
Supreme Court of New Jersey

DOCKET NO. 089632

SERGIO LOPEZ,

Plaintiff – Petitioner,

-against-

MARMIC, LLC and MIKE RUANE, individually,

Defendants – Respondents.

ON PETITION FOR
CERTIFICATION
FROM AN ORDER OF
THE SUPERIOR COURT

APPELLATE DIVISION
DOCKET NO.
A-002391-22

SAT BELOW:
HON. ROBERT HEYS GARDNER,
J.S.C.

RESPONSE TO PETITION FOR CERTIFICATION

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COUNTERSTAMENT OF THE MATTER INVOLVED

Defendants-Respondents Marmic, LLC and Mike Ruane, Jr. (“Respondents”) submit this brief in opposition to the Petition for Certification filed by Plaintiff-Petitioner Sergio Lopez (“Petitioner”). Petitioner commenced this matter by the filing of Complaint, dated September 9, 2019, seeking payment of wages under New Jersey’s Wage and Hour Law. A bench trial took place in this matter on August 18, 2023. The trial judge specifically excluded any evidence regarding Petitioner’s immigration status at trial. (App24-25¹). Instead, the testimony from Petitioner at trial was that he knowingly provided a false social security number on the W-4 form that he submitted to gain employment with Respondents. (App19). Furthermore, Petitioner was unable to provide any cognizable measure of his alleged damages, which amounted to mere speculation. (App14).

Following the close of the evidence, and after post-trial submissions by the parties of proposed findings of facts and conclusions of law, the trial judge ruled that “the Court is required to rely upon the veracity of the plaintiff to – to make out the initial claim in this particular case. And I don’t

¹ The prefix “App” refers to the appendix submitted with the Petition.

find the – that the plaintiff in this case to be credible or believable.”

(App11). Furthermore, the trial court found that “the testimony of the employee has to be credible. And I don’t find in any way, shape, or form that the plaintiff’s testimony in this case is credible.” (Id.).

The trial judge also found that Petitioner knowingly lied in filling out the W-4 form. (App11-12). The trial judge also held that the Immigration Reform and Control Act of 1986 (“IRAC”), 8 U.S.C.A. §1101, et seq., as a matter of federal law, statutorily barred Petitioner from recovery here. (App13-14).

In analyzing Petitioner’s damages claim, the trial judge found that it was “left to entirely speculate, as a jury would be, if this were a jury case, as to what the hourly wages were at the time and/or the total number of hours worked.” (App14). Thus, by order dated March 7, 2023, the trial judge held that Petitioner failed to sustain his burden of proof and dismissed the Complaint with prejudice. (App2).

Thereafter, Petitioner filed a Notice of Appeal to the Appellate Division. On June 20, 2024, the Appellate Division issued a written opinion per curium, affirming the trial court’s findings and rulings. The Appellate Division recognized that the trial judge excluded any evidence regarding

Petitioner's immigration status at trial. (App24-25). However, the Appellate Division recognized that the trial judge appropriately that it found that it was the fact that Petitioner knowingly lied in completing the W-4 form to gain employment that represented the lack of credibility to dismiss Petitioner's claims. (App25-26). The Appellate Division also held that under the Immigration Reform and Control Act of 1986, 8 U.S.C. 1101 to 1507 ("IRAC"), Petitioner was also statutorily barred from recovery pursuant to the United States Supreme Court case entitled Hoffman Plastics Compounds, Inc. v. NLRB, 535 U.S. 137 (2002). (App16-18).

Additionally, the Appellate Division held that the "ABC test" to determine if a person is an employee or an independent contractor for a wage payment claim did not apply here because there could be no employee-employer relationship between Petitioner and Respondent here. (App29).

In the absence of an employee-employer relationship, the Appellate Division affirmed the trial judge's findings that Petitioner and Respondents then entered into a barter arrangement. (App27-28). Finally, the Appellate Division also affirmed the trial court's finding that Petitioner had not presented a cognizable damages claim at trial and his testimony regarding the alleged hours he worked was also not credible. (App20). Accordingly,

the Appellate Division affirmed the trial judge's findings. This Petition for Certification followed.

REASONS WHY CERTIFICATION SHOULD BE DENIED

Rule 2:12-4 states in relevant part that Certification to the New Jersey Supreme Court "will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court." Certification should be denied by this Court because there is no issue presented here that remotely approaches satisfying the standard set forth in Rule 2:12-4.

