NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3738-12T2

AMERITEMPS, INC.,

Plaintiff-Appellant,

v.

HAINESPORT INDUSTRIAL RAILROAD, LLC,

Defendant-Respondent.

Argued January 27, 2014 – Decided February 24, 2014

Before Judges Harris and Kennedy.

On appeal from the Superior Court of New Jersey, Law Division, Special Civil Part, Burlington County, Docket No. DC-010783-10.

Stephen J. Buividas argued the cause for appellant.

Karen M. Murray argued the cause for respondent (Caplan, Valenti & Murray, PC, attorneys; Ms. Murray, on the brief).

PER CURIAM

Following a bench trial and a remand, plaintiff Ameritemps, Inc. appeals from a February 27, 2013 order dismissing its breach of contract claims. We affirm.

I.

The background of this appeal is recounted in our prior opinion:

> Plaintiff, Ameritemps, Inc., appeals from a final judgment in the Special Civil Part, following a bench trial, in favor of defendant Hainesport Industrial Railroad, dismissing its complaint for money due on a contract between them. Plaintiff's complaint asserted causes of action based upon a book account, breach of a promise to pay, and quantum meruit. Defendant asserted a counterclaim in which it alleged that plaintiff "failed to provide services and insurance as agreed." The final judgment also dismissed the counterclaim, but defendant has not filed an appeal or cross appeal from that ruling.
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> . . . .
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> At some point in 2008, defendant hired three individuals to work as general laborers and paid them on a cash basis. However, these workers may not have been citizens of the United States and Darryl Caplan, one of defendant's principals, became concerned about whether they were "legally permitted to work in the country." He also wanted to be certain that their taxes were paid properly and workers' compensation insurance was in place. Because of the nature of defendant's business, Caplan wanted to be certain that "there were no issues"; and he "did not feel that internally [defendant] had the ability to ensure full compliance." Consequently, defendant decided "to move those employees to an employee leasing type company."
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> Defendant contacted plaintiff, and Troy Brady, plaintiff's representative, met with another of defendant's principals and went

over with him a sample contract and "control sheet." Brady explained the contract terms in detail and left the documents with defendant. The contract stated on the first page, under the heading "Permanent Placement," that no employee of plaintiff will be hired by the other party "without first paying the permanent placement fee."

The contract also stated that "[t]his [c]ontract contains [the] agreement of the parties, also binding are client information on back of staffing control [sheet][.]"

. . . .

The three individuals that caused concern for defendant were thereafter hired by plaintiff and listed for "payroll purposes" as independent contractors for Ameritemps PA, a Pennsylvania corporation wholly owned by plaintiff. According to plaintiff, defendant wanted the three employees to be engaged as "independent contractors" in order to insure they received payment of $9.00 per hour without deductions for backup withholding. The employees wanted to be listed as independent contractors, as well. Plaintiff agreed to this arrangement because, according to Jesse Proctor, plaintiff's president, "one, the customer requested it; two, they worked for the railroad and that's one of the industries where you can pay employees [as independent contractors] . . . ."

. . . .

A dispute arose between plaintiff and defendant after a few months. Defendant claimed plaintiff did not properly credit its payments and plaintiff claimed that defendant was behind in paying invoices. Defendant "terminated" the contract on September 22, 2008, and on October 10 issued a check to plaintiff for $8325.75, indicating on the check "pain [sic] in

> full." This was the outstanding balance due at the time on plaintiff's invoices, and defendant's principal claimed he had reached an "agreement" with Brady that he would pay that sum "in full and final satisfaction and you can take it if you want it or not." Brady went to defendant's office to pick up the check and observed the three individuals still working at the site. Defendant had not notified plaintiff that it had hired the three individuals directly. Plaintiff thereafter sent an invoice to defendant for $14,040 for its permanent placement fee using a calculation based upon a combination of the provisions set forth in the staffing control sheets. Plaintiff contended it was entitled to the fee under the plain terms of its contract because defendant had directly "hired" its assigned "temporary" employees.
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> [Ameritemps, Inc. v. Hainesport Indus. R.R., No. A-6109-10 (App. Div. September 26, 2012) (slip op at 1-6).]

We determined that the trial judge erred in finding that Ameritemps had breached the parties' contract by not securing insurance and not taking care of the taxes. Id. at 11. However, the trial judge never addressed Hainesport's accord and satisfaction defense and did not address the issue of Ameritemps's damages. Accordingly, we remanded the matter to the trial court to address the defense of accord and satisfaction and damages. Our mandate stated,

> If defendant prevails on the accord and satisfaction defense, judgment should be entered for defendant. If defendant does not prevail on that issue, then the trial court must address the question of whether plaintiff is entitled to damages for the

> breach of contract and, if so, the amount of damages it is entitled to receive.
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> [Id. at 12.]

On remand, the trial judge canvassed the record, reviewed the parties' briefs, and finding the remand issue "fairly simple," declared that there was an accord and satisfaction. The judge focused on Caplan's trial testimony that explained why, after reaching an agreement with Brady, Caplan wrote "pain in full" on the $8325.75 check:

> [A]gain, my recollection is [twenty] some thousand, 22,000, and they were demanding that we pay the full amount. And I said I'm not paying it. Finally, an agreement had been reached that I would pay that $8,000. And that's why I wrote paid in full on the check.

