1,818.13 for her out-of-pocket expenses. Pursuant to N.J.S.A. 34:11-4.10(c) Plaintiffs are entitled, as employees denied their rightful and due wages, to liquidated damages in the amount of 200% of the wages lost, together with costs and reasonable attorney's fees for the prosecution of this matter to a conclusion.

In conclusion, aside to the base amount in unpaid wages of \$22,500, Plaintiff Joel Esquijarosa is owed 200% of the unpaid wages as liquidated damages in the amount of \$29,700.

The total owed by Defendants to Joel Esquijarosa, each as his employer, is \$67,500 (\$22,500 in wages and \$45,000 as 200% in liquidated damages). The total owed by Defendants to Veronica Villalobos, each as her employer, is \$44,550 (\$14,850 in wages and \$29,700 as 200% in liquidated damages). In addition to the wage award, Ms. Villalobos is also due from Defendants \$894 in commissions and \$1,818.13 in reimbursement for out-of-pocket expenses, which she has proven by a preponderance of the credible evidence. The total owed by Defendants to Joel Esquijarosa is \$67,500, and the total owed by the Defendants for Plaintiff Veronica Villalobos is \$47,262.13. No certification has been presented to assess an attorney's fees award and thus, none has been included in this judgment order. An order entering final judgment consistent with this decision has been issued on this date.



HON. ESTELA M. DE LA CRUZ, J.S.C.