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 AMICUS CURIAE BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

OTHER AUTHORITIES

PRELIMINARY STATEMENT

Defendants-Respondents Marmic, LLC and Mike Ruane, Jr. ("Respondents") submit this brief in response to the amicus curiae brief submitted by amici curiae Make the Road New Jersey, Legal Aid at Work, National Employment Law Project, American Civil Liberties Union of New Jersey, CATA, Laborers Eastern Region Organizing Fund, Laundry Workers Center, Legal Services of New Jersey, New Jersey Alliance for Immigrant Justice, New Labor, Service Employees International Local 32BJ, and Volunteer Lawyers for Justice ("Amici Curiae").

This matter stems from a one-day bench trial where the trial judge made specific findings of fact with respect to Petitioner's claims. Ultimately, the trial judge concluded that at trial, Petitioner had no credibility at all and, therefore, dismissed his claims. In its opinion affirming the trial court's findings, the Appellate Division merely followed the precedent established by the Supreme Court of the United States in Hoffman Plastics Compounds, Inc. v. NLRB, 535 U.S. 137 (2002) with respect to the facts presented below at the trial court level. Here, initially, based on Petitioner's representation that he had a valid Social Security Number, the Respondent paid Petitioner for two weeks. However, once the

Respondent found out that the Petitioner did not have a valid Social Security Number, the Respondent advised the Petitioner that he could no longer be paid. At that point, the Respondent offered the Petitioner a barter arrangement to allow him to continue to live in the apartment in the subject building. Petitioner knew it was a barter arrangement and accepted the arrangement. At trial, ultimately, as indicated above, the trial judge made a specific finding that Petitioner had no credibility at all and dismissed his claims.

The Amici Curiae are attempting to make this case into something that it is not. This particular case does not change immigration law with respect to undocumented workers. This case was simply about credibility. Therefore, the Court here should follow the well-settled precedent and affirm the Appellate Division's decision in this case.

LEGAL ARUMENT

I. THE APPELLATE DIVISION CORRECTLY APPLIED THE UNITED STATES SUPRME COURT'S RULING IN HOFFMAN TO DENY PETITIONER'S CLAIMS

The Amici Curiae argue that the Appellate Division fundamentally misconstrued the United States Supreme Court's ruling in Hoffman Plastics Compounds, Inc. v. NLRB, 535 U.S. 137 (2002). In its 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 Plastics Compounds, Inc. v. NLRB, 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)[1]. Significantly, the Appellate Division cited several important statements from the Hoffman decision about the IRCA scheme. More specifically, the Appellate Division recognized the Hoffman Court

[1] The prefix "App" refers to the Appellate Division's decision in this case.

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, following the Hoffman Court's directive, 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." (App18). 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 Plastics Compounds, Inc. v. NLRB, 535 U.S. at 148. It should be noted that 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. 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.

The Appellate Division also recognized the following findings of fact made by the trial judge:

> [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).

The Amici Curiae attempt to argue that Hoffman does not apply here because that case dealt with the issue of backpay and Petitioner here is

seeking pay for work allegedly performed. That argument is without merit. In Hoffman, the Supreme Court noted "[t]he Board further argues that while IRCA criminalizes the misuse of documents, 'it did not make violators ineligible for back pay awards or other compensation flowing from employment secured by the misuse of such documents.'" Hoffman Plastics Compounds, Inc. v. NLRB, 535 U.S. at 149. In addressing this argument, the Hoffman Court stated that "[t]his latter statement, of course, proves little: The mutiny statute in Southern S. S. Co. and the INA in Sure-Tan, were likewise understandably silent with respect to such things as backpay awards under the NLRA." Id. at 149-150. Furthermore, the Hoffman Court went on to state that

> [w]hat matters here, and what sinks both of the Board's claims, is that Congress has expressly made it criminally punishable for an alien to obtain employment with false documents. There is no reason to think that Congress nonetheless intended to permit backpay where but for an employer's unfair labor practices, an alien-employee would have remained in the United States illegally, and continued to work illegally, all the while successfully evading apprehension by immigration authorities (footnote omitted). Far from "accommodating IRCA, the Board's position, recognizing employer misconduct but discounting the misconduct of illegal alien employees, subverts it.
>
> Id.

In this case, initially, based on the Petitioner's representation that he had a valid Social Security Number, Respondent paid the Petitioner. Once Respondent found out that Petitioner had lied to him and provided a false Social Security Number, Respondent advised Petitioner he could not pay him anymore. The Amici Curiae fail to acknowledge the conduct of Petitioner in lying to Respondent that he had a valid Social Security Number. At that point, as the Appellate Division properly recognized, under Hoffman, there was no employer-employee relationship between Petitioner and Respondent.

Finally, it should be noted that the United States Department of Labor defines "backpay" as follows: "A common remedy for wage violations is an order that the employer make up the difference between what the employee was paid and the amount he or she should have been paid." See https://www.dol.gov/general/topic/wages/backpay. Contrary to the argument of the Amici Curiae, Petitioner's claims were for "backpay" and therefore, fall squarely within the purview of the reasoning in Hoffman. Accordingly, the argument by the Amici Curiae that the Appellate Division misconstrued the United States Supreme Court's ruling in Hoffman is without merit.

II. THE ARGUMENT BY THE AMICI CURIAE THAT THE BARTER ARRANGEMNT CIRCUMVENTS WAGE AND HOUR LAWS FAILS

The Amici Curiae further argues that the barter arrangement somehow circumvents existing Wage and Hour laws. That argument also has no merit. As indicated above, once Respondent found out that Petitioner had lied regarding his Social Security Number, Petitioner was advised that he could no longer be paid by Respondent. At that point, under Hoffman, there could be no employer-employee relationship. Petitioner was not forced to accept the barter arrangement, and he was aware that was what he was offered. Petitioner also could have left at any time without owing anything to Respondent. Respondent was not using the barter arrangement to circumvent any wage and hour laws. To the contrary, Respondent understood he could not pay Petitioner because he was an undocumented person in the United States. It should be noted that the Hoffman Court also stated that "[s]imiarly, Castro cannot mitigate damages, a duty our cases require, (citations omitted), without triggering new IRCA violations, either by tendering false documents to employers or by finding employers willing to ignore IRCA and hire illegal workers." Hoffman Plastics Compounds, Inc. v. NLRB, 535 U.S. at 151. Instead, Petitioner was offered, with no

contractual strings attached, a place to live in exchange for doing some work at the complex. Petitioner accepted that arrangement. The alternative would have been for Respondent to merely evict Petitioner from his apartment.

Finally, any argument made by the Amici Curiae 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. The Supreme Court in Hoffman noted that to permit the Board's decision in favor of the undocumented employee to stand "would unduly trench upon explicit statutory prohibitions critical to federal immigration policy, as expressed in IRCA. It would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of the immigration laws and encourage future violations." Hoffman Plastics Compounds, Inc. v. NLRB, 535 U.S. at 151.

Here, ultimately, this case turned on the issue of Petitioner's lack of overall credibility, not just with respect to the lying about a Social Security Number. 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. For the Court to overturn the Appellate Division's decision would encourage and condone future violations of immigration laws and contradict the clear expression of policy stated above by the Hoffman Court. Accordingly, there is no "chilling effect" here by way of the Appellate Division's decision and, therefore, the Petition 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: March 31, 2025