

« Citation

Data **Original** Wordprocessor Version

(NOTE: The status of this decision is **Unpublished.**)

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-o

PROSOFT TECHNOLOGY GROUP,
INC.,

Plaintiff-Respondent,

v.

COMPUGRA SYSTEMS, INC.,

Defendant-Appellant.

April 8, 2015

Before Judges Fasciale and Hoffman.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-3485-13.

LisaAnne R. Bicocchi argued the cause for appellant (Archer & Greiner, P.C., attorneys; Patrick Papalia, of counsel; Patrick A. Ascolese, on the briefs).

Robert B. Meola argued the cause for respondent (Finazzo Cossolini O'Leary Meola & Hager, L.L.C., attorneys; Robert J. Pansulla and Mr. Meola, on the brief).

PER CURIAM

Defendant Compugra Systems, Inc. ("Compugra") appeals from a September 30, 2013 Law Division order entering summary judgment in favor of plaintiff Prosoft Technology, Inc. ("Prosoft"), and awarding damages in the amount of \$35,728.¹ We affirm.

Prosoft and Compugra are both technology companies offering computer consulting and other information technology ("IT") services. On January 31, 2011, the parties entered into a Masters Service Agreement (the "Agreement"), which stated that Compugra "desires to engage [Prosoft's] employees and/or independent contractors from time to time for assistance on projects relating to [software design] and [systems implementation]."

Under the Agreement, Prosoft assigned Phaneendar Baddam, an employee of Software Professionals, Inc., to complete a specific job for one of Compugra's clients, IMS Health. Baddam completed the services for IMS Health in January 2012. For Baddam's services, Prosoft submitted total billings of \$86,024. Compugra paid Prosoft \$50,296, leaving an outstanding balance of \$35,728.

When one of Compugra's checks was returned for insufficient funds, and the company thereafter failed to keep repeated promises of payment, Prosoft initiated this collection action. The complaint sought payment of \$35,728 for services rendered pursuant to the Agreement. The day after filing its answer, Compugra moved for summary judgment, seeking dismissal of Prosoft's complaint. Compugra asserted that Prosoft was not licensed in the State of New Jersey as a "temporary help service firm" at the time the cause of action accrued. As a matter of law, Compugra argued that Prosoft is a "temporary help service

firm" which is barred from initiating legal action in New Jersey because it failed to comply with the registration requirements under the New Jersey Private Employment Agency Act ("the Act"), [N.J.S.A. 34:8-43](#) to -66. Prosoft filed a cross-motion for summary judgment.

Judge Frank M. Ciuffani held oral argument and subsequently rejected Compugra's legal contention, finding plaintiff was not an employment agency within the meaning of the Act. In his written statement of reasons, the judge found that Compugra hired Prosoft "not as an employment agency or temporary staffing provider." Rather, Compugra hired Prosoft because of Prosoft's "highly specialized and technical services"

The judge also found no genuine issue of material fact as to the services which Prosoft provided or the amount which Compugra still owed under the Agreement:

There is no dispute that Prosoft did supply the technical support as requested by Compugra for its customer. All of the billings that are the subject of this lawsuit were generated through the efforts of the consultant supplied by Prosoft, working for the customer of Compugra in Pennsylvania.

There is no dispute as to the amount Prosoft was to be paid under the Agreement. The [c]ross-[m]otion for [s]ummary [j]udgment allows the [c]ourt to consider a classic fact pattern for entitlement to payment through unambiguous circumstances. In fact, the evidence establishes that Compugra attempted to pay the balance it owed to Prosoft after the work was performed. Compugra bounced checks, sent emails, and confirmed that payment was due and owing without ever contesting that the work was unsatisfactory or lacking in any way. Compugra has never disputed any of the invoices provided by

Prosoft. Yet to date, Prosoft is still owed \$35,728.

On appeal, Compugra again argues that plaintiff is a "temporary help service firm," pursuant to [N.J.S.A. 34:8-43](#), and is thus barred from collecting money because it was not properly registered in the State of New Jersey as required by the statute. In the alternative, Compugra argues that the court erred in granting summary judgment without permitting Compugra to conduct discovery.

We have considered Compugra's contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant extended discussion in a written opinion. [R. 2:11-3\(e\)\(1\)\(E\)](#). We affirm substantially for the reasons Judge Ciuffani expressed in his cogent written statement of reasons. We add the following comments.

Our review is guided by the same standards governing the trial court on a motion for summary judgment. [LVNV Funding, L.L.C. v. Colvell](#), [421 N.J. Super. 1](#), 6 (App. Div. 2011). We first determine, giving the non-moving party all reasonable inferences, whether the moving party demonstrated there were no genuine disputes as to any material facts, and then decide whether the motion judge's application of the law was correct. [Atl. Mut. Ins. Co. v. Hillside Bottling Co.](#), [387 N.J. Super. 224](#), 230-31 (App. Div.), [certif. denied](#), [189 N.J. 104](#) (2006). No special deference is accorded to the motion judge's "interpretation of the law and the legal consequences that flow from established facts," which we review de novo. [Manalapan Realty, L.P. v. Twp. Comm. of Manalapan](#), [140 N.J. 366](#), 378 (1995).

