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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2391-22

SERGIO LOPEZ,

Plaintiff-Appellant,

v.

MARMIC LLC, and
MIKE RUANE, individually,

Defendants-Respondents.

Submitted May 30, 2024 – Decided June 20, 2024

Before Judges Firko and Vanek.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-6594-19.

Ishan Dave (Borrelli & Associates, PLLC) and Andrew C. Weiss (Borrelli & Associates, PLLC) of the New York bar, admitted pro hac vice, attorneys for appellant (Ishan Dave and Andrew C. Weiss, on the briefs).

Bashwinder and Deer, LLC, attorneys for respondents (Joseph Anthony Deer, on the brief).

PER CURIAM

Plaintiff Sergio Lopez appeals from a March 7, 2023 order dismissing his complaint seeking unpaid wages under the New Jersey Wage and Hour Law (WHL), N.J.S.A. 34:11-56(a) to -56(a)41, and New Jersey Wage and Payment Law (WPL), N.J.S.A. 34:1-4.1 to 4.15, following a bench trial. The trial judge found plaintiff knowingly provided a false Social Security number on a W-4 form to obtain part-time employment with defendants Marmic LLC (Marmic) and Mike Ruane as a superintendent and was barred from recovering any economic damages for unpaid wages under the WHL and the federal Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. §§ 1101 to 1507, because he was an undocumented non-citizen who did not have a valid Social Security number and could not produce a valid W-4 form. The trial judge also found plaintiff did not sustain his burden of proof on the issue of back pay. We affirm.

I.

Factual Background

We derive the following facts from the record and bench trial. On September 9, 2019, plaintiff filed a three-count complaint in the Law Division alleging unpaid overtime in violation of the WHL (count one); unpaid minimum wages in violation of the WHL (count two); and failure to pay wages owed in

violation of the WPL (count three). Plaintiff alleged he worked for Marmic—a residential and commercial realty management company—and one of its owners—Ruane[1]—as a superintendent from June 15, 2015, to December 3, 2018, at two buildings located in Newark. Plaintiff alleged Ruane was his direct supervisor and was responsible for overseeing the day-to-day operations of the buildings and Marmic's employees. Ruane was authorized to hire and fire employees, establish work schedules, and set pay rates.

In his complaint, plaintiff alleged each building has commercial tenants on the lower levels and residential units on the upper levels. There were a total of nine commercial units and eleven residential units. The commercial units included a laundromat owned by Ruane, a restaurant, and a barbershop. Plaintiff alleged he "was required to perform general maintenance tasks for the [b]uildings," such as cleaning the common areas, maintaining equipment, shoveling snow, clearing the parking lots during the winter, sidewalk cleanup, repairing the washing machines, providing "immediate assistance" to the tenants if an emergency repair was needed, and preparing the buildings for inspection.

[1] The record refers to Michael Ruane and Michael Ruane, Jr. as members of Marmic. However, it appears Ruane, Jr. conducted all dealings with plaintiff. Thus, all references to "Ruane" in our opinion refer to Ruane, Jr.

According to plaintiff, he claimed defendants required him to work four days per week twice per month, and seven days per week for the other weeks at designated hours, which he fulfilled. Plaintiff also alleged he worked "outside of his normal scheduled hours" for defendants.

At the commencement of his employment, in exchange for his work, plaintiff alleged defendants agreed to provide him with an apartment in one of the buildings and to pay him $400 per week, regardless of the number of hours he worked. On June 15, 2015, plaintiff moved into his apartment.

For his work completed during the first two weeks of his employment, defendants paid plaintiff the stated salary. However, plaintiff alleged defendants failed to pay him any of his salary thereafter and "simply provided him with a free apartment." Plaintiff claims he made complaints to Ruane about not being paid wages, and Ruane responded he would pay plaintiff when he "fixed his documents." Plaintiff sought unpaid overtime compensation at the rate of pay under the WHL. He also sought pay under the WHL's minimum wage provisions, attorney's fees, and an order restraining defendants from retaliating against him for participating in this lawsuit.

