

Yankee Stadium Waiters Win Appeal In Tip Row

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Law360, New York (April 01, 2014, 7:34 PM ET) -- A New York state appeals court has rekindled a suit accusing the Yankee Stadium's premium catering company of failing to pass tips along to waiters, ruling that the plaintiffs' state labor claim was not preempted by federal law.

In a two-paragraph order, the First Department of New York's Appellate Division reversed a lower court's dismissal of a suit brought by 32 waiters against Legends Hospitality LLC, which provides in-seat service to Yankees patrons with field-level seating.

"Contrary to the motion court's determination, defendants did not establish that for all of the pertinent period they sufficiently notified patrons that the mandatory service charge at issue was not a gratuity," the appeals court wrote.

The waiters [filed the suit](#) in 2012, claiming that Legends improperly retained a 20 percent mandatory service fee added to patrons' checks between the 2009 and 2011 baseball seasons.

The once-common practice of withholding mandatory service charges has been expressly illegal since 2008, when New York's top court held that such charges must be passed to servers since they are assumed to be tips, according to the complaint.

In its dismissal motion, Legends argued that the waiters' wages were governed by a heavily negotiated collective bargaining agreement with their union and that under the federal National Labor Relations Act, the court did not have the authority to rewrite the contract.

The lower state court sided with the defendants in June, ruling that the waiters had not exhausted the arbitration procedures required by the bargaining agreement as required by federal labor law. The court also found that Legends had properly disclosed what percentage of the mandatory service charge was being distributed to servers.

"Defendants reasonably notified patrons that the mandatory service charge was not a gratuity," New York Supreme Court Judge Alexander Hunter wrote in his dismissal.

"Accordingly, plaintiffs claims for the mandatory charges are not properly brought under

[New York state law].”

The appeals court swiftly reversed that determination on Tuesday, ruling that the plaintiffs had stated a valid claim under Section 196-d of New York’s labor code, which prevents employers from retaining gratuities meant for employees.

“We are obviously thrilled with the ruling,” Eric Gitig, an attorney for the plaintiffs, told Law360 on Tuesday. “We were confident that the lower court’s decision was going to be overturned. The company shouldn’t be allowed to hide behind the CBA when it comes to paying wages and violating labor laws.”

Gitig said that the court’s ruling showed that the plaintiffs’ state law claim was valid and that their bargaining agreement was not in need of interpretation.

Representatives and attorneys for Legends did not immediately return a request for comment on Tuesday.

The plaintiffs are represented by Brian Schaffer and Eric Gitig of Fitapelli & Schaffer LLP.

Legends Hospitality is represented by Anastasia M. Kerdock and Lawrence D. Levien of [Akin Gump Strauss Hauer & Feld LLP](#).

The case is Mendez et al. v. Legends Hospitality et al., case number 12105, the Supreme Court of New York, Appellate Division, First Department.