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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-3472-15T3
A-3610-15T3

DEWANE PARKER,

Plaintiff-Respondent,

v.

ATLANTIC CITY BOARD
OF EDUCATION,

Defendant-Appellant.

ATLANTIC CITY BOARD
OF EDUCATION,

Plaintiff-Appellant,

v.

GARY ADAIR,

Defendant-Respondent.

Argued October 31, 2017 - Decided November 29, 2017

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Special Civil Part, Atlantic

County, Docket Nos. DC-4376-15 and DC-6094-15.¹

Tracy L. Riley argued the cause for appellant (Law Offices of Riley and Riley, attorneys; Ms. Riley and Rachel M. Conte, on the briefs).

Arnold M. Mellk argued the cause for respondents (Mellk O'Neill, attorneys; Mr. Mellk, of counsel, Edward A. Cridge, on the briefs).

PER CURIAM

The Atlantic City Board of Education (Board) appeals from Special Civil Part orders dated March 1, 2016, and March 15, 2016, granting summary judgment in favor of two Board employees, Dewane Parker and Gary Adair. These matters involve the recovery of money paid to Parker and Adair for their emergency shelter work during Hurricane Sandy. Parker and Adair were both supervisors who were paid annual salaries under individual contracts. The Board contends that the motion judge erred in allowing Parker and Adair to retain money paid to them for their work during the storm. We affirm.

During Hurricane Sandy, the City of Atlantic City (City) asked to use the Board's schools as shelters for residents who had not evacuated in advance of the storm. The Atlantic City Board

¹ We have consolidated these two appeals for purposes of this opinion.

of Education agreed, and the City paid the Board to use the schools as emergency shelters. The Board's superintendent of operations, Barry Caldwell, testified at his deposition that he contacted Parker about staffing the emergency shelters. Caldwell also testified that when Board employees were asked to assist with the Hurricane Sandy emergency shelters, he was aware they were not obligated to perform the work. Moreover, Caldwell assured Parker that those who worked during the storm would get paid for their work, either by the Board or by the City.

On the weekend preceding the storm, and for the duration of the storm, Parker and other school staff prepared and staffed the school buildings for use as emergency shelters. Schools were not in session during this time period, and Parker and Adair were not working in their capacity as school supervisors. There were no issues related to the school facilities, such as leaking roofs or broken windows, requiring repair to ensure that the school buildings would be operational when school resumed.

After the storm event, in accordance with Caldwell's instructions, Parker and Adair submitted timesheets reflecting their work at the emergency shelters. Caldwell approved the timesheets. After payroll processed the timesheets, they were returned to Caldwell or the superintendent of schools, who gave

them final approval. For their emergency shelter work, Adair was paid \$3,174.32 and Parker was paid \$13,999.59.

More than two years later, the New Jersey State Office of Fiscal Accountability and Compliance (OFAC) investigated possible overpayment to Board employees during Hurricane Sandy. In its investigative report, OFAC concluded that "payments issued to [administrators, such as Parker and Adair,] were not authorized by the respective employment contracts." OFAC found that administrators were not entitled to overtime pay as they were exempt under the Fair Labor Standards Act (FLSA), 29 U.S.C.A. §§ 201-219. OFAC recommended that the Board consider recovering the money paid to Parker and Adair for their Hurricane Sandy work.

In accordance with the OFAC report, the Board was instructed to adopt a corrective action plan or appeal OFAC's findings within thirty days. The Board elected to adopt a corrective action plan whereby the Board demanded that all administrators, including Parker and Adair, reimburse the money paid to them during Hurricane Sandy. Parker and Adair declined to repay the money, but three other administrators reimbursed the Board.

The Board filed suit against Adair demanding reimbursement of the money paid during Hurricane Sandy. Because Parker was terminated as a Board employee, the Board unilaterally elected to withhold \$13,999.59 from his accrued vacation pay and paid Parker

the difference in the amount of \$3,081.41. Parker had no notice of the Board's action until he received his unused vacation pay. Parker then sued the Board for withholding his accrued vacation pay.

The parties moved for summary judgment. The motion judge granted summary judgment in favor of Parker and Adair on the bases of quantum merit and unjust enrichment. Under the highly unusual and unique circumstances of Hurricane Sandy, the motion judge concluded that Parker and Adair were entitled to compensation based upon their performance of extraordinary and unexpected work with the expectation of remuneration. He also observed that the Board was paid by the City for the emergency shelter work performed by Parker and Adair, and concluded that the Board would be unjustly enriched if it kept the City's payment and, simultaneously, recouped the money it paid Parker and Adair.

