

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

<b>MITCHELL GREENBERG,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>C.A. No. CPU4-11-003483</b>
	)	
<b>THOMAS EDISON CHARTER</b>	)	
<b>SCHOOL, THOMAS EDISON</b>	)	
<b>CHARTER SCHOOL BOARD OF</b>	)	
<b>DIRECTORS, and</b>	)	
<b>BONITA WILLIAMS,</b>	)	
<b>Defendants.</b>	)	

Submitted: October 25, 2011  
Decided: November 21, 2011

On Defendant's Motion to Dismiss  
**DENIED IN PART, GRANTED IN PART**

On Plaintiff's Motion for Summary Judgment  
**DENIED**

**MEMORANDUM OPINION and ORDER**

Andres Gutierrez De Cos, Esq., 704 King Street, Suite 600, Wilmington, Delaware 19801, Attorney for Plaintiff.

Sarah E. DiLuzio, Esq., 1313 North Market Street, P.O. Box 951, Wilmington, Delaware 19899, Attorney for Defendants.

**ROCANELLI, J.**

Plaintiff Mitchell Greenberg filed this action against Thomas Edison Charter School, Thomas Edison Charter School Board of Directors, and Bonita Williams to recover money damages based on two employment contracts. The Complaint, filed on June 13, 2011, demands relief under three causes of action: (1) breach of contract, (2) *quantum meruit*, and (3) denial of procedural due process under the United States Constitution. The Complaint demands judgment in the amount of \$5,616.08, plus \$1,698.96 in unpaid medical benefits, post judgment interest, attorneys' fees, and costs.

The Complaint includes two employment contracts (Plaintiff's Exhibits to the Complaint A and C) and 49 pay stubs that purportedly represent all payments made by Defendant to Plaintiff (Plaintiff's Exhibits to the Complaint B and E). According to Plaintiff, the first contract required Plaintiff to work as a teacher for the 2008-2009 academic year and the second contract required Plaintiff to work as a teacher for the 2009-2010 academic year. The Defendants claim that an addendum provides that payments made beginning on July 17, 2009 constitute payment under the 2009-2010 employment agreement and not payments under the 2008-2009 employment agreement. (Defendant's Exhibit to the Motion Dismiss 1).

The pay stubs included in the Complaint are packaged in two exhibits. Plaintiff's Exhibit B to the Complaint contains 26 pay stubs starting in August 31, 2008 and ending August 15, 2009. The total amount paid under these pay stubs is \$45,982.20. Plaintiff's Exhibit E to the Complaint contains 23 pay stubs starting in August 16, 2009 and ending July 3, 2010. The total amount paid under these pay stubs is \$40,564.91. The amount paid to Plaintiff is not in dispute. Plaintiff claims that the total amount he was paid,

\$86,547.11, was \$4,714.89 less than what he was owed under the two employment contracts.

Whether Plaintiff is owed additional salary is a disputed fact. Defendants respond that Plaintiff was paid in full for his work and is not owed any money. More specifically, Defendants contend that Plaintiff's first employment term was for less than one full year and that his pay was prorated because he started working after the contract term began. In addition, there is a factual dispute regarding health insurance. These are the factual issues in dispute for which a trial is necessary.

As stated more fully below, Plaintiff's Complaint alleging breach of contract and *quantum meruit* states claims upon which relief may be granted and this Court cannot rule as a matter of law that Plaintiff or Defendants are entitled to judgment as a matter of law. However, Plaintiff's claim for a violation of due process is dismissed because Plaintiff has not set forth a claim upon which relief can be granted.

## **I. DEFENDANT'S MOTION TO DISMISS**

In considering motions to dismiss a complaint for failure to state a claim made pursuant to CCP Civ. R. 12(b)(6), all well-pleaded allegations in the complaint must be accepted as true.<sup>1</sup> The complaint shall not be dismissed unless the plaintiff cannot recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.<sup>2</sup>

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<sup>1</sup> *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978); *Battista v. Chrysler Corp.*, 454 A.2d 286, 287 (Del. Super. 1982).

