

2014 WL 1281767
Supreme Court, Appellate Division, First
Department, New York.

Janine Mendez, et al., Plaintiffs–Appellants,
Walter Sanchez, et al., Plaintiffs,
v.
Legends Hospitality, LLC,
Defendant–Respondent, New York Yankees
Partnership, Defendant.

1210 5 | ENTERED: APRIL 1, 2014

Attorneys and Law Firms

Fitapelli & Schaffer, LLP, New York (Brian S. Schaffer
of counsel), for appellants.

Akin, Gump, Strauss, Hauer & Feld LLC, Washington,
DC (Lawrence D. Levien of the bar of the District of
Columbia, admitted pro hac vice, of counsel), for
respondent.

Friedman, J.P., Renwick, Moskowitz, Richter, JJ.

Opinion

Order, Supreme Court, Bronx County (Alexander W.
Hunter, Jr., J.), entered July 10, 2013, which granted
defendants’ motion to dismiss the complaint,
unanimously reversed, on the law, without costs, the
motion denied, and the complaint reinstated.

Plaintiffs stated a valid claim under Labor Law § 196–d,
not preempted by federal law (*see Tamburino v. Madison
Sq. Garden, L.P.*, AD3d, 2014 N.Y. Slip Op 00895 [1st
Dept 2014]). 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.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION,
FIRST DEPARTMENT.

CLERK

Parallel Citations

2014 N.Y. Slip Op. 02235