
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 BRIEFS

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PRELIMINARY STATEMENT

Defendants-Respondents Marmic, LLC and Mike Ruane, Jr. (“defendants”) submit this brief in response to the amicus curie briefs submitted by Amici Curiae Labor and Law Professors, New Jersey Association for Justice, New Jersey Department of Labor and Workforce Development and Seton Hall Law School Center for Social Justice (“Amici Curiae”).

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 of the plaintiff that did not involve his immigration status. The trial judge made specific findings of fact with respect to plaintiff’s claims. Ultimately, the trial judge concluded that at trial, plaintiff had no credibility at all and, therefore, dismissed his claims. In its opinion affirming the trial court’s findings, the Appellate Division followed the precedent established by the Supreme Court of the United States. The appellate division’s opinion will have no “chilling effect” with respect to undocumented workers in New Jersey and should be affirmed.

LEGAL ARUMENT

I. THE TRIAL JUDGE AND THE APPELLATE DIVISION CORRECTLY ANALYZED THAT PLAINTIFF’S IMMIGRATION STATUS WAS NOT RELEVANT TO PLAINTIFF’S CREDIBILITY AT TRIAL

The Amici Curiae first focus on the issue of whether immigration status is relevant to if any employer owes wages to an employee under New Jersey’s Wage and Hour Law and New Jersey’s Wage Payment Law. In support of their collective position, Amici Curiae make several arguments that are unpersuasive. First, it should be noted that appellate division court noted that “on cross-examination, we note defense counsel inquired whether plaintiff did not have a Social Security number because he lacked 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 under N.J.R.E. 408 is devoid of merit.” (App24-25).¹ Therefore, as an initial matter, the trial judge and the appellate division ruled that, in this case, plaintiff’s immigration status was not relevant with respect to if an employer owes

¹ The prefix “App” refers to the Appellate Division’s decision in this case.

wages to an employee under New Jersey's Wage and Hour Law or New Jersey's Wage Payment Law.

It is argued by amici that the appellate division determined that plaintiff's immigration status and invalid social security number meant he was barred from relief and precluded from recovering damages. (See Labor and Law Professors Br. at p. 2.). That argument is without merit. Instead, the appellate division ruled that "[h]ere, the record supports the trial judge's determination that plaintiff 'lied' when he completed the W-4 form and knew he was 'required to tell the truth.' The trial judge properly concluded that plaintiff was not eligible to work for defendants under the IRCA and was barred from relief and was precluded from recovering damages." (App19). It is further argued that the appellate division considered plaintiff's immigration status, "which is inextricably connected to whether he had a valid Social Security number." (See Labor and Law Professors Br. at p. 2-3). That argument also fails. The Internal Revenue Service requires an employer "to get each employee's name and Social Security number (SSN) and to enter them on Form W-2 (this requirement also applies to resident and nonresident alien employees)." See <https://www.irs.gov/businesses/small-businesses-self->

[employed/hiring-employees](#). Here, initially plaintiff voluntarily provided a Social Security number – that he knew was invalid – to defendants which was used to initially pay the plaintiff. Thereafter plaintiff was advised by defendants that the Social Security number he provided was invalid. That action alone did not reveal his immigration status because he could have just made an honest mistake in providing the Social Security number. The issue is that plaintiff, intentionally, lied about the Social Security number. It should also be noted that at trial, “plaintiff stipulated at the time of trial that he would not introduce any evidence regarding the validity of any tax identification number.” (App24-25).

It is also argued that the trial judge improperly “indirectly” used plaintiff’s immigration status with respect to finding plaintiff lacked credibility at trial. (See Seton Hall Br. at p. 38). In support of that position, it is argued that N.J.R.E. 608, and the analysis in State v. Scott, 229 N.J. 469 (2017), were not properly considered by the trial court and the appellate division. (See Seton Hall Br at p. 30-31). That argument fails because this matter is not a criminal case. Instead, the appellate division properly analyzed this issue under N.J.R.E. 607 by stating “[p]laintiff’s uncontroverted deceit in furnishing a false Social Security number was

probative of his fraud and saliently, served to impeach his credibility.

Moreover, under Rule 607, extrinsic evidence may be introduced if relevant to a witness's credibility. 'Although extrinsic evidence may be admitted to impeach a witness . . . its probative value as impeachment evidence must be assessed independently of its potential value as substantive evidence.'

Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480-494 (1999). We conclude that the trial judge did not abuse his discretion in admitting plaintiff's testimony on this issue.' (App25-26). Finally, it should be noted that the argument by amici that there needs to be an additional Rule 403 analysis under State v. Sanchez-Medina, 231 N.J. 452 (2018) also fails because, as the appellate division correctly points out, this was a bench trial, not a jury trial. (App25).

In sum, both the trial judge and the appellate division ruled that plaintiff's immigration status was not relevant to the issue of his claims in this case. Instead, the issue was clearly related to the plaintiff merely intentionally providing a false social security number in order to gain employment from defendants. Finally, it should also be noted that the trial court and the appellate division recognized that the issue of plaintiff's credibility went far beyond merely his intentionally providing a false Social Security number. Instead, the appellate division noted trial court

emphasized that "the [t]rial court is required to rely upon the veracity of . . . plaintiff to—make out the initial claim in this particular case." And I don't find . . . plaintiff to be "credible" in any way, shape or form." (App11).

