

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 09-21461-CV-KING

LORENA BELTRAN-MOYA, et al.,

Plaintiffs,

v.

HI-TECH AUTOBODY, INC. and
FRANK RONQUILLO,

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

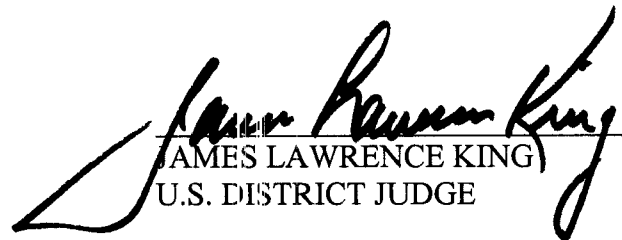
THIS CAUSE comes before the Court upon Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction (DE #7), filed June 30, 2009. Plaintiffs filed their Response on July 20, 2009 (DE #9), and Defendant filed a Reply on July 30, 2009 (DE #11). Having carefully reviewed the parties' motions and legal authorities, the Court determines that the Motion should be **DENIED**.

Defendants' Motion is styled as a Motion to Dismiss, or in the alternative, a Motion to Convert the Motion into a Motion for Summary Judgment. In that vein, Defendant has attached an affidavit and made numerous assertions purporting to show that Defendant does not engage in interstate commerce and is therefore not covered under the Fair Labor Standards Act (FLSA). However, the Court cannot consider those outside facts in a motion to dismiss, and the Court declines to convert the motion into one for Summary Judgment at this point in the litigation. Plaintiffs' well-plead complaint sufficiently alleges facts to support coverage under FLSA (*See* Compl., ¶¶5-8).

Accordingly, the Court having carefully considered the parties' motions and legal authorities and being otherwise fully advised, it is **ORDERED, ADJUDGED, and DECREED** that:

1. Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction (DE #7) be, and the same hereby is, **DENIED**.
2. Defendants shall file an Answer within **twenty (20) days from the date of this Order**.

DONE AND ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 19th day of August, 2009.



JAMES LAWRENCE KING
U.S. DISTRICT JUDGE

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