

Slip Copy, 2011 WL 1346887 (S.D.Fla.)
(Cite as: 2011 WL 1346887 (S.D.Fla.))

Only the Westlaw citation is currently available.

United States District Court, S.D. Florida,
Miami Division.

Maria D. GOMEZ, Plaintiff

v.

VICKY BAKERY VIII, INC. and Alejandro Santi-
ago, Defendants.

No. 10–23944–CIV.

April 4, 2011.

[Neil Flaxman](#), Neil Flaxman, P.A., Miami, FL, for
Plaintiff.

[Chris Kleppin](#), [Kristopher Walter Zinchiak](#), Glass-
er, Boreth, & Kleppin, Plantation, FL, for Defend-
ants.

ORDER GRANTING SUMMARY JUDGMENT
ADALBERTO JORDAN, District Judge.

*1 For the following reasons, the Vicky Bakery
VIII, Inc.'s and Alejandro Santiago's unopposed
motion for summary judgment [D.E. 17] is GRAN-
TED.

In their summary-judgment motion, Vicky
Bakery and Mr. Santiago argue that no federal jur-
isdiction exists under the Fair Labor Standard Act
(FLSA) because (1) Ms. Gomez, a one-time em-
ployee of Vicky Bakery, never engaged in interstate
commerce or the production of goods for interstate
commerce and (2) Vicky Bakery is not an enter-
prise engaged in commerce or in the production of
goods for commerce. Under the FLSA, Ms. Gomez
must show one of the two conditions to proceed.

“[F]or an employee to be ‘engaged in com-
merce’ under the FLSA, he must be directly parti-
cipating 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). In other words, the employee must either

participate in the movement of things in interstate
commerce or regularly use the instrumentalities of
interstate commerce in his employment. *See Id.*
For a business to be engaged in commerce or in the
production of goods for commerce, the business
must, at a minimum, have an “annual gross volume
of sales ... not less than \$500,000.” 29 U.S.C. §
203(s)(1)(A)(ii) (2006).

The undisputed evidence shows that Ms.
Gomez was not engaged in commerce. Nor was she
engaged in the production of goods for commerce
[17–1 ¶ 3]. And Vicky Bakery's financial records
show that it did not have an annual gross volume of
sales reaching \$500,000 during the relevant period
[D.E. 17–2 at 2–17]. Accordingly, the FLSA does
not apply to the employee-employer relationship of
Vicky Bakery and Ms. Gomez. Ms. Gomez, for her
part, does not oppose the motion for summary judg-
ment, apparently agreeing that the tax returns pre-
clude her claim.

For these reasons, Vicky Bakery's and Mr. Santi-
ago's motion for summary judgment [D.E. 16] is
GRANTED. A final order will be issued separately.

DONE and ORDERED.

S.D.Fla., 2011.

Gomez v. Vicky Bakery VIII, Inc.

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