Petitioner attempts to cloud the trial court's ruling, as well as the sound reasoning of the Appellate Division. Contrary to Petitioner's argument, the trial judge properly explicitly excluded any evidence of Petitioner's immigration status at trial. Instead, the issue of Petitioner's credibility centered around him intentionally falsely completing the W-4 form to gain employment from Respondents. Petitioner knowingly lying on the W-4 form had nothing to do with his immigration status. Petitioner's own conduct created a legitimate credibility issue with respect to Petitioner's testimony.

Furthermore, ultimately, the trial court determined that the Petitioner was unable to present a cognizable damages claim and his testimony regarding his alleged damages also lacked credibility. The credibility issues relied upon by the trial court do not remotely implicate the standard to grant Certification by this Court.

COMMENTS ON THE APPELLATE DIVISION DECISION

I. THE COURT SHOULD DENY CERTIFICATION BECAUSE THE APPELLATE DIVISION PROPERLY RECOGNIZED THAT PETITIONER'S IMMIGRATION STATUS WAS EXCLUDED FROM TRIAL AND IT WAS PETITIONER LYING ON THE W-4 FORM THAT REPRESENTED PETITIONER'S LACK OF CREDIBILITY AT TRIAL

Petitioner argues that Certification should be granted because the Appellate Division erred in determining that Petitioner's immigration status, in any context, was relevant to his claims and not unduly prejudicial. (Pb10)². This argument fails. The Appellate Division properly recognized that Petitioner's immigration status was properly not admitted by the trial judge. Instead, as discussed more fully below, it was Petitioner knowingly lying in providing information and signing the W-4 form that formed the

² The prefix "Pb" refers to Petitioner's brief.

basis of the trial judge's credibility finding with respect to Petitioner at trial.

More specifically, the Appellate Division correctly opined that:

on cross examination we note defense counsel inquired whether plaintiff did not have a Social Security number because he lacked legal status in this country. An objection was immediately made, and the trial judge sustained the objection. Consequently, since there was no cross-examination about plaintiff's immigration status, his argument that the cross-examination was unduly prejudicial N.J.R.E. 403 is devoid of merit.

(App24-25).

Notwithstanding the fact that the Appellate Division correctly recognized that at trial Petitioner's immigration status was not the subject of any cross examination, the Appellate Division further properly analyzed the issue under N.J.R.E. 403 and the applicable caselaw. As indicated by the Appellate Division, N.J.R.E. 403 provides in relevant part that "relevant evidence may be excluded if its probative value is substantially outweighed by the risk of: (a) [u]ndue prejudice, confusion of issues, or misleading a jury . . ." Consistent with the rule, the Appellate Division cited State v. Sanchez-Medina, 231 N.J. 452 (2018) where the Supreme Court, in analyzing the prejudicial effect of evidence of a person's immigration status, held that "[a]s a general rule, that type of evidence should not be presented

to a jury.” State v. Sanchez-Medina, 231 N.J. at 462. (App25). The Appellate Division also recognized “that ‘[i]n most cases, the immigration status of a witness or party is simply irrelevant, and a jury should not learn about it.’ Id at 463, because disclosure of a person’s ‘illegal status in this country is very likely to trigger negative sentiments in the minds of some jurors.’ Id. At 464 (quoting Serrano v. Underground Utils. Corp., 407 N.J. Super. 253, 274 (App. Div. 2009)).” (App25). However, the Appellate Division recognized the critical difference in this case, which was “[h]ere, a bench trial was conducted, and no jury was tainted.” (App25).³

In his Petition for Certification, Petitioner goes to great lengths to cite non-precedential Federal District Court cases deciding various motions in limine holding that a person’s immigration status is not admissible. Initially, as the Appellate Division correctly ruled on appeal, and as is case with the Petition for Certification, the cases cited by Petitioner have no precedential

³ It should also be noted that, while not precedential, the Federal Courts have held that “Rule 403 has no logical application to bench trials [because] Rule 403 assumes a trial judge is able to discern and weigh the improper inferences that a jury might draw from certain evidence, and then balance those improprieties against probative value and necessity. Certainly, in a bench trial, the same judge can also exclude those improper inferences from his mind in reaching a decision.” Gulf States Utils. Co. v. Ecodyne Corp., 635 F.2d 517, 519 (5th Cir.1981).

value on this Court. See Brundage v. Estate of Carambio, 195 N.J. 575, 592-93 (2000). (App25-26). Nevertheless, Petitioner is attempting to cloud the issue and the facts before this Court. The trial judge, as recognized by the Appellate Division, specifically excluded evidence of Petitioner's immigration status at trial. (App24). Thus, the trial judge's ruling, as well as the Appellate Division's, complies not only with New Jersey law, but also all the non-precedential cases cited by Petitioner.

The critical significance here is that Petitioner lied in connection with the W-4 form as he knowingly provided a false social security number. (App6). Furthermore, and importantly, at trial Petitioner agreed that he would not be presenting any evidence that Petitioner had a valid tax identification number. (App25-26). The trial judge correctly excluded from trial any evidence or testimony that Petitioner was an undocumented person. Instead, the trial judge made a finding that Petitioner "lied" in filling out and signing the W-4 form, which demonstrated his lack of credibility. (App19). The act by Petitioner of knowingly lying in completing the W-4 form has nothing to do with his immigration status. The Appellate Division, in affirming, held that "[p]laintiff's uncontroverted deceit in furnishing a false Social Security number was probative of his fraud and saliently, served to

impeach his credibility.” (App26). The Appellate Division further properly recognized that that a credibility finding by a trial judge is one to which appellate courts defer. State v. Locurto, 157 N.J. 463, 474 (1999); State v. Jamison, 153 N.J. 318, 341 (1998). (App15). Thus, the trial judge merely ruled Petitioner lied at trial in filling out the W-4 form thereby rendering his testimony not credible, while not admitting any evidence regarding his immigration status. The Appellate Division simply affirmed that finding by the trial judge. Therefore, Petitioner’s argument that Certification should be granted because his immigration status was improperly admitted into evidence at trial for cross examination fails. Accordingly, because the trial judge properly excluded at trial any evidence regarding Petitioner’s immigration status, and merely ruled that Petitioner lacked credibility due to him lying on the W-4 form, there is no “question of general public importance” here. Therefore, the standard to grant Certification is not met and the Petition should be denied.

II. THE COURT SHOULD DENY CERTIFICATION BECAUSE APPELLATE DIVISION PROPERLY RULED THAT PETITIONER WAS NOT AN EMPLOYEE UNDER THE IRCA AND THEREFORE A BARTER ARRANGMENT EXISTED BETWEEN PETITIONER AND RESPONDENTS

Petitioner also argues that Certification should be granted because the Appellate Division erred in affirming the trial court's decision that a barter arrangement occurred between Petitioner and Respondents, rather than an employer/employee relationship. More specifically, Petitioner argues that "the Appellate Division erroneously affirmed that the existence of the alleged 'barter arrangement' on the basis that 'plaintiff could not be legally paid [as] he provided false [S]ocial [S]ecurity number and apparently he did not have a valid [S]ocial [S]ecurity number.'" (Pb16) (App27). Petitioner further argues that "the overwhelming majority of case law dictates that undocumented immigrants have the same rights for wage claims for work already performed as anyone else." (citation omitted) (Pb16). Thus, Petitioner ultimately argues that an employee-employer relationship between Petitioner and Respondents continued to exist even after Respondent discovered that Petitioner had provided a false Social Security number, thus supporting Petitioner's alleged wage claim. This argument also fails.

In affirming the trial judge’s findings, the Appellate Division engaged in a thorough and rigorous analysis of 8 U.S.C. 1324a and the United States Supreme Court decision in Hoffman Plastics Compounds, Inc. v. NLRB, 535 U.S. 137 (2002). In its well-reasoned opinion, the Appellate Division noted that in Hoffman, the United States Supreme Court held that a National Labor Relations Board order awarding an undocumented person backway was prohibited by the Immigration Reform and Control Act of 1986 (“IRCA”). Hoffman, 535 U.S. at 140.

The Appellate Division noted the Hoffman Court’s description of the IRCA “as ‘a comprehensive scheme prohibiting the employment of illegal aliens in the United States,’ and found it ‘forcefully made combating the employment of illegal aliens central to the policy of immigration law.’” Id. at 147. (App16). Significantly, the Appellate Division cited several important statements from the Hoffman decision about the IRCA scheme. More specifically, the Hoffman Court noted that the IRCA “makes it a crime for an unauthorized alien to subvert the employer verification system by tendering fraudulent documents [and] ‘prohibits aliens from using or attempting to use ... ‘any falsely made document’ ... for purposes of obtaining employment in the United States.” Id. at 148. (App17).