II. THE APPELLATE DIVISION CORRECTLY RULED THAT THE BARTER ARRANGEMENT HERE WAS LEGALLY DISTINCT FROM AN EMPLOYER-EMPLOYEE RELATIONSHIP

The Amici Curiae also appear to focus on the issue of whether a barter arrangement is legally distinct from an employer-employee relationship. In support of their collective position, Amici Curiae essentially argue that under N.J.S.A. 34:11-56a1(d) and (h) that plaintiff is an “employee” and that the term “wages” includes “the fair value of any food or lodgings supplied by an employer to an employee.” (See New Jersey Association for Justice Br. at p. 6, 12). However, under the sound analysis of the trial court and appellate division, that argument fails because the Amici Curiae fail to recognize the threshold issue in this analysis, namely, that there was no “employer-employee relationship” between plaintiff and defendants when the barter arrangement was entered into as a matter of law. It should also be noted that the New Jersey Department of Labor found plaintiff was due “no

wages” with respect to plaintiff’s complaint filed with the Division.

(App10).

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). 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 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 plaintiff "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 plaintiff 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, plaintiff 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 defendants know plaintiff provided a false Social Security number, defendants stopped paying plaintiff because he cannot be legally paid at that point because there is no employee-employer relationship as a matter of law.

The Supreme Court in Hoffman also 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 plaintiff’s representation that he had a valid Social Security Number, defendants paid the plaintiff. Once

defendants found out that plaintiff had lied and provided a false Social Security Number, defendants advised plaintiff he could not pay him anymore. The Amici Curiae fail to acknowledge the conduct of plaintiff in lying to defendant 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 plaintiff and defendants.

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, plaintiff’s claims were for “backpay” and therefore, fall squarely within the purview of the reasoning in Hoffman.

More specifically in New Jersey, the appellate division has held that a plaintiff does not have a viable claim for unpaid wages where the plaintiff committed fraud in obtaining the employment upon which his claim is based. Crespo v. Evergo Corp., 366 N.J. Super. 391 (App. Div. 2004). In Crespo, plaintiff applied for employment with defendants by presenting a false social security card and representing that she could legally work in the

United States. Crespo v. Evergo Corp., 366 N.J. Super. at 394. Plaintiff Crespo subsequently filed a discrimination termination claim against defendant Evergo Corp. seeking both economic and non-economic damages. The appellate Division affirmed the trial court's dismissal of plaintiff's economic damages claim by reasoning that plaintiff's fraudulent conduct by presenting a false Social Security card, which the Court characterized as the "employee conduct," barred plaintiff's economic claim for back pay. Crespo v. Evergo Corp., 366 N.J. Super. at 401. See also Cedeno v. Montclair State Univ., 163 N.J. 473 (2000) (plaintiff's economic damages claim was barred as plaintiff misrepresented his criminal record on the job application).

The Amici Curiae also attempt to argue that plaintiff is entitled to recover for work already performed. (See New Jersey Department of Labor Br. at p. 20-22; Seton Hall Br. at p. 34-35). That argument also fails. The appellate division addressed this issue in its analysis of Anderson v. Mt. Clemons Pottery Co., 328 U.S. 680 (1946). The appellate division analyzed Anderson as follows: "In Anderson, the United States Supreme Court held:

that an employee has carried out his burden if he proves that he has in fact performed work for which he was

improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

Id. at 687-88.

But this burden-shifting analysis only applies where damages are certain. Id. at 688. (App20).

The appellate division further recognized that:

The trial judge considered this burden-shifting analysis in his decision and concluded that plaintiff failed to prove a cognizable damages claim. Specifically, the trial judge found plaintiff'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." Moreover, plaintiff failed to proffer any time sheets or other documents supporting the hours he worked. The trial judge concluded there was "no basis of the number of hours worked" and "no judicial notice of what the hourly wages would have been during that time frame." The credibility finding made by the trial judge here is relevant to the damages analysis, as the Anderson Court held. Id. at 689. (App20-21).

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 defendants found out that plaintiff had lied regarding his Social Security number, plaintiff was advised that he could no longer be paid by defendants. At that point, under Hoffman, there could be

no employer-employee relationship. Plaintiff was not forced to accept the barter arrangement, and he was aware that was what he was offered. Plaintiff also could have left at any time without owing anything to defendants. Defendants were not using the barter arrangement to circumvent any wage and hour laws. To the contrary, defendants understood they could not pay plaintiff because he was an undocumented person in the United States. It should be noted that the Hoffman Court also stated that “[s]imilarly, 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, plaintiff was offered, with no contractual strings attached, a place to live in exchange for doing some work at the complex. Plaintiff accepted that arrangement. The alternative would have been for defendants to merely evict Plaintiff 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 plaintiff'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 plaintiff'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 this 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: July 9, 2025