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Judge upholds strippers' pay suit

Scores of dancers claiming thousands; Chelsea club may appeal, lawyer says

By Jonathan Saltzman, Globe Staff | August 11, 2009

About 70 strippers who worked at a Chelsea club are each entitled to recover thousands of dollars in damages in a class-action lawsuit because their employer misclassified them as "independent contractors," depriving them of wages and tips, a judge has ruled.

The suit, which a lawyer for one of the strippers described as the first of its kind in Massachusetts, seeks to recover money they should have received at King Arthur's Lounge in Chelsea since 2004.

King Arthur's Lounge, a club that has been the scene of more than one notorious crime, did not pay the strippers any salaries, required each to pony up \$35 to perform each night, and kept \$10 of every \$30 that each made for "private dancing" in secluded booths, according to a state judge who granted a stripper's motion for summary judgment on the issue of liability.

The club had argued that selling alcohol is its main business, not putting on strip shows, and that the performers were independent contractors who provided extra entertainment akin to televisions and pool tables at a sports bar.

Suffolk Superior Judge Frances A. McIntyre dismissed that argument.

"A court would need to be blind to human instinct to decide that live nude entertainment was equivalent to the wallpaper of routinely-televised matches, games, tournaments, and sports talk in such a place," she wrote. "The dancing is an integral part of King Arthur's business."

McIntyre certified the suit brought by Lucienne Chaves, a 32-year-old former stripper at the club, as a class action on behalf of her and other dancers who were misclassified as independent contractors, said Shannon Liss-Riordan, a Boston lawyer for the strippers. About 70 other strippers who worked at the club are part of the class proceeding to trial on damages.

Liss-Riordan said the strippers at King Arthur's were like indentured servants, given the \$35 fee they had to pay management.

"In this case, we have an employer who was charging its employees to work," she said. "They weren't making minimum wage. They weren't making any wage. Imagine a restaurant where a waiter has to pay to come to work" and hand over a portion of his tips.

She estimated that some of the strippers will be entitled to tens of thousands of dollars in damages.

Under the Massachusetts tips law, waiters, bartenders, skycaps, and other service employees must earn a minimum wage of \$2.63 an hour. Employers are prohibited from taking a portion of their tips, although a number of restaurants, bars, hotels, and other businesses have violated that provision.

The strippers at King Arthur's were allowed to keep all the tips they received when they performed in an open area, but had to turn over a third of what they made in the private shows, Liss-Riordan said.

Chaves, who worked at the club from 2005 to 2007, declined to comment through her lawyers.

Robert R. Berluti, a Boston lawyer for King Arthur's, said that some of the strippers made hundreds of dollars a shift. That raises questions about whether they suffered financially, he said, although the judge rejected a similar argument in her July 30 ruling.

Berluti said McIntyre's ruling reflected the fact that Massachusetts has one of the strictest laws in the country concerning misclassification of workers as independent contractors.

"This was a case where the judge was saddled with a Massachusetts law that makes it an outlier with respect to the rest of the country," he said, adding that his client is considering appealing.

In arguing that the strippers were independent contractors, King Arthur's said that Chaves got to pick her own music, costumes, partners, and routines. The club also said it never gave her written rules to follow or documentation that she was an employee.

McIntyre rejected that argument, pointing out that the club hired and fired strippers, determined what hours they worked, and "apparently hired its dancers based solely on whether they 'look good' rather than individual performance experience or talent."

On Jan. 25, 2008, a man opened fire during a fight inside King Arthur's, killing one man, wounding two others, and causing patrons and employees to scramble for safety. The alleged assailant, Jesse Camacho, who was 19 at the time, was arrested nine months later in Mexico City.

The bar was also the scene of a brawl on July 23, 1982, that began with an argument between Alfred J. Mattuchio and Everett police Officer John McLeod, who was off duty.

The officer left the lounge, then returned with several other police officers, armed with nightsticks, baseball bats, and tire irons, according to news reports. They attacked a dozen patrons and employees, and Vincent J. Bordonaro was beaten to death. Four Everett officers were indicted in the death, and three were convicted. The city was found liable in a civil case. ■