Here, the Appellate Division properly affirmed the trial judge's finding that Petitioner "lied" in completing the W-4 form when he "knew he was required to tell the truth." (App19). The Appellate Division correctly affirmed the trial judge's finding that Petitioner was "an undocumented alien expressly excluded within the statutory definition of the IRCA. Thus, there can be no employee-employer relationship between the parties." (App. Div. Decision p. 18). Importantly, it should also be noted that the Hoffman Court noted that "[t]here is no dispute that Castro's use of false documents to obtain employment with Hoffman violated these provisions." Hoffman, 535 U.S. at 148. Here, as in Hoffman, Petitioner attempted to use a false document (W-4 form) to obtain employment, placing him squarely within the statutory scheme of the IRCA. Petitioner offers no distinguishing analysis with respect to Hoffman. Under Hoffman, as recognized by both the trial court and the Appellate Division, once Respondents know Petitioner provided a false Social Security number, Respondents stopped paying Petitioner because he cannot be legally paid at that point because there is no employee-employer relationship as a matter of law.

Furthermore, at that point, as the Appellate Division recognized, the trial judge made the following findings of fact:

[P]laintiff admitted he was told by . . . Ruane that Plaintiff could not be paid because the . . . W-4 form was invalid . . .

Subsequently, plaintiff was offered an alternative arrangement – a barter arrangement to continue to work at the buildings. As plaintiff could not be legally paid he has provided false [S]ocial [S]ecurity number and apparently he did not have a valid [S]ocial [S]ecurity number.

Plaintiff was offered the apartment, rent and utility free in exchange for plaintiff's part[-]time services around the buildings. . . .

Plaintiff confirmed his testimony that he was aware there was a barter arrangement where he received the apartment, rent and utility free in exchange for his work in the buildings. . . .

[and]

There was no lease or employment agreement between plaintiff and Marmic.

(App27).

Petitioner argues that the “ABC” test set forth in Hargrove v. Sleepy's, LLC, 220 N.J. 289, 295 (2015) applies, as well as the four (4) part test in an unreported District of New Jersey case entitled Wang v. Chapei, LLC, NO. 15-cv-2950, 2020 WL 468858, at *2 (D.N.J. Jan 29, 2020). (Pb15).

Furthermore, Petitioner argues that “the Appellate Division effectively rewrote the relevant statutes, finding that even if an individual qualifies as an employee under the ABC, and/or the economic realities test, that employee is not entitled to statutory wages if undocumented.” (Pb17). That argument

is also without merit. Petitioner's analysis fails to consider the threshold issue that the Hoffman Court discusses in detail, namely that is when an undocumented alien uses a "false document" to gain employment, there is no employee-employer relationship established. It should be noted, as the Appellate Division pointed out, "[h]offman has not been expanded beyond its specific focus." Crespo v. Evergo Corp., 366 N.J. Super. 391, 398 (App. Div. 2004). Petitioner's own conduct disqualified him from being considered "an employee" for any further analysis.

Finally, any argument made by Petitioner that the Appellate Division's ruling would have a potential "chilling effect" on undocumented workers seeking payment from employers for unpaid wages and overtime also has no merit. This case turned on the issue of Petitioner's lack of overall credibility. As indicated above, Petitioner knowingly lying on the W-4 form to gain employment. However, as further recognized by the Appellate Division, the trial judge also found that Petitioner's "claim that he worked thirty-seven or sixty hours per week 'not credible' and noted '[t]here's no basis for the number of hours worked.'" (App20). The Appellate Division's decision is in line with all applicable precedent and does not change the law in New Jersey. Accordingly, there is no "chilling

effect” here by way of the Appellate Division’s decision and, therefore, the Petition should be denied.

In sum, Petitioner has failed to present any “question of general public importance” that would require intervention by this Court. The Appellate Division correctly affirmed the trial judge’s decision to exclude evidence of Petitioner’s immigration status at trial. Instead, the Appellate Division properly recognized that the trial judge merely made a finding that Petitioner lacked credibility in knowingly providing false information on the W-4 form, as well as an additional finding that Petitioner also lacked credibility in terms of his alleged damages claim at trial. Accordingly, the Petition for Certification should be denied.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that the Petition for Certification be denied.

Respectfully submitted,

By: s/Joseph A. Deer
Joseph A. Deer

Dated: August 23, 2024