Restaurant Owners Owing Millions of Dollars to Workers Close Down, Only to Open Again Under Related Owners

Rajashree Chakravarty
CUNY Graduate School of Journalism
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It seemed like a busy day with customers pouring in and out of a Chinese restaurant in midtown Manhattan. The place was filled with greetings, laughter and chatter of those who had come for lunch on a regular Thursday afternoon. The old world setting of the restaurant with bright golden chandeliers, big paintings adorning the walls, timeworn wooden panels and an arch dividing the restaurant into two sections gave the customers an impression that it has been in the business for quite sometime. The laminated paper cuttings of The New York Times and other newspapers across the city, at the entrance of this Zagat-rated restaurant gave an indication that the customers might get the value for their money. But this apparently regular Chinese restaurant got involved in litigation charges when workers dragged the management to court on charges of not getting paid the minimum wage, overtime and fringe benefits.

Wu Liang Ye is one of the many restaurants in the city which have cases registered against them for failing to adhere to the labor laws of the state. In most of the cases, workers demand the wage that they have lost over the course of their work but face a hard time retrieving the money from the employers.

According to reports from the department of labor, during the first 10 months of 2015, the state of New York returned around $25.1 million to around 22,600 workers, who were denied proper minimum wage, overtime pay or any kind of fringe benefits. This new figure falls a little short from the record $32.2 million distributed to 27,000 workers in 2014.
The DOL is working on the complaints of the workers faster to retrieve the money and give the workers their due from the employers, according to a public announcement made by the department last year.

Many workers working in the restaurants are subjected to wage violations wherein they are paid less than the state’s standard minimum wage and are deprived of the minimum benefits like taking breaks during their work-shifts and working under good conditions. These workers coming from low-income background are afraid to ask what they deserve for the fear of losing their job or getting abused by the employers. But there are workers who have come out to voice their grievances against their employers and sought help from the different labor organizations working across the city.

Some workers have won the cases against their employers who are primarily restaurant owners, but rarely have got any money owed to them. These restaurants close down and open again with some other name maybe in the same location or in any other location managed by the same people. The owners find ways to evade the law and carry on doing business. Sometimes they recruit the same workers and do not even bother to change the restaurant’s décor.

JoAnn Lum, executive director of the National Mobilization Against Sweatshops (NMASS), a worker’s organization that work for labor rights, said that the state’s DOL and Governor Cuomo should be held accountable and must take the initiative to fulfill the demands to protect the workers from employer practices that affect them. She wants better working conditions and minimum wage for the workers.
“Stealing from your workers is okay because even if you get investigated, you don’t have to pay too much, and for the businesses that are trying to comply with the labor law, well good luck, you will have to compete because New York State is open to sweatshops,” said Lum.

Wage theft is a common practice across the nation. It is the illegal practice of not complying with the minimum wage laws, not paying overtime, forcing workers to work off the clock and imposing fines on them.

Workers regularly demonstrate peacefully in front of the New York state’s DOL on Varick street in Manhattan. They want the government to enforce labor laws, end delays, complete investigation of the wage theft claims and notify those who have filed their cases about its progress in a timely manner and end sweatshop like conditions the workers are subjected to.

“It is a sweat shop when your hard-earned money is stolen from you, it is a sweat shop when you are forced to deliver food under dangerous conditions, it is a sweat shop when your boss calls you an independent contractor so that he doesn’t have to pay your health insurance,” said Sophie DeBenedetto, a young board member of NMASS but has been a member for five years.

Most of the workers who file for lawsuits against their employers either belong to the restaurant industry or clothing manufacturing industry or the construction industry.

According to government documents and Empty Judgments: The Wage Collection Crisis in New York, a report prepared by the community development project at the Urban Justice Center, employment law unit at The Legal Aid Society and National Center for Law and Economic Justice, the restaurants
exploit Asian and Mexican workers by not following the labor laws like paying the minimum wage, paying wages and wage supplements or adhering to maximum hours of work per week. Some of these workers claimed in court that the employers imposed fines for almost everything like breaking glass, using telephone or wearing wrong blouse or skirt and sometimes even forced to work 15 days at a stretch when there are less people.

