

# United States Court of Appeals-For the Second Circuit

Mazhar Saleem, et al v. Corporate Transportation Group, Ltd.

## Granted Summary Judgement in favor of Defendants

Test Applied in this case was based on what is referred to as the **Economic Reality Test**: a six (6) part test

In this case there are several other factors gleaned from the six-part test that the Court delved into.

- 1st. Factor has to do with the Integral nature of the IC services which **avored employment because -work was not outside of the usual course of business thus integral to the survival of Defendant company**
- 2nd. Factor-chose the nature and parameters of their affiliation, i.e., when to perform those services/what best fits their schedules and were also able to negotiate the terms of their compensation which ultimately affected their profitability, so the Plaintiff participated in their ability to make a profit or loss. The terms were not indefinite so a Plaintiff could have terminated their relationship within a reasonable time frame. **FAVORING IC STATUS**
- 3rd. Factor- that **written Agreements** were pertinent about the nature AND term of the relationship which was that of independent contractor, thus, no significant degree of permanence. **FAVORING IC STATUS**
- 4th. Factor was the freedom to work for others supplemented with **those that actually did**; either for competitors or direct customers of their own. Thus, Plaintiff became **less economically dependent** on the putative employer. **FACTOR FAVORING IC STATUS**
- 5th. Plaintiff classified themselves as independent contractors when they **filed their tax returns and took deductions for business expenses**. No benefits like health was offered and no withholding of income related taxes. **FACTOR FAVORING IC STATUS**
- 6th. Some Plaintiffs had **business cards**. **FACTOR FAVORING IC STATUS**
- 7th. Some Plaintiff had **others** working for them. **FACTOR FAVORING IC STATUS**
- 8th. Some Plaintiff had capital expenditures. **FACTOR FAVORING IC status**. Economic Investment is interrelated for opportunity of loss where the risk of the investment also lends itself with an eye to profit inventive.

- 9th. There were numerous **non-reimbursed expenses** incurred by Plaintiffs. **FACTOR FAVORING IC STATUS**
- 10th. Compensated by the job and **not by the hour**. **FACTOR FAVORING IC STATUS**
- 11th. Rejected assignments **without retaliation**. **FACTOR FAVORING IC STATUS**
- 12th. **No non-compete clauses** in IC Agreement. **FACTOR FAVORING IC STATUS**
- 13th. Plaintiff took vacations without permission from the Defendant. **FACTOR FAVORING IC STATUS**
- 14th. Regularity and length of the working relationship was of Plaintiffs choosing. **FACTOR FAVORING IC STATUS**
- 15th. Many Plaintiff's had **multiple** engagements. **FACTOR FAVORING IC STATUS**

While not all facts here are listed, and while there existed some direction and control exercised over the Plaintiffs, the totality of the relationship weighed heavily in favor of IC status that led up to issuance of a Summary Judgement in favor of the purported employer/Defendant.

**Respectfully Submitted, Paul Gapp, Managing Partner/Consultech**