Defendants filed an answer denying the allegations in plaintiff's complaint and asserted a counterclaim. In their counterclaim, defendants alleged in June

2015, plaintiff agreed to rent an apartment from them in Newark for $800 per month plus payment of utilities. Defendants alleged plaintiff "defaulted on the agreement to pay rent" in December 2018, and defendants filed a landlord tenant action[2] in the Essex County Special Civil Part (the landlord-tenant section).

In their counterclaim, defendants stated that plaintiff defaulted and a warrant of removal was entered by the court in the landlord-tenant action on March 12, 2019. Defendants sought damages from plaintiff for unpaid rent and utilities, dismissal of the complaint, and counsel fees. Following a period of discovery, defendants filed a motion for summary judgment, which was denied. On August 18, 2023, a one-day bench trial was conducted.

The Trial

Ruane testified at trial that in June 2015, he was looking for a superintendent for two buildings owned by Marmic. At his initial meeting with plaintiff, Ruane testified the position was for a part-time superintendent to perform minor repairs and maintenance of the buildings. Ruane advised plaintiff his salary would be $1,600 per month and that plaintiff would pay $800 per month for an apartment in the Marmic building, which plaintiff accepted.

[2] Docket number LT-3049-19

According to Ruane, plaintiff represented that he had a valid Social Security number.

Ruane testified a second meeting was held with plaintiff to fill out the W-4 form to permit him to be legally paid by Marmic. Plaintiff presented a form of identification to Ruane, and according to plaintiff's testimony, he wrote in a Social Security number in the appropriate box on the W-4 form at Ruane's behest even though plaintiff "knew" he did not have a valid Social Security number. Plaintiff also testified that he read and understood he was signing the W-4 form "under penalties of perjury," even though it was not written in Spanish, and he could not read English.[3] Ruane testified that he relied upon the information provided by plaintiff in the W-4 form to issue a paycheck and that at no point during this meeting did plaintiff indicate that he did not have a valid Social Security number.

After Marmic paid plaintiff an initial paycheck for his first two weeks of work, Ruane discovered that the Social Security number provided by plaintiff on the W-4 form was invalid. Ruane met with plaintiff again, informed him the Social Security number was invalid, and that Marmic's payroll company could

[3] Plaintiff testified at trial with the aid of a Spanish interpreter.

not legally pay him. Plaintiff admitted at trial Ruane told him that he could not be paid because the W-4 form was invalid.

Subsequently, Ruane offered plaintiff an alternative barter arrangement for his continued employ at the buildings because he did not have a valid Social Security number. Plaintiff was offered the apartment rent and utility free in exchange for his part-time services as a superintendent. Plaintiff confirmed in his testimony that he was aware there was a barter arrangement as stated. No lease or employment agreement was entered between the parties. Plaintiff was free to leave the apartment and cease performing superintendent services at any time without penalty.

Under the barter arrangement, plaintiff's duties essentially remained the same as before—taking out the garbage, mopping the floors, and responding to tenants' requests for minor repairs. Plaintiff testified he only had to perform work for tenants when they called him, which averaged one to two calls at night, or five to seven times per week. He set his own schedule. Plaintiff claimed Ruane asked him to perform tasks in the laundromat, including repairing and unclogging the machines. Ruane testified that there were no specific hours plaintiff had to work, and plaintiff was not required to be at the premises for any

specified period of time. According to Ruane, the barter arrangement lasted from June 2015 through December 2018.

Plaintiff testified he either worked a "long week" or a "short week." A long week meant "around [sixty] hours," and a short week meant "around [thirty-seven] hours." He also claimed he worked "seven days each week" for defendants. At trial, plaintiff did not present any written documentation of the amount of hours he worked and did not introduce any evidence of any unpaid wages or damages allegedly due in support of the "long" and "short" weeks as he testified to in seeking payment for back wages. Plaintiff argued he was paid a "flat weekly salary of $400[], regardless of how many hours he worked in a week," plus an apartment and utilities.

Plaintiff testified that his work responsibilities for defendants increased over time and included inspecting the property for leaks, broken pipes, collecting and disposing of garbage, painting, and cleaning. Plaintiff claimed he was not required by defendants to "track" the hours he worked, and defendants did not maintain such records.

Throughout his part-time employment with Marmic, plaintiff testified that he performed work for individuals who did not reside in Marmic's buildings for cash and was paid $80 to $150 per job. At times, plaintiff performed these

outside jobs five days per week. Plaintiff further testified that he discussed his off-site work with Ruane, who did not object.

Sometime in 2018, plaintiff filed a claim with the New Jersey Department of Labor (NJDOL) seeking unpaid wages from defendants. The record shows the NJDOL sent a letter dated July 9, 2018, to Ruane requesting time records, payroll records, employee records, payroll taxes, workers' compensation insurance, bank information, company ownership information, and employment certificates regarding this matter and scheduled a hearing for July 30, 2018. Approximately two weeks after the letter was sent by the NJDOL, Ruane responded in writing that he did not have any time records, payroll tax information, bank information, employee handbook, or employment certificates pertaining to plaintiff.

In his letter, Ruane explained that plaintiff was given an apartment "valued at $900, including gas, electric, heat, and hot water, amounting to approximately $250[,] which totals $1,150 in compensation per month in lieu of an actual hourly rate to perform part-time duties for the buildings." Ruane included the W-4 form that plaintiff filled out, which included his name, date of birth, and the fictitious Social Security number. Ruane also provided the Federal

Identification number to the buildings, workers' compensation, and company ownership information.

On October 2, 2018, the NJDOL sent Ruane a letter concluding no wages were due to plaintiff. However, the NJDOL assessed a $750 penalty against Ruane as a member of Marmic and individually, for not providing records ($500) and unpaid wages/late payment ($250).

Ruane testified that following an investigation, the NJDOL determined that no wages were due plaintiff, no fee was assessed, and the $750 penalty assessed was ultimately reduced and settled for $250, as confirmed in a November 19, 2018 letter from the NJDOL. The November 19, 2018 letter also confirmed that no wages were due plaintiff, but plaintiff could request a wage hearing.

Ruane testified that he decided to terminate the barter arrangement with plaintiff in the latter part of 2018, which had lasted three-and-a-half years, due to problems with the work plaintiff was doing for the tenants and a decline in the quality of the work he performed. Ruane told plaintiff that he had to start paying rent after a thirty-day grace period. Following termination of the barter agreement, plaintiff continued to live in the apartment but refused to pay rent or vacate the apartment. Marmic filed an eviction action and sought a judgment of

possession and warrant of removal. Ruane testified that plaintiff owed Marmic $4,000 in unpaid rent and utilities. Ultimately, plaintiff vacated the apartment after defendants obtained the warrant of removal. No other witnesses testified. Items were moved into evidence, including the W-4 form, and the NJDOL letter. The trial judge requested proposed findings of fact and conclusions of law from the parties and reserved decision.

The Trial Judge's Decision

On March 5, 2023, the trial judge rendered a comprehensive oral decision. The trial judge determined plaintiff did not sustain his burden of proof to "prove more likely than not" that he was owed back monies for work done for defendants from 2015 through 2018. The trial judge determined that plaintiff was not "credible or believable." The trial judge 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."

In particular, the trial judge found that plaintiff testified at trial he knew he did not have a valid Social Security number when he filled in the box on the W-4 form in order to obtain part-time employment with Marmic. Furthermore, the trial judge also observed that defendants relied upon plaintiff's

representations on the W-4 form in order to issue him a paycheck, prior to discovering the Social Security number was invalid. The trial judge found plaintiff admitted he was told by Ruane that he could not be paid "because the W-4 form was invalid." The trial judge determined plaintiff was offered an alternative arrangement—a barter arrangement—to continue to work at the buildings where he received an apartment, "rent and utility free," in exchange for his work at the buildings because he did not have a valid Social Security number. The trial judge noted there was no lease or employment agreement entered between the parties, and plaintiff was "free to leave the apartment and stop performing barter services at any time without penalty."

The trial judge found plaintiff's work consisted of mopping the floors, taking out the garbage, and responding to the tenants' requests for "minor repairs." The trial judge noted that plaintiff was "paid cash" for work he performed for other individuals. Regarding hours of work, the trial judge concluded defendants did not require plaintiff to "track or report" his hours. The trial court made no findings of fact with regard to the amount claimed by plaintiff because his proposed findings of fact "[did] not comport with the testimony" as presented at trial.

