

APPELLATE COURT DENIES RECOVERY TO STAFFING FIRM WHERE IT WAS ALLEGED TO HAVE VIOLATED IMMIGRATION LAW AND NEW JERSEY REGISTRATION REQUIREMENTS

By Kevin J. O'Connor*

An unpublished decision yesterday by the New Jersey Appellate Division in Spaceage Consulting Corp. v. Montecastro, A-4936-12T4 and A-5390-12T4 (App. Div. May 6, 2015) illustrates how an employer's right to enforce a non-competition provision and pursue penalties against H1B workers without complying with federal and state law, can be futile.

These consolidated appeals involved plaintiff Spaceage Consulting Corp. ("Spaceage") which had challenged the grant of summary judgment to Defendants, Dario Montecastro, Citigroup and Feng Zhang and the dismissal of the complaints against those defendants with prejudice. Spaceage is a software services firm that trains employees and assigns them to its clients to provide software development, application integration and technology training services. In hiring Montecastro and Zhang, Spaceage was governed by the H1-B non-immigrant worker provisions of the Immigration and Nationality Act of 1952 and its implementing regulations ("H1B Requirements").

Montecastro and Zhang signed plaintiff's "train-to-hire" employment contract. Plaintiff executed a contract with Mitchell Martin, Inc. to provide software development services to Mitchell's client, Citigroup. Plaintiff then assigned Montecastro to provide those services to Citigroup. Following an extensive training period, Montecastro resigned from his employment with plaintiff and began working directly for Citigroup. Spaceage then pursued claims against Montecastro for breach of contract and unjust enrichment, and against Mitchell and Citigroup for tortiously interfering with Montecastro's contract by soliciting him for their own employment and breaching the Mitchell contract by failing to pay for the hours Montecastro worked overtime,

among other claims.

Spaceage also filed a separate complaint against Zhang for breach of contract and unjust enrichment when he also left employment during the contract term.

Both contracts contained restrictions on post-employment activities by the employees.

The Appellate Division affirmed the dismissal of the complaints against the employees on multiple grounds. First, Spaceage was not properly registered under New Jersey's Private Employment Agency Act, N.J.S.A. § 34:8-43 to -66, when the contracts were signed with the employees. While it claimed to be exempt, its contracts contained a "fee or liquidated charge" to the employees which brought it within the scope of the licensing scheme. Accordingly, since it was not properly licensed, the contracts were regarded as being void ab initio.

Second, because the employer failed to pay the employees wages during their training period and a penalty was charged for ceasing employment prior to the expiration of the three-year employment period, the contract violated federal law and was void and unenforceable ab initio. The Court therefore held that Spaceage was barred from maintaining any action against Montecastro and Zhang. The appellate panel affirmed the grant of summary judgment to defendants.

This opinion points out the need for staffing firms to engage competent counsel to ensure their employment practices are in line with applicable federal and state law. It also points out that pursuing an employee for violation of a non-compete should be carefully considered and done only in circumstances where a firm entitlement to relief is warranted.

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