

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of

Hearing Examiner File Nos.:
**LS-21-002, LS-21-003, and
LS-21-004**

**BAJA CONCRETE USA CORP., ROBERTO
CONTRERAS, NEWWAY FORMING INC., and
ANTONIO MACHADO**

**ORDER ON CROSS
MOTIONS FOR SUMMARY
JUDGMENT**

from a Final Order of the Decision issued by the
Director, Seattle Office of Labor Standards

This matter concerns the appeals by Baja Concrete USA Corp. (“Baja”), Newway Forming Inc. (“Newway”), and Antonio Machado (“Machado”) (collectively herein “Appellants”) of a Seattle Office of Labor Standards (“OLS,” “City,” or “Respondent”) Final Order of Decision issued by the Department Director (“Decision”). The parties filed cross-motions for summary judgment, and associated responses and replies. The Hearing Examiner has reviewed the file in this matter, including the motion documents. For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated.

Quasi-judicial bodies, like the Hearing Examiner, may dispose of an issue summarily where there is no genuine issue of material fact. *ASARCO Inc. v. Air Quality Coalition*, 92 Wn.2d 685, 695-698, 601 P.2d 501 (1979). Rule 1.03 of the Hearing Examiner Rules of Practice and Procedure (“HERs”) states that for questions of practice and procedure not covered by the HERs, the Hearing Examiner “may look to the Superior Court Civil Rules for guidance.” Civil Rule 56(c) provides that a motion for summary judgment is properly granted where “the moving party is entitled to a judgment as a matter of law.” The Hearing Examiner “must consider the facts in the light most favorable to the nonmoving party, and the motion should be granted only if reasonable persons could reach only one conclusion.” *Labriola v. Pollard Group, Inc.*, 152 Wn.2d 828, 832-833, 100 P.3d 791 (2004).

Machado moved for summary judgment on the issue of whether he is a joint employer of the named aggrieved workers in the Decision.¹

Baja filed a motion for partial summary judgment, seeking an order declaring that Baja is not an employer of the workers at issue in this matter, under the legal doctrine of joint employment.

Newway’s motion to dismiss argues that it should be dismissed from this matter, because OLS wrongfully determined that Newway was a joint employer with its subcontractor Baja.

¹ Machado also moved for the exclusion of nine witness statements taken by OLS.

OLS moved for summary judgment on the basis that Appellants violated Seattle's Wage Theft Ordinance, Minimum Wage Ordinance, and Paid Sick and Safe Time Ordinance in its employment of laborers and cement finishers in Seattle, and that Appellants jointly employed the relevant workers.

The parties filed extensive briefing supported by many exhibits and declarations. The parties' motions do not argue any pure issues of law, but are all strongly dependent on fact based arguments. On their face the motions, in some cases even between the Appellants, present conflicting accounts of the central facts at issue in this matter. Although some minor issues of fact may present no genuine issues of law, considering the facts in the light most favorable to the nonmoving parties, it is not possible for a reasonable person to reach only one conclusion as to the facts in this matter as briefed and argued by the parties. The parties have failed to demonstrate that there is no genuine issue of material fact as to the core issues in this matter, and the Hearing Examiner declines to address minor issues raised in the motions that can be addressed at hearing.

The Appellants' and Respondent's motions to dismiss and for summary judgment are **DENIED**.

Baja has also moved for the exclusion of unsworn witness statements and other evidence, and Newway joined in Baja's motion. Appellant Machado also moved to exclude evidence as part of his motion for summary judgment. The basis of the motions to exclude the evidence is that it consists of unsworn witness statements that do not meet various evidentiary standards including that the statements include hearsay. The motions to exclude evidence are premature. The City is not asking the Hearing Examiner to consider any of these unsworn statements either in support of its motion for summary judgment or in its responses to Appellants' motions for summary judgment. The parties have yet to identify final witness and exhibit lists for hearing, and it remains unclear what use if any the witness statements may have at hearing. For that reason, the motions are **DENIED** without prejudice, and these issues may be raised again later at hearing if they become relevant. However, HER 2.17(a) allows hearsay evidence at hearing, therefore where the Baja motion to dismiss argues that the unsworn statements are hearsay, and therefore inadmissible, that motion is **DENIED** as to that issue with prejudice, and it may not be raised again at hearing.

Entered September 22, 2022.

/s/Ryan Vancil
Ryan Vancil, Hearing Examiner

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CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT** to each person listed below, or on the attached mailing list, in the matter of **BAJA CONCRETE USA CORP., ET AL.**, Hearing Examiner File: **LS-21-001, 003, & 004**, in the manner indicated.

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Dated: September 22, 2022

/s/ Patricia Cole
Patricia Cole
Executive Assistant