

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3694-13T4

STRATUS TECHNOLOGY SERVICES, INC.,

Plaintiff-Appellant,

v.

ALEXANDRA PACIELLO,

Defendant-Respondent.

Submitted April 21, 2015 - Decided November 18, 2015

Before Judges Messano and Sumners.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Docket No.
L-0795-14.

Byrnes, O'Hern & Heugle, attorneys for
appellant (Sean F. Byrnes, on the brief).

Alexandra Paciello, respondent pro se.

The opinion of the court was delivered by
SUMNERS, JR., J.A.D.

This appeal arises out of a de novo trial in the Law
Division granting defendant Alexandra Paciello's claim that her
former employer, plaintiff Stratus Technology Services, Inc.,
failed to pay her \$29,166.40 in commissions. We affirm.

We glean the following factual and procedural background from the record. Stratus Technology is in the business of finding employees for its clients who are primarily in the information technology sector. Paciello was hired as a business development manager starting on November 16, 2009. Her compensation and terms of employment were set forth in an employment agreement.

The employment agreement provided that Paciello earn a base salary of \$50,000 plus commission from two types of employment placements. One involved a contract placement, where Stratus Technology would find a temporary employee for a client. Stratus Technology would pay the temporary employee's salary, and then bill the client for the employee's services. Paciello's commission would be ten percent of the net revenue on every temporary employee she placed. The other involved a permanent placement and occurred when a client hired Stratus Technology to find an employee for permanent hire. Stratus Technology would be paid a one-time fee based on the employee's salary. The employment agreement specifically provided "[p]ermanent [p]lacement [c]ommissions will be 10% of the fee for the business procured by [Paciello]." Moreover, "[i]f [e]mployee recruits and places the individual she will receive an additional 10% of the fee."

Sometime in September 2012, Stratus Technology became engaged in a new concept, recruitment process outsourcing (RPO), with Lend Lease (US) Construction Holdings, Inc., which hired Stratus Technology to act as its exclusive recruiting agent for the hiring of all its employees. Similar to the fee structure for permanent employee placement set forth in Paciello's employment agreement, Stratus Technology would receive a flat fee based on the salary of the employee placed with Lend Lease. All placements made for Lend Lease were for permanent employees.

Since Paciello was responsible for recruiting Lend Lease as a client, she became Stratus Technology's RPO account manager for Lend Lease. However, Status Technology made no arrangement nor did it have an understanding with Paciello regarding whether she could receive commission for RPO placements.

Before RPO took effect, Paciello went on maternity leave. A few months after returning, she sought commission on the fees Stratus Technology received from Lend Lease. She claimed that, since she brought in Lend Lease as a new client, she was entitled to an additional ten percent commission on all placements made for Lend Lease. Stratus Technology disagreed, contending that RPO was a different type of placement and was not contemplated in Paciello's employment agreement. Shortly thereafter, Paciello resigned effective March 8, 2013.

On August 1, 2013, Paciello filed a wage claim with the New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance, seeking commission on RPO fees. A hearing before a wage collection referee was held on January 8, 2014. In a written decision issued on February 25, the wage referee determined that Stratus Technology had an obligation to pay Paciello in accordance with their employment agreement. Since Stratus Technology was required by N.J.S.A. 34:11-4.6, "to notify [Paciello] in advance of any RPO work[,]" what her commission would be but failed to do so[,]" Stratus Technology was barred from retroactively deciding that she would not receive commission. Thus, Paciello was awarded \$29,166.40, representing ten percent commission minus commission she previously received.¹

Stratus Technology appealed the decision to the Law Division, where a trial de novo hearing was conducted on March 21, 2014. Stratus Technology's owner testified that RPO commission was not contemplated in Paciello's employment agreement and that Paciello did not have any involvement with Lend Lease once RPO was set-up. According to Paciello, during the time she was account manager for Lend Lease, RPO placements

¹ Stratus Technology received \$295,700 in fees from Lend Lease. Paciello was previously paid \$403.60 as commission.

generated over \$400,000 in revenues for Stratus Technology. Following testimony and summations, the judge issued a bench decision affirming the administrative tribunal's decision. In so finding, the judge rejected Stratus Technology's contention that the wage referee rewrote the employment agreement by giving Paciello the benefit of a ten percent commission on RPO revenues. He reasoned that since RPO was a new service that Stratus Technology did not add to the employment agreement, Paciello "had a reasonable expectation to be paid her [ten] percent commission based on the signed agreement." The judge further determined that the RPO commission should be calculated on the gross revenues Stratus Technology received as that was the commission formula under the employment agreement for procuring permanent employees. This appeal followed.

Before us, Stratus Technology contends that the trial court erred in awarding Paciello RPO commission; the employment agreement did not contemplate RPO, and did not allow for commission based on referral of business, but only for individual placements. Having scrutinized the record and considering the arguments presented, we affirm the trial court's decision, substantially for the reasons expressed by the judge, and also by the wage referee in his written administrative decision.

In accordance with the Wage Collection Act, N.J.S.A. 34:11-57 to -67, employees have the right to file claims with the Department of Labor to collect wages they contend are owed to them by their employers. Any party may appeal the administrative decision to the Superior Court, which may consider de novo the wage dispute. Marr v. ABM Carpet Serv., Inc., 286 N.J. Super. 500, 504-05 (Law Div. 1995); see also N.J.S.A. 34:11-63. In its de novo consideration, the trial court may consider the testimony of witnesses and documentary evidence, even if they had not been offered or admitted at the administrative hearing, so long as such proof is "otherwise legal and competent[.]" N.J.S.A. 34:11-65.

When a trial court's decision is appealed, our usual standards of appellate review apply. We will "'not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]'" Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting In re Trust Created by Agreement Dated December 20, 1961, ex rel Johnson, 194 N.J. 276, 284 (2008)); see also Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974).

Even so, "[w]hen a trial court's decision turns on its construction of a contract, appellate review of that determination is de novo." Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014) (citing Kieffer v. Best Buy, 205 N.J. 213, 222 (2011)). Consequently, the appellate division gives "'no special deference to the trial court's interpretation and look[s] at the contract with fresh eyes.'" Ibid. (quoting Kieffer, supra, 205 N.J. at 223).

We enforce contracts "'based on the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract.'" Id. at 118 (quoting Caruso v. Ravenswood Developers, Inc., 337 N.J. Super. 499, 506 (App. Div. 2001)). If a contract can be construed according to its plain language, then that language governs. Twp. of White v. Castle Ridge Dev. Corp., 419 N.J. Super. 68, 74-75 (App. Div. 2011).

Applying these well-settled standards, we discern no basis to set aside the trial court's decision that Paciello receive ten percent commission on the RPO gross fees Stratus Technology received from Lend Lease. Though Stratus Technology failed to amend Paciello's employment agreement or to give her advance notice regarding entitlement to commission for RPO, the employment agreement's plain and expressed language is clear. The employment agreement provided that Paciello receive ten

percent commission for the business that she procured in the placement of permanent employees. If she also placed an individual employee, she would earn an additional ten percent commission on that placement. Under RPO, Stratus Technology recruited and hired permanent employees for Lend Lease. The record supports the judge's finding that Paciello was instrumental in procuring Lend Lease as a client, as evidenced by her appointment as Stratus Technology's account manager for Lend Lease. Thus, Paciello had the reasonable expectation under her employment arrangement that she would receive commission from the Lend Lease account. As such, the trial court did not re-write the employment agreement when it awarded Paciello's commission but properly applied its terms. Accordingly, Paciello was entitled to ten percent commission on the fees generated from the placement of permanent employees with Lend Lease.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION