

STATE OF RHODE ISLAND

KENT, SC.

SUPERIOR COURT

[Filed: August 19, 2021]

THOMAS J. BARRETT, M.D.

Plaintiff,

v.

ORTHOPEDECS RHODE ISLAND, INC.
and WEST BAY ORTHOPAEDICS &
NEUROSURGERY, INC.,

Defendants.

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C.A. No. KC-2019-1325

DECISION

LANPHEAR, J. Before this Court is Plaintiff Thomas J. Barrett, M.D.'s (Dr. Barrett/Plaintiff) Motion for Partial Summary Judgment against Defendants Orthopedics Rhode Island, Inc. (OrthoRI) and West Bay Orthopaedics & Neurosurgery, Inc. (West Bay) (collectively, Defendants). This motion was argued before this Court on May 24, 2021. For the reasons set forth herein, this Court denies summary judgment.

I

FACTS & TRAVEL

On November 2, 2015, OrthoRI announced its formation through the consolidation of three previously distinct physician groups: Blackstone Orthopedics & Sports Medicine, Foundry Orthopedics & Sports Medicine, and South County Orthopedics. Pl.'s Mem. Supp. Mot. Summ. J. (Pl.'s Mem.) 4. West Bay consolidated into OrthoRI within one year of the consolidation of the initial three groups. *Id.*

Dr. Barrett was employed as a physician by OrthoRI pursuant to an employment agreement dated July 1, 2016 for an employment term of August 1, 2017 until July 31, 2019. Compl. ¶ 7. The agreement set forth two elements of compensation: a “Base Salary” payable in bi-weekly installments, and a potential “Bonus” for each contract year. Exhibit A ¶ 3.1.¹ The language of the agreement broke down the formula for the bonuses, and bonus payments were not discretionary. Pl.’s Mem. at 3-4. By the time Dr. Barrett began his employment, West Bay had consolidated into OrthoRI and during the period of the agreement, Dr. Barrett was employed by OrthoRI. *Id.* at 4. West Bay had two categories of physicians: (1) shareholder-employee physicians and (2) employed physicians; the Plaintiff joined as an employed physician. Defs.’ Mem. at 2. Dr. Barrett eventually had the opportunity to become a shareholder and he accepted this opportunity. *Id.* at 3. After accepting the offer and the negotiation process began in earnest, Dr. Barrett informed OrthoRI that he would be resigning from OrthoRI. *Id.*

After the conclusion of Dr. Barrett’s employment, OrthoRI calculated a final bonus due to Dr. Barrett, which included remaining bonuses due of \$256,196. Pl.’s Mem. at 5. This calculation

¹ “In addition to Base Salary, for each contract year, the Corporation shall pay Physician a “Bonus” for professional services provided by Physician and such other services set forth below, when such services are paid by commercial payors and/or paid on an “incident to” basis by Medicare and Medicaid, which, when the combined collections relating to Physician (“Physician Collections”) exceed Five Hundred Forty-eight Thousand Dollars (\$548,000) during the first contract year and Five Hundred Thousand Dollars (\$500,000) during the second contract year (“Threshold”), the Corporation will pay Physician the percentages of the Physician Collections in excess of the Threshold, as set forth below. Notwithstanding the foregoing, in the event that Physician’s start-up expenses, e.g., SRS licenses, professional liability insurance deposit, ORI initiation fee, etc., are lower than Forty-eight Thousand Dollars (\$48,000), the Threshold during the first contract year shall be reduced to reflect the difference between Forty-eight Thousand Dollars (\$48,000) and such lower amount.” Exhibit A ¶ 3.1.

was based on the formula of the employment agreement. Pl.’s Mem. at 5. OrthoRI then deducted \$205,750 from this bonus amount as a set-off of “Call Pay” previously paid to Dr. Barrett during his two-year employment and purported to pay Dr. Barrett an amount of \$50,546 as his final bonus amount. *Id.* The agreement did not contain any provision permitting an offset of Call Pay or any other amounts against the productivity bonuses. *Id.* Thereafter, OrthoRI indicated that it would only pay him the \$50,546 if Dr. Barrett signed a release and accepted that amount as payment in full as well as release all claims against OrthoRI. *Id.* at 6.

On November 25, 2019, Dr. Barrett filed the instant suit with a two-count complaint: one count of breach of contract and one count of “Wage Act.” *See* Compl. On February 24, 2020, this Court heard and denied Defendants’ motion to dismiss. On April 6, 2021, Dr. Barrett filed the instant motion for partial summary judgment. On May 7, 2021, Defendants filed an objection and on May 12, 2021, Dr. Barrett filed