The judge concluded, "that was the accord reached by the parties that I am relying upon to understand that there was an accord. And Mr. Caplan gave a check to Ameritemps that day. That check was later cashed and everyone went their merry way . . . ."

This appeal followed.

II.

On appeal, Ameritemps argues that

> it is logically impossible that Caplan could have reached an agreement with anyone from [Ameritemps] to compromise the amount of that permanent placement fee. That logical impossibility, of course, explains why Caplan could not remember with whom he had reached such an agreement, as well as his

> failure to confirm it in writing. Furthermore, considering the importance which [Ameritemps] attached to the permanent placement fee, it strains credulity to believe that [Ameritemps] would have agreed to accept approximately $8300.00 as payment in full not only for past labor invoices, but the $14,040.00 permanent placement fee as well.

This argument ignores the trial judge's pivotal role in sorting out competing facts and drawing reasonable inferences therefrom. Because the record contains sufficient evidence to support the judge's conclusion, we cannot agree with Ameritemps's proposition that the $8325.75 check could not have embraced a resolution of both the outstanding labor costs and permanent placement fee issues. It was for the trial judge to make that call, and we are constrained to respect such a decision if there is evidence in the record to support it.

The trial court's findings that the payment and acceptance of the $8325.75 check were relationship-ending acts, and that they amounted to an accord and satisfaction, are entitled to substantial deference.

> Reviewing a trial court's findings in a non-jury trial, the appellate court "'ponders whether . . . there is substantial evidence in support of the trial judge's findings and conclusions.'" Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting In re Trust Created by Agreement Dated Dec. 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008)). "Deference [to factual findings] is especially appropriate

> 'when the evidence is largely testimonial and involves questions of credibility.'" Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)).
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> [Sipko v. Koger, Inc., 214 N.J. 364, 376 (2013).]

We do not substitute our own assessment of the evidence for that of the trial judge. See State v. Minitee, 210 N.J. 307, 317 (2012) (citing State v. Johnson, 42 N.J. 146, 162 (1964)). Our task is complete upon determining there is sufficient credible evidence in the record to support the trial court's factual findings. Ibid.

"The traditional elements of an accord and satisfaction are the following: (1) a dispute as to the amount of money owed; (2) a clear manifestation of intent by the debtor to the creditor that payment is in satisfaction of the disputed amount; (3) acceptance of satisfaction by the creditor." A. G. King Tree Surgeons v. Deeb, 140 N.J. Super. 346, 348-49 (Cty. Dist. Ct. 1976); accord Loizeaux Builders Supply Co. v. Donald B. Ludwig Co., 144 N.J. Super. 556, 564-65 (Law Div. 1976). "'An accord and satisfaction is an agreement which, upon its execution, completely terminates a party's existing rights and constitutes a defense to any action to enforce pre-existing claims.'" Gunter v. Ridgewood Energy Corp., 32 F. Supp. 2d 166, 183 (D.N.J. 1998) (quoting Nevets C.M., Inc. v. Nissho Iwai Am.

Corp., 726 F. Supp. 525, 536 (D.N.J. 1989), aff'd sub nom., Appeal of Nevets C.M., Inc., 899 F.2d 1218 (3d Cir. 1990)). "[A]n accord and satisfaction requires a clear manifestation that both the debtor and the creditor intend the payment to be in full satisfaction of the entire indebtedness." Zeller v. Markson Rosenthal & Co., 299 N.J. Super. 461, 463 (App. Div. 1997).

In New Jersey, the "rule has been that when a check is tendered as payment for an unliquidated claim on the condition that it be accepted in full payment, the creditor is deemed to have accepted this condition by depositing the check for collection notwithstanding any obliteration or alteration." Chancellor, Inc. v. Hamilton Appliance Co., 175 N.J. Super. 345, 347 (Cty. Dist. Ct. 1980); see also Decker v. George W. Smith & Co., 88 N.J.L. 630, 632 (E.& A. 1916) ("[W]here a claim is unliquidated, or in dispute, payment and acceptance of a less sum than claimed in satisfaction, operates as an accord and satisfaction."). Additionally, a valid accord and satisfaction requires consideration, which means "[t]here must be some advantage, or presumed or assumed advantage, accruing to the party who yields his claim, or some detriment to the other party." Decker, supra, 88 N.J.L. at 632.

Here, although the trial judge was not required to subscribe to a particular party's view, he found Caplan's explanation of the events surrounding the termination of the parties' arrangement more persuasive and logical than the contrary. We do not deny that Ameritemps's arguments are plausible; they simply did not carry the day with the trial judge. Given our limited role, we are obliged to uphold the factual findings unless we are "convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Gnall v. Gnall, 432 N.J. Super. 129, 146-47 (App. Div. 2013) (internal quotation marks and citations omitted). In the present case, we cannot conclude that the judge's determination of the nature of the parties' dispute was manifestly unsupported, inconsistent with the evidence, clearly mistaken, or wide of the mark. Nor can we find that the judge erred in determining that the $8325.75 check represented a fulfillment of the parties' intention to forever end their relationship and constituted an accord and satisfaction.

Affirmed.