Since many of these workers are undocumented, they are too scared to question the rules set by their employers. When they do so, they are sometimes threatened with dire consequences like lay off or deportation and at times offered money to withdraw the case.

A group of workers got together and complained against three restaurants, La Posada, Gaviota’s Restaurant and Sports Bar Inc. and Tequila Song, which were managed by the same group of people. After investigation, DOL issued orders to pay $1.45 million in wages and penalties, one owner agreed to pay a small sum while other 2 appealed.

The five workers, Mirna Hernandez, Maria Del Carmen Aguilera, Gregoria Jeronimo, Griselda Sallas, Rocio Velez and Carmen Amaguaya brought charges against the owners of the three restaurants, Angel Moina, Maria Moina and Napoleon Moina for not paying proper wages. The owners appealed to the court saying that each was a separate entity and were not liable to pay such huge amount to the workers.

Testimonies to the investigative officer of DOL by the workers showed that owners of La Posada, Angel Moina and Gaviota’s Restaurant and Sports Bar Inc., Maria Moina are related.
Maria Del Carmen Aguilera, one of the workers who complained against the owners of the restaurant said she started working at La Posada and Gaviota’s in 2005. She claimed that she worked from 4.00 p.m. till 12 a.m. without breaks for $30 every month along with gratuities. Aguilera alleged that gratuities from customers were divided at the end of the shift and the employer Maria Moina also received a part of it. While Velez and Amaguaya alleged that they were made to sign false documents about their payroll by the employers.

Aguilera also claimed that Maria Moina continued to supervise employees at La Posada even after Gaviota’s opened. She was in charge of making the work schedules while Angel Moina paid the wages.

Maria Moina, in her testimony in court claimed that though she was Angel Moina’s wife, she stopped supervising the employees once Gaviota’s opened in 2008.

She explained that the schedules showing employees working at both restaurants were so because “those employees were from La Posada and I would give them the days that they were free at La Posada because La Posada they only worked from two to three days. And I completed their schedule at Gaviota’s.”

The court disagreed with Maria Moina’s testimony and said that the evidence presented clearly showed that she was an employer at all the three restaurants. The court also affirmed that Angel Moina and Napoleon Moina were “liable as employers under Articles 6 and 19 of the Labor Law, where they failed to meet their burden of proof on this issue.”

Article 6 of the Labor Law is related to the payment of wages. This law protects the rights of the workers to receive the
wages earned. It assures payment of wages in full on regular pay days and sets benchmarks as to the frequency of pay days. The law authorizes the DOL to assist the workers in collecting unpaid wages. While article 19 is related to the minimum wage act to help workers provide adequate maintenance for themselves and their family.

The court found Maria Moina’s testimony that she was no longer associated with La Posada after Gaviota’s was opened, not credible. Testimonies from other workers confirmed that Maria Moina made the schedules and enforced house rules for both the restaurants and transferred employees among the three restaurants.

“Accordingly, based on the above, we find Maria Moina exercised sufficient control over the petitioners’ employees to meet the definition of an employer as set forth in Articles 6 and 19 of the Labor Law,” said the court judgment.

Angel Moina, owner of La Posada dissolved the restaurant and reopened another one under a different name, according to Empty Judgments report. Solace Bar and Grill, a new restaurant bustling with young crowd is placed conveniently at the same location, around the corner of 143rd street. While Geisha Sushi, an Asian lounge has opened at the same place as that of Gaviota’s Restaurant and Sports Bar.

Napoleon Moina settled the case involving Tequila Song, which is still in business, according to another court document. He is waiting for liquor license for another restaurant, El Sabor Latino Inc., in Bronx. He applied for it in October 2015.

“An individual can be held liable for violations of the wage theft laws regardless of whether a business was also incorporated, if
that individual possessed sufficient control over the terms and conditions of the worker’s employment,” said David Colodny, supervising attorney at The Urban Justice Center.

He says that an individual who is found liable is subject to having their assets seized, including other business interests such as a separate restaurant. The individual can be liable regardless of whether the business that broke the law is still open or whether it has closed and the individual can be liable regardless of whether they open up another business at all.