"The Act is a regulatory measure intended to alleviate abuses in the employment-agency industry." [Data Informatics, Inc. v. AmeriSOURCE Partners](#), [338 N.J. Super. 61](#), 74 (App. Div. 2001) (citations and internal quotation marks omitted). "The Act provides for the Division of Consumer Affairs' regulation and oversight of mandated practices . . . and registration requirements for private agencies which provide employment services, and prohibits regulated agencies from engaging in 'deceptive or otherwise unfair practices" [Id.](#) at 71 (citations omitted).

In furtherance of the Legislature's remedial objectives, the Act requires employment services providers, including employment agencies, consulting firms, and temporary help service firms, to "comply with the provisions of . . . [the Consumer Fraud Act, [N.J.S.A. 56:8-1](#) to -97]."¹ *Id.* at 76 (alteration in original) (quoting [N.J.S.A. 34:8-43](#)). This includes the annual registration requirements set forth in [N.J.S.A. 56:8-1.1a](#). *Id.* at 73. While employment agencies must be licensed, consulting firms and temporary help service firms need only be registered. *Id.* at 71-72 (citing [N.J.S.A. 34:8-52](#); [N.J.S.A. 56:8-1.1](#)); see also [N.J.S.A. 34:8-64a](#) (providing that "[e]very consulting firm operating within this State shall . . . annually . . . register"). To ensure compliance with these provisions, the Act states no person or entity shall

bring or maintain an action in any court of this State for the collection of a fee, charge or commission for the performance of any of the activities regulated by this act without alleging and proving licensure or registration, as appropriate, at the time the alleged cause of action arose.

[[N.J.S.A. 34:8-45b](#).]

We have expressly stated that the Act is both "'regulatory and penal' in nature"; consequently, a plaintiff performing activities regulated by the Act but failing to comply with its registration requirement is barred from enforcing agreements within the State. *Data Informatics*, supra, 338 *N.J. Super.* at 78; see also *Accountemps Div. of Robert Half, Inc. v. Birch Tree Grp., Ltd.*, 115 *N.J.* 614, 626 (1989) (holding "[o]ur courts have consistently held that public policy precludes enforcement of a contract entered into in violation of [the State's] licensing statute[s]"). Therefore, given the Act's purpose "to preclude unlicensed [or unregistered] agencies . . . from benefiting from unlawful conduct[,]" agreements entered into by non-compliant employment agencies "are void as illegal, and unenforceable as a matter of public policy." *Id.* at 78.

The Act further defines temporary help service firms to include:

any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in the handling of the customers' temporary,

excess or special work loads, and who, in addition to the payment of wages or salaries to the employed individuals, pays federal social security taxes and State and federal unemployment insurance; carries worker's compensation insurance as required by State law; and sustains responsibility for the actions of the employed individuals while they render services to the firm's customers.

[N.J.S.A. 34:8-43.]

This definition describes companies and firms that routinely hire individuals to perform temporary or excess workloads for third parties that contract with the staffing firm for temporary help, thus making the firm a "[t]emporary help service firm." N.J.S.A. 34:8-43.

In this case, the trial court properly interpreted the Act and its legislative intent to not include companies such as Prosoft in the category of "employment agency" or "temporary help service firm." Prosoft's primary responsibility as a company is to provide IT services to companies, not to provide individuals to third parties with a staffing need. The purpose of the Legislature in passing the Act was to limit abuses in the employment agency industry and to hold those companies that specialize in staffing responsible for their actions. It is clear from the Act that this was meant to only apply to temporary help service firms. N.J.S.A. 34:8-43.

As made apparent in the Agreement, which was drafted by Compugra, Prosoft was hired as a subcontractor to perform specific technological tasks. Prosoft is not a staffing firm, nor was it approached as such a firm. In this instance, Prosoft was asked to provide only one individual to complete a highly technical and complex job for one of defendant's clients, not to fill a temporary staffing need. These circumstances do not fit within the description or the legislative intent of the Act. Thus, we conclude that the motion court correctly determined that Prosoft is not a temporary help service firm and therefore not subject to the Act.

Regarding the amount owed, the record shows that Compugra attempted to pay the balance it owed to Prosoft multiple times after the work had been performed and completed. But for insufficient funds and bounced checks, the amount would have been paid. Compugra even confirmed in emails that

payment was due and that the company was in the process of satisfying the debt owed. Compugra never disputed any of the invoices provided by plaintiff and therefore owes the outstanding amount of \$35,728.

Compugra also contends that it should have been permitted to conduct discovery with respect to Prosoft's cross-motion for summary judgment. However, Compugra failed to provide the judge with any valid basis for allowing a period of discovery. Compugra was billed for the services that Prosoft provided and attempted to pay the balance it owed. Compugra's claim of needing discovery is also inconsistent with its own actions, as it filed for summary judgment first. We discern no valid basis for allowing discovery before considering Prosoft's summary judgment motion.

Viewing the facts in the light most favorable to Compugra, we conclude that Compugra failed to provide competent proofs that plaintiff was a "temporary staffing firm" required by law to be registered with the State of New Jersey as such. Moreover, Compugra failed to provide any valid basis for conducting discovery with respect to plaintiff's cross-motion for summary judgment. Therefore, plaintiff is entitled to summary judgment and defendant owes plaintiff the outstanding amount of \$35,728.

Affirmed.

¹ The record contains contradictory dates for this order. The order is stamped as filed on September 27, 2013, and Compugra refers to the order as dated September 27, 2013. However, the judge dated the order as September 30, 2013, and Prosoft also claims the date of the order was September 30, 2013.

This archive is a service of [Rutgers School of Law](#).