

322 Fed.Appx. 644, 2009 WL 792939 (C.A.11 (Fla.))
(Not Selected for publication in the Federal Reporter)
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This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Eleventh Circuit Rules 36-2, 36-3. (Find CTA11 Rule 36-2 and Find CTA11 Rule 36-3)

United States Court of Appeals,
 Eleventh Circuit.
 Jorge GUZMAN, and all others similarly situated,
 Plaintiff-Appellant,
 v.
 IRMADAN, INC., d.b.a. Dansco Enterprises, Dan
 Pasqualucci, Defendants-Appellees.

No. 08-12902
 Non-Argument Calendar.
 March 27, 2009.

Background: Former employee, a cabinet installer and assembler for small, family-owned carpentry business, brought Fair Labor Standards Act (FLSA) action for unpaid overtime wages against employer corporation and its owner. Defendants' motion to dismiss for lack of subject matter jurisdiction was converted into motion for summary judgment. The United States District Court for the Southern District of Florida, D.C. Docket No. 07-23289-CV-CMA, [Cecilia M. Altonaga, J., 551 F.Supp.2d 1368](#), granted summary judgment in favor of defendants. Employee appealed.

Holding: The Court of Appeals held that employee was not directly involved in interstate commerce.
 Affirmed.

West Headnotes

Commerce 83  **62.62**

83 Commerce

83II Application to Particular Subjects and Methods of Regulation

83II(D) Employment of Labor

83II(D)3 Wages and Hours

83k62.62 k. Particular Employees.

Most Cited Cases

Labor and Employment 231H  **2232**

231H Labor and Employment

231HXIII Wages and Hours

231HXIII(B) Minimum Wages and Overtime

Pay

231HXIII(B)2 Persons and Employments

Within Regulations

231Hk2231 Employees Included

231Hk2232 k. In General. **Most**

Cited Cases

Employee's occasional conduct as cabinet installer and assembler, in picking up materials for employer from local hardware and retail stores, including plywood and liquid nails, which had come from out of state and abroad, did not constitute direct participation in the actual movement of persons or things in interstate commerce, so as to qualify for individual coverage under Fair Labor Standards Act (FLSA); materials were removed from the flow of interstate commerce when they arrived at the retail stores, and employee's later transport of the materials and installation of cabinets purchased by employer's customers purely was intrastate activity. Fair Labor Standards Act of 1938, § 7(a)(1), [29 U.S.C.A. § 207\(a\)\(1\)](#).

***644** [Jamie H. Zidell, J.H. Zidell, P.A., Miami Beach, FL](#), for Plaintiff-Appellant.

[Chris Kleppin, Glasser, Boreth & Kleppin, P.A., Plantation, FL](#), for Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida. D.C. Docket No. 07-23289-CV-CMA.

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Before EDMONDSON, Chief Judge, CARNES and BARKETT, Circuit Judges.

PER CURIAM:

**1 Jorge Guzman appeals the dismissal of his complaint for unpaid overtime wages under the Fair Labor Standards Act *645 (“FLSA”), 29 U.S.C. § 201 *et seq.* No reversible error has been shown; we affirm.

Here, the district court granted Irmadan's summary judgment motion after concluding that Guzman was not engaged in interstate commerce under the FLSA. We review a district court's grant of summary judgment *de novo*; and we view the evidence and all reasonable factual inferences in the light most favorable to the nonmoving party. *Manciccia v. Brown*, 171 F.3d 1364, 1367 (11th Cir.1999). On appeal, Guzman—who assembled and installed kitchen cabinets in customers' homes and businesses for Irmadan—argues that he individually was engaged in interstate commerce because he purchased and transported building materials that had traveled in interstate commerce.

The FLSA requires an employer to pay an employee overtime compensation for any hours worked in excess of forty in a given workweek, if that employee establishes either individual or enterprise coverage.^{FN1} For individual coverage to apply under the FLSA, Guzman had to show that he (1) engaged in commerce or (2) engaged in the production of goods for commerce. 29 U.S.C. § 207(a)(1). Guzman relies on the “engaged in commerce” element.

^{FN1}. Guzman originally argued for enterprise coverage but later conceded that it was not a viable theory because Defendant did not have at least \$500,000 in gross revenues. 29 U.S.C. § 203(s)(1)(A)(ii).

To receive overtime compensation, Guzman had to “directly participat[e] in the actual movement of persons or things in interstate commerce.”

Thorne v. All Restoration Servs., Inc., 448 F.3d 1264, 1266 (11th Cir.2006).^{FN2} In his employment with Irmadan, Guzman would, on occasion, pick up materials for Irmadan from local hardware and retail stores. These materials—including plywood and liquid nails—had come from out of state and abroad and later were used in the construction of Irmadan's cabinets. But the materials were removed from the flow of interstate commerce when they arrived at the retail stores. *See id.* at 1267 (“When goods reach the customer for whom they were intended, the interstate journey ends ...”); *see also* 29 U.S.C. § 203(i). Guzman's later transport of the materials and installation of cabinets purchased by Irmadan's customers purely was intrastate activity “not covered under the Act.” *Thorne*, 448 F.3d at 1267. Guzman's assertion that Irmadan's customers were the ultimate consumers of the materials is unavailing; the materials Guzman used and transported simply allowed Irmadan to conduct its cabinetry business. *See Dunlop v. Indus. Am. Corp.*, 516 F.2d 498, 499-502 (5th Cir.1975) (wholly intrastate garbage removal service was the ultimate consumer of the gasoline—which had moved in interstate commerce—used in operating company's trucks).^{FN3}

^{FN2}. In enacting the FLSA, Congress did not exercise the full scope of its commerce power. *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 63 S.Ct. 332, 336, 87 L.Ed. 460 (1943).

^{FN3}. In his brief, Guzman belies his own assertion that the customers were the ultimate consumers of the materials, noting that the materials he picked up were “crucial and central to [Irmadan's] cabinetry business” and that he transported the materials “to be used in connection with [Irmadan's] business.”

AFFIRMED.

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