

Illegal workers entitled to back pay, New York judge says

By SAMUEL MAULL

Associated Press Writer

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NEW YORK -- A state judge has ruled that several illegal immigrant workers may proceed with a lawsuit against a city construction company for back wages they say were withheld as part of a money laundering scheme.

The defendants, led by Kel-Tech Construction Inc., argued that the federal Immigration Reform and Control Act (IRCA) bars immigrants who obtain employment with false documents from pursuing wage claims in court.

But state Supreme Court Justice Karla Moskowitz said in her decision that the facts in this case differed from those in other cases in which rulings limited undocumented workers' rights to sue.

The judge said the key U.S. Supreme Court case that the defendants cite bars an illegal immigrant from pursuing wages he would have earned if he had not been fired for union organizing.

The distinction in this case, the judge wrote, is that the eight workers _ of whom seven purportedly are illegal immigrants _ are seeking a total of \$280,000 they have already earned, not wages they would have earned.

"The crucial issue in this case was whether the undocumented worker performed services for which the worker deserves compensation," the judge wrote in her decision, which was made public Thursday.

Kel-Tech has contracts with various municipal agencies, including the city's School Construction Authority and Housing Authority, to do construction on public projects.

The plaintiffs, in their 20s and 30s, said they worked on two schools in the Bronx, one in Staten Island and a housing project in Brooklyn.

Under the state Labor Law, public works contracts _ funded with taxes _

require payment of the prevailing wage and supplemental benefits to all workers, the judge wrote.

Lloyd Ambinder, a lawyer for the immigrants, said Thursday that his clients were paid about half of what they should have received. He said Kel-Tech cut two checks each week in each worker's name but cashed and kept the money from one of them while claiming it was paying the worker the prevailing proper wage.

Ambinder said regarding the alleged money laundering scheme, "I have no knowledge of any criminal or administrative investigation."

The judge said previous rulings reinforce "the conclusion that undocumented workers, no matter what kind of documents they proffered or did not proffer at the time of employment, may still collect the prevailing wage under New York Labor Law for work they have performed."

Federal laws work "to ensure that employers do not treat undocumented workers unfairly because, without the IRCA and the labor laws, employers could easily offer undocumented workers less protection and lower wages than legal workers and thus take these jobs away from legal workers," the judge wrote.

Kel-Tech's lawyer, Ahmed Massoud, did not return a telephone call for comment.

Ambinder said he expects to go to trial on the money issue in April or May.

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