Colodny says that a corporation or an individual who is liable for wage theft violations is liable regardless of whether the company is still operating. But, if a business has shut down and has no assets, the workers may not be able to collect their wages from that entity even if they win a judgment.

In 2011, employees of Charm Thai, a Thai restaurant in Amsterdam Avenue, Manhattan, filed suit in federal court in New York alleging minimum wage violations, overtime violations and unlawful retaliation after the workers complained of the violations. The court ruled the case in favor of the workers and granted a default judgment against the two individual owners, Prakit Premon and Pochjana Premon, husband and wife duo. They were liable to pay $830,000, but they filed for bankruptcy, chapter 7. This chapter deals with liquidation of the debtor’s nonexempt property to pay the debts.

According to Empty Judgment report, the workers didn’t get any money and some workers claim that the duo got enough time to liquidate their assets and leave the country.
But Prakit Premon and Pochjana Premon owned another restaurant, Sala Thai, on Second Avenue in New York, which was still in business during the same time. According to the state liquor license public query, on-premises liquor license was effective from the beginning of March 2012 till the end of February 2014. The Premons, though filed for bankruptcy under chapter 7 were still carrying on their business.

Prakit Premon was mentioned for his culinary skills in The New York Times, which also listed him as the owners of Red Garlic, Sala Thai, Siam Inn, Blue Chili and Prem-on Thai. While all of the above mentioned restaurants ceased to exist, Opai Thai continues to do thriving business at its former location under Yan Bing Chen, according to the state liquor license public query. It is hard to establish any connection between the Premons and Chen.

“If a business is sold or transferred to another entity that continues to operate the business (or buys the assets and liabilities), the new business can be held liable for the wage theft violations of the old business under some circumstances,” says Colodny. “Though the legal test for determining whether an entity is a successor is a little complex, courts will have to determine whether the new business is a “successor in interest” to the old business.”

Lum claim that the DOL has done little to help workers get their dues. She claims that more needs to be done and the owners should be stopped from liquidating their assets by enforcing stricter laws.

Saigon Grill was a Vietnamese restaurant in the Upper West Side. The restaurant served Asian Fusion and Sushi to its customers. It got three and half stars from over 300 reviews on
Yelp. Behind the seemingly innocent eating-place, there was exploitation going on, according to court records and reports. Three workers filed a lawsuit in Federal court against the owners of Saigon Grill Restaurant in Manhattan’s Upper West Side. The owners did not go to the court and shut down the restaurant around February 2013. The court awarded the workers $181,000 in a default judgment in 2013. According to the Empty Judgment report, the workers are trying to get their money from the largest shareholder who owns 80 percent stake of the corporation but is in bankruptcy court.

These stories are common among those working in the restaurant industry.

Jin Ming Cao, a former employee of Wu Liang Ye restaurant claim that some other workers along with him who filed lawsuit against the restaurant owners owed $1.8 million, as per the court judgment.

Cao claims that the restaurant is operating under the same owners who haven’t even bothered to change the interior of the shop and some of the old workers have returned to work at the same place. The restaurant website also shows the business is in operation, but none of the workers has got back any money from the owners.

New York State Corporation records do not require the business to state the name of the owner. The record only needs the name of the business and the location of the business and that for correspondence.

The restaurant owners are aware of the loopholes in the law and take advantage of those to continue doing their business. Most of the restaurants listed above operate under different
names. Charm Thai did business as Best Boat Seafood Restaurant while Glyphs Garden Inc. did business as Saigon Grill and Gaviota’s Restaurant and Sports Bar Inc. did business as Maguey Lounge.

The New York state corporation records do not update their database very often and many times, though a business is shown to be active may not be so.

The state liquor licenses sometimes show the principal’s name which help to identify individuals associated with the business but it is not mandatory. So, many times restaurant owners who try to evade the law do so by not putting the principal’s name on record and hence it becomes difficult to trace the owner associated with the business.

“Corporations are responsible to pay the debts for wage and hour violations, but they often do not do so because they hide or transfer their assets or have insufficient assets to pay their debts,” says Colodny. “Sometimes these companies file for bankruptcy protection, and sometimes they just dissolve the corporation or cease operating without paying.”