In support of his decision, the trial judge cited Crespo v. Evergo Corp., 366 N.J. Super. 391, 394 (App. Div. 2004), where we held such "employee conduct"—presenting a false Social Security card—for the purpose of employment barred economic recovery for back pay. Id. at 401. The trial judge also cited to our Supreme Court's decision in Cedeno v. Montclair State Univ., 163 N.J. 473 (2000), where our Court found plaintiff's economic damages claim was barred because plaintiff misrepresented his criminal record—a prior conviction for bribery—on the employment application, which statutorily prohibited him from holding a position in a public university.

The trial judge noted the Cedeno Court envisioned an extraordinary circumstance, such as a sexual harassment claim, where there was "a need to vindicate statutory policies" to compensate an aggrieved party who could be allowed to seek such compensation but found "there's no extraordinary issue in this particular case" and concluded plaintiff is "statutorily barred" by federal law from seeking recovery. Cedeno, 163 N.J. at 476-77.

The trial judge also found plaintiff was statutorily barred from recovery under the IRCA because "it's unlawful to employ an unauthorized alien," and the employer "can be fined" as well as the employee. The trial judge relied on the United States Supreme Court's holding in Hoffman Plastics Compounds, Inc.

v. NLRB, 535 U.S. 137, 151 (2002), which construed the IRCA, and concluded an undocumented immigrant worker could not be awarded back pay because such a determination would "have unduly entranced upon the explicit statutory provisions critical to federal immigration policy expressed in the IRCA." Ibid. The trial judge noted that plaintiff worked for defendants for "two-and-a-half years," and he "never fixed the problem."

As to plaintiff's claim for damages, the trial judge found he was "left to entirely speculate, as a jury would be, if this were a jury case, as to what the hourly wages were at the time and/or the total number of hours worked." The trial judge found plaintiff failed to carry the burden to prove he did the work. The trial judge determined "damages in this case are uncertain." By way of example, the trial judge found plaintiff was "clearly less than exact" about the amount of time he worked.

As to the counterclaim, the trial judge found defendants failed to present proofs for unpaid rent and utilities. Therefore, the counterclaim was dismissed with prejudice. A memorializing order dismissing the matter with prejudice was entered. This appeal followed.

On appeal, plaintiff argues the trial judge erred by dismissing his complaint due to his undocumented status because the trial judge's

determination was contrary to the IRCA and New Jersey law. Plaintiff also asserts the trial judge abused his discretion by allowing and considering testimony concerning plaintiff's Social Security number on the W-4 form and his undocumented status, making factual findings and conclusions of law resulting from plaintiff's admission, and impermissibly raising plaintiff's burden of proof by incorrectly applying the applicable burden-shifting framework to his wage claims. Plaintiff also contends the trial judge erred in finding he was subject to a barter arrangement with defendants and did not take judicial notice of the prevailing hourly wage at the time of trial.

II.

The trial court's findings of fact are "binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998); see also Brunson v. Affinity Fed. Credit Union, 199 N.J. 381, 397 (2009). A trial court's credibility determinations are also accorded deference because the court "'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" City Council of Orange Twp. v. Edwards, 455 N.J. Super. 261, 272 (App. Div. 2018) (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)). "To the extent that the trial court interprets the law

and the legal consequences that flow from established facts, we review its conclusions de novo." Motorworld, Inc. v. Benkendorf, 228 N.J. 311, 329 (2017) (first citing D'Agostino v. Maldonado, 216 N.J. 168, 182; then citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

A.

We first address plaintiff's argument the trial judge misconstrued the IRCA. In particular, the trial judge found § 1324a of the IRCA statutorily barred plaintiff's request for recovery for work performed for defendants and misapplied Hoffman Plastic Compounds.

The IRCA makes it unlawful for an employer to hire or continue to employ an unauthorized alien. 8 U.S.C. § 1324a(a)(1) and (2). The IRCA also describes the verification process that employers must complete to ensure their hires are authorized to work. 8 U.S.C. § 1324a(b).

In Hoffman, the United States Supreme Court found a National Labor Relations Board (NLRB) order awarding an undocumented alien backpay was foreclosed by the IRCA. Hoffman, 535 U.S. at 140. The Supreme Court described 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. The Supreme Court made the following note about this scheme:

> if an employer unknowingly hires an unauthorized alien, or if the alien becomes unauthorized while employed, the employer is compelled to discharge the worker upon discovery of the worker's undocumented status. § 1324a(a)(2). . . . IRCA also makes it a crime for an unauthorized alien to subvert the employer verification system by tendering fraudulent documents. § 1324c(a). It thus prohibits aliens from using or attempting to use "any forged, counterfeit, altered, or falsely made document" or "any document lawfully issued to or with respect to a person other than the possessor" for purposes of obtaining employment in the United States. §§ 1324c(a)(1)-(3). Aliens who use or attempt to use such documents are subject to fines and criminal prosecution. 18 U.S.C. § 1546(b) . . . .
>
> Under the IRCA regime, it is impossible for an undocumented alien to obtain employment in the United States without some party directly contravening explicit congressional policies. Either the undocumented alien tenders fraudulent identification, which subverts the cornerstone of IRCA's enforcement mechanism, or the employer knowingly hires the undocumented alien in direct contradiction of its IRCA obligations.

In Hoffman, an unauthorized alien worked at Hoffman Plastics and supported a union campaign. Hoffman Plastics laid off the unauthorized alien and others involved in that campaign. Id. at 140. Charges were filed with the NLRB, which found the termination violated the National Labor Relations Act

and ordered the illegally fired workers be reinstated and awarded backpay. Id. at 140-41. But the Supreme Court reversed because the unfair labor practice claims under the NLRA were precluded by the IRCA, and the NLRB's "remedy trenches upon a federal statute or policy outside the [NLRB's] competence to administer, the [NLRB's] remedy may be required to yield"—specifically that the NLRA conflicted with the IRCA. Id. at 147.

As the trial judge correctly found, plaintiff is an undocumented alien expressly included within the statutory definition of the IRCA. Thus, there could be no employee-employer relationship between the parties. As we noted in Crespo, "Hoffman has not expanded beyond its specific focus. See Zeng Liu v. Donna Karan Int'l, Inc., 207 F.Supp.2d 191, 192-93 (S.D.N.Y. 2002) (Hoffman did not apply to preclude an illegal alien's claims under the federal Fair Labor Standards Act (FLSA) for work already performed.); Singh v. Jutla & C.D. & R's Oil, Inc., 214 F.Supp.2d 1056, 1061-62 (N.D. Cal. 2002) (an illegal alien who was arrested and detained for fourteen months immediately following settlement of a FLSA suit against his employer could proceed with an FLSA retaliation claim against the employer); Escobar v. Spartan Security Serv., 281 F.Supp.2d 896-98 (S.D. Tex. 2003) (plaintiff, who sued his former employer alleging workplace sexual harassment and retaliation under Title VII of the Civil

Rights Act of 1964, was not entitled to back pay because he was an illegal alien at the time of the events but was not barred from his other remedies, including reinstatement and front pay, because he had subsequently attained his legal work status prior to trial)."

Here, the record supports the trial judge's determination that plaintiff "lied" when he completed and signed 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. Plaintiff did not assert a claim for workplace harassment or other misconduct while he worked for defendants. Thus, the trial judge did not err in dismissing plaintiff's complaint with prejudice.

B.

Turning to the issue of damages for work already completed, plaintiff relies on Serrano for support that he is not barred from recovery under the IRCA. In Serrano, we held that the undocumented worker was permitted to recover for work performed. 407 N.J. Super. at 271; see also Id. at 469-70. Plaintiff also argues that he met his burden of proving damages but misplaces reliance on

Anderson v. Mt. Clemons Pottery Co., 328 U.S. 680 (1946). 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.

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.

We also reject plaintiff's claim that he was "on call" because he was not required to remain on Marmic's premises, and the hours he was potentially waiting for a call should be taken into consideration. N.J.S.A. 12:56-5.6 describes when on-call time constitutes hours worked:

> (a) When employees are not required to remain on the employer's premises and are free to engage in their own pursuits, subject only to the understanding that they leave word at their home or with the employer where they may be reached, the hours shall not be considered hours worked. When an employee does go out on an on-call assignment, only the time actually spent in making the call shall be counted as hours worked.
>
> (b) If calls are so frequent or the "on-call" conditions so restrictive that the employees are not really free to use the intervening periods effectively for their own benefit, they may be considered as "engaged to wait" rather than "waiting to be engaged." In that event, the waiting time shall be counted as hours worked.

The record belies plaintiff's contention that he was "on call." In fact, contrary to his assertion, plaintiff testified that he made his own schedule and worked off-site, without any reservations by Ruane. Moreover, plaintiff had no

minimum hours requirement, and he was not required to remain on Marmic's premises. Thus, plaintiff's reliance on N.J.S.A. 12:56-5.6 is misguided.

C.

Plaintiff maintains that the trial judge's findings that damages were not established contradicted the prior denial of defendants' motion for summary judgment, which he argues constitutes law of the case. Again, we disagree.

"The law-of-the-case doctrine is a non-binding rule intended to prevent relitigation of a previously resolved issue in the same case." State v. K.P.S., 221 N.J. 266, 276 (2015) (quotations and citations omitted). Ordinarily, the law-of-the-case doctrine "precludes a court from reexamining an issue previously decided by the same court, or a higher appellate court, in the same case." State v. Reldan, 100 N.J. 187, 208 (1985) (O'Hern, J., dissenting) (quoting United States v. Maybusher, 735 F.2d 366, 370 (9th Cir. 1984)).

Importantly, "[a] hallmark of the law of the case doctrine is its discretionary nature, calling upon the deciding judge to balance the value of judicial deference for the rulings of a coordinate judge against those 'factors that bear on the pursuit of justice and, particularly, the search for truth.'" Hart v. City of Jersey City, 308 N.J. Super. 487, 498 (App. Div. 1998) (quoting Reldan, 100 N.J. at 205).

Our Supreme Court has recognized that "[u]nderlying the [law-of-the-case doctrine] are principles similar to collateral estoppel . . . ." K.P.S., 221 N.J. at 277 (second alteration in original) (quoting Reldan, 100 N.J. at 209). Further,

> [b]oth collateral estoppel and law of the case are guided by the "fundamental legal principle . . . that once an issue has been fully and fairly litigated, it ordinarily is not subject to relitigation between the same parties either in the same or in subsequent litigation." However, whereas collateral estoppel may bar a party from relitigating an issue decided against it in a later and different case, law of the case may bar a party from relitigating the same issue during the pendency of the same case before a court of equal jurisdiction. One major distinction between the two doctrines is that law of the case, unlike collateral estoppel, is subject to the exercise of sound discretion.
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> [Ibid. (second alteration in original) (citations omitted).]

"The trial judge has the inherent power to review, revise, reconsider and modify interlocutory orders at any time prior to the entry of final judgment." C.P. v. Twp. of Piscataway Bd. of Educ., 293 N.J. Super. 421, 431 (App. Div.1996) (prior denials of defendant's motion for summary judgment did not become law of the case, precluding renewal at the time of trial). A denial of summary judgment is always interlocutory and never precludes the entry of judgment for the movant later in the case. Hart v. City of Jersey City, 308 N.J. Super. 487, 498 (App. Div. 1998). For these reasons, we reject plaintiff's

argument that the prior denial of defendants' motion for summary judgment constituted law of the case.

D.

We next address plaintiff's argument that the judge impermissibly allowed and considered testimony regarding the fictitious Social Security number on the W-4 form and his undocumented status. Plaintiff also contends he met his burden of proving his damages claim. Again, we are unpersuaded.

The trial judge found plaintiff knew he was supposed to be truthful at the time he filled out the W-4 form and stated:

> And it is interesting to note that although he was—a lot of testimony was taken in this case with [an] interpreter when he was able to clearly and concisely articulate answers to all the questions.
>
> When it came to question by cross[-]examination by defense counsel regarding his signature on the form just below the paragraph indicating that if it was knowingly false, it was perjury. He waffled and—and—and attempted to not exactly answer the questions. Which the [c]ourt notes is—finding a basis for his lack of truth and veracity in his statements.

Moreover, on cross-examination we note defense counsel inquired whether plaintiff did not have a Social Security number because he lacked legal 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. 403 is devoid of merit.

Rule 403, which limits the admissibility of relevant evidence, provides "relevant evidence may be excluded if its probative value is substantially outweighed by the risk of: (a) [u]ndue prejudice, confusion of issues, or misleading the jury . . . ." In State v. Sanchez-Medina, our Court considered the prejudicial effect of evidence concerning a person's immigration status, explaining that, "[a]s a general rule, that type of evidence should not be presented to a jury." 231 N.J. 452, 462 (2018).

Our Court found that "[i]n most cases, the immigration status of a witness or party is simply irrelevant, and a jury should not learn about it," id. at 463, because disclosure of a person's "'illegal status in this country is very likely to trigger negative sentiments in the minds of some jurors.'" Id. at 464 (quoting Serrano v. Underground Utils. Corp., 407 N.J. Super. 253, 274 (App. Div. 2009)).

Here, a bench trial was conducted, and no jury was tainted. Plaintiff's reliance on non-precedential cases is of no moment.[4] And, plaintiff stipulated

[4] Plaintiff relies in part on unpublished opinions to support his position, but such opinions have no precedential value. See Brundage v. Estate of Carambio,

at the time of trial that he would not introduce any evidence regarding the validity of any tax identification number.

We also reject plaintiff's argument that cross-examination regarding his intentionally providing an invalid Social Security number on his W-4 form was irrelevant under Rule 401. Rule 401 defines "relevant evidence" as "evidence having a tendency in reason to prove or disprove any fact of consequences to the determination of the action." Plaintiff'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 the trial judge did not abuse his discretion in admitting plaintiff's testimony on this issue.

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195 N.J. 575, 592-93 (2008) (acknowledging that Rule 1:36-3 "provides that '[n]o unpublished opinion shall constitute precedent or be binding upon any court.'" (quoting R. 1:36-3)).

E.

Finally, plaintiff contends the trial judge erred by finding there was a barter arrangement between the parties because he was simply an employee. On the contrary, the trial judge duly found that a barter arrangement was created after defendants discovered plaintiff provided a fictitious Social Security number. The trial judge stated:

> [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 has he 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. . . .
>
> There was no lease or employment agreement between plaintiff and Marmic. . . .

Plaintiff attempts to argue that an employer-employee relationship continued to exist after Marmic discovered plaintiff provided a fictitious Social

Security Number and thus could not be paid wages. Plaintiff relies on the "ABC" test under N.J.S.A. 43:21-19(i)(6)(A), (B), and (C), which provides:

> Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter [(N.J.S.A. 43:21-1 to -71)] unless and until it is shown to the satisfaction of the division that
>
> (A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact;
>
> (B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
>
> (C) Such individual is customarily engaged in an independently established trade, occupation, profession[,] or business.
>
> [Ibid.]

All three provisions must be satisfied under this test; an entity that fails to prove even one of the elements is considered an employer under the Unemployment Compensation Law, N.J.S.A. 43:21-1 to -24.4. Carpet Remnant Warehouse, Inc. v. N.J. Dep't of Labor, 125 N.J. 567, 581 (1991); William H. Goldberg & Co. v. Div. of Emp. Sec., 21 N.J. 107, 113 (1956); Trauma Nurses, Inc. v. Bd. of Rev.,

242 N.J. Super. 135, 143 (App. Div. 1990); Bloom v. Div. of Emp't Sec., Dep't of Labor and Industry, 69 N.J. Super. 175, 178-79 (App. Div. 1961).

The ABC test is used to determine whether a person is an employee or an independent contractor and governs "for purposes of resolving a wage-payment or wage-and-hour claim." Hargrove v. Sleepy's, LLC, 220 N.J. 289, 295 (2015). But the ABC test is inapplicable here because whether plaintiff was an employee of defendants or worked as an independent contractor is not at issue. Therefore, plaintiff's argument is rejected, and the trial judge did not err in concluding a barter arrangement was created between the parties.

In light of our decision, we need not address plaintiff's burden-shifting argument as to his wage claims. To the extent we have not addressed plaintiff's remaining arguments, we conclude they lack sufficient merit to warrant any further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.
CLERK OF THE APPELLATE DIVISION