<sup>2</sup> *Spence*, 396 A.2d at 968 (citation omitted).

Defendants request that the complaint be dismissed on the grounds that the complaint fails to state claims upon which relief can be granted. First, Defendants contend that Plaintiff only seeks relief for breach of contract based on an alleged failure to be paid in full under the 2009-2010 employment agreement. According to Defendants, the contract addendum provided that payments made to Plaintiff July 17, 2009 and thereafter were payments on the second contract, and not on the first contract. Therefore, according to Defendants, Plaintiff cannot prevail on either the breach of contract claim or the *quantum meruit* claim. Second, Defendants state that the Complaint fails to state a claim for violation of procedural due process rights because, as a non-tenured employee, Plaintiff had no reasonable expectation of continued employment and thus was not entitled to a pre-termination hearing.

Plaintiff filed a response to the Motion to Dismiss arguing that the Complaint states claims upon which relief can be granted. With respect to the breach of contract and *quantum meruit* claims, Plaintiff argued that, even if Defendant is correct that Plaintiff was paid in full under the 2009-2010 contract, then Plaintiff was not paid in full for the 2008-2009 academic year. Further, Plaintiff argued that the Complaint states a claim for denial of procedural due process because Plaintiff has a property interest in unpaid salary, rather than continued employment.

## 1. Plaintiff's Contract Claim

In order to state a claim upon which relief can be granted for breach of contract, the Plaintiff must first show that a contract existed.<sup>3</sup> Second, Plaintiff must establish that Defendants breached an obligation imposed by the contract.<sup>4</sup> Finally, Plaintiff must prove that he suffered damages as a result of the Defendants' alleged breach.<sup>5</sup> As pled, relief can be granted on Plaintiff's contract claim because Plaintiff contends that he was paid \$4,714.89 less than what he was owed under the two employment contracts. Therefore, as to the contract claim, the Motion to Dismiss must be denied.

## 2. Plaintiff's *Quantum Meruit* Claim

*Quantum Meruit* is a Latin term which means for "what one has earned." It is a quasi-contractual remedy that allows a party, in the absence of an express agreement, to recover the reasonable value of his or her materials or services.<sup>6</sup> If there is an enforceable contract between the parties, then *quantum meruit* recovery is inapplicable.<sup>7</sup> In order to state a claim upon which relief can be granted for *quantum meruit*, Plaintiff must establish that (1) Plaintiff performed the services with the expectation that the Defendants would pay for those services; (2) that the services were performed by

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<sup>3</sup> *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *C & C Drywall Contractor, Inc. v. Milford Lodging, LLC*, Young, J., 2010 WL 1178233, at \*3 (Del. Super.).

<sup>7</sup> *Id.*

Plaintiff, absent a promise to pay; and (3) the circumstances were such that Defendants should have known that Plaintiff expected to be paid.<sup>8</sup>

Plaintiff has stated a claim for which relief can be granted on the legal theory of *quantum meruit*. Plaintiff alleges that he performed services for Defendants, namely, teaching classes for two academic years. Plaintiff alleges that he expected to be paid, and attached two purported employment contracts between the parties as supporting evidence. Moreover, Plaintiff pled that Defendants understood that Plaintiff expected to be paid for his services. With respect to the element of a promise to pay, this is a claim in the alternative. Therefore, as to the *quantum meruit* claim, the Motion to Dismiss must be denied.

### **3. Plaintiff's Claim of Violation of Due Process**

Due process protections apply prior to the deprivation of a liberty or property interest by the State.<sup>9</sup> Deprivation of payment owed under an alleged contract is a property interest subject to due process protections.<sup>10</sup> Assuming these protections apply, due process requires some type of notice and hearing prior to deprivation of the protected interest.<sup>11</sup> However, ordinary judicial process, such as a conventional lawsuit alleging a cause of action for breach of contract, satisfies the notice and hearing requirement.<sup>12</sup>

While Plaintiff has a protectable property interest in full payment of the salary

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<sup>8</sup> *C & C Drywall Contractor, Inc.* 2010 WL 1178233 at \*3; *Petrosky v. Peterson*, 859 A.2d 77, 79 (Del. 2004).

<sup>9</sup> *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

<sup>10</sup> *Lujan v. G&G Fire Sprinklers, Inc.*, 532 U.S. 189, 196 (2001).

<sup>11</sup> *Adjile v. City of Wilmington*, 875 A.2d 632, \*2 (Del. 2005)(TABLE)(citations omitted).

<sup>12</sup> *Lujan*, 532 U.S. at 196-97.

allegedly owed, a claim for denial of procedural due process protections is not the appropriate avenue for relief. Plaintiff's claims for breach of contract and *quantum meruit* provide all the process that is required by the United States Constitution.<sup>13</sup> This Court finds that Plaintiff's claim for deprivation of procedural due process must be dismissed because it fails to state a claim upon which relief can be granted. Accordingly, Defendants' Motion to Dismiss Plaintiff's due process claim is granted because Plaintiff has not stated a claim upon which relief can be granted.

## II. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

A motion for summary judgment requires the Court to examine the record to determine whether any genuine issues of material fact exist or whether one party should prevail as a matter of law.<sup>14</sup> If, after viewing the record in a light most favorable to the nonmoving party, the Court finds no genuine issue of material fact exists, then summary judgment is appropriate.<sup>15</sup> However, summary judgment may not be granted when the record indicates a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.<sup>16</sup>

With his opposition to Defendants' Motion to Dismiss, Plaintiff also filed a Cross-Motion for Summary Judgment pursuant to CCP Civil Rule 56. Plaintiff contends that there are no genuine issues of material fact, and that Plaintiff is entitled to judgment as a matter of law. Defendants' argument is that Plaintiff is not entitled to judgment as a

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<sup>13</sup> *Id.*

<sup>14</sup> *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

<sup>15</sup> *CCP Civ. R. 56(c)*; *Hammond v. Cold Industries Operating Corp.*, 565 A.2d 558, 560 (Del. 1989); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

<sup>16</sup> *Wilson v. Triangle Oil Co*, 566 A.2d 1016, 1018 (Del. 1989).

matter of law on either the breach of contract or *quantum meruit* claims because there is no dispute that both parties fully performed their obligations under the 2009-2010 contract. In other words, Defendants agree that there are no issues of material fact in dispute but seek judgment in Defendants' favor as a matter of law. The Court finds that there are genuine issues of material fact with regard to the breach of contract and *quantum meruit* claims, and thus the case must proceed to trial.

### **III. ORDER**

#### **Based on the findings stated herein,**

1. With respect to Plaintiff's claims for breach of contract and *quantum meruit*, it is hereby ordered that Defendants' Motion to Dismiss is **DENIED**, because the Complaint properly states claims upon which relief can be granted for each cause of action;

2. With respect to Plaintiff's claim for denial of procedural due process, it is hereby ordered that Defendants' Motion to Dismiss is **GRANTED** and Plaintiff's claim for denial of procedural due process is **DISMISSED WITH PREJUDICE**, because the Complaint does not state a claim upon which relief can be granted for this cause of action;

3. It is hereby ordered that Plaintiff's Cross-Motion for Summary Judgment is **DENIED** because there are material issues of fact in dispute and Plaintiff is not entitled to judgment as a matter of law; and



4. Finally, this Judicial Officer will retain jurisdiction of this matter through final disposition. The Court will schedule a pre-trial conference.

**IT IS HEREBY ORDERED this 21<sup>st</sup> day of November 2011.**

*Andrea L. Rocanelli*

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The Honorable Andrea L. Rocanelli