In Parker's case, the motion judge held that the Board's unilateral decision to offset his vacation pay was a deprivation of property without due process of law. In Adair's case, the same motion judge specifically found that Adair's Hurricane Sandy work was outside the scope of his employment contract.

Our review of orders granting summary judgment is de novo, and we apply the same standard employed by the trial court. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405 (2014).

Accordingly, we must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). "[W]hen the evidence 'is so one-sided that one party must prevail as a matter of law,' the trial court should not hesitate to grant summary judgment." Ibid. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)).

The Board argues the motion judge failed to consider the law compelling it to respond to OFAC. The Board contends that N.J.A.C. 6A:23A-5.6 requires adoption of a corrective action plan. The Board claims it was legally required to recoup the money paid to Parker and Adair and the Board fulfilled its legal responsibilities by filing suit against Adair and withholding Parker's accrued vacation pay. However, the Board failed to cite any legal authority in support of this argument. The OFAC report only recommended the Board consider seeking reimbursement. Rather than dispute OFAC's findings by filing an appeal, the Board decided to pursue reimbursement from Parker and Adair as its corrective action plan.

The Board's primary argument is that it was effectively compelled to recover the monies paid to Parker, Adair, and three other administrators based on the OFAC report. The OFAC report, however, was not a legal mandate to institute legal actions against Parker and Adair. Instead, the report evaluated whether administrators were entitled to overtime under their contracts. OFAC concluded that administrators were not entitled to overtime. That conclusion does not control in these cases because the undisputed facts established that Parker and Adair were not doing work as Board employees; rather, they were doing work outside their contractual duties by assisting the City in setting up shelters for people displaced by Hurricane Sandy.

The Board next argues the motion judge erred because Parker and Adair were not entitled to overtime wages under the FLSA and New Jersey Minimum Wage Law (MWL), N.J.S.A. 34:11-56a to -56a38. The Board misunderstands Parker and Adair's position. Parker and Adair do not dispute that they are ineligible for overtime in conjunction with their contractual job duties. Parker and Adair argue that the work they performed during Hurricane Sandy was extra-contractual and, thus, compensable under a quasi-contract theory. Adair was in charge of maintaining the facilities for educational use. Parker was head of security and truancy and

tasked with ensuring the safety of students and teachers as well as monitoring student truancy.

We concur with the motion judge's determination that Adair's "labor during Hurricane Sandy [did] not fall within the scope of his job description" and that Parker "bore the tremendous burden of coordinating and supervising Hurricane Sandy relief," such that Parker's and Adair's efforts were outside their employment contracts. Parker's and Adair's job duties were clearly related to school functions and the schools were closed when Parker and Adair worked at the emergency shelters. Thus, Parker and Adair were not performing work within their contractual scope during Hurricane Sandy. The work performed by Parker and Adair under the unique circumstances of the storm event constituted completely different work – emergency shelter work – for a completely different entity – the City.

The Board also argues that the motion judge erred in denying its motion based upon unjust enrichment. To prove a claim for unjust enrichment, a party must demonstrate that the opposing party "received a benefit and that retention of that benefit without payment would be unjust." Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 110 (2007) (quoting VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 554, (1994)). A quasi-contract theory "requires that plaintiff show that it expected remuneration from

the defendant at the time it performed or conferred a benefit on defendant and that the failure of remuneration enriched defendant beyond its contractual rights." Ibid. (quoting VRG Corp., supra, 135 N.J. at 554).

The Board was paid approximately \$168,000 by the City for emergency shelter services provided by Board employees, including Parker and Adair. The Board has not reimbursed the City for any sums it recouped from employees who worked at the emergency shelters during Hurricane Sandy. There is nothing in the record to indicate that the City has demanded reimbursement from the Board or that the State has withheld school funding due to the Board's payment of Parker and Adair. Consequently, we agree with the motion judge that the Board has been enriched by the work of Parker and Adair in satisfaction of their unjust enrichment claim.


Nor did the Board dispute Parker's and Adair's expectation of pay for their work during Hurricane Sandy. Parker was advised by Caldwell that he would be paid for his time. Parker and Adair kept track of the hours they worked, submitted their time to the Board, and were issued checks for their work. Thus, the Board was unjustly enriched by withholding Parker's accrued vacation pay, and would be unjustly enriched if reimbursed by Adair.

Based upon the undisputed and competent evidential materials, involving a rare, 100-year storm event, the motion judge correctly

determined that the Board would be unjustly enriched if Parker and Adair, who were working outside of their school contractual obligations, were required to return the money paid for their work at the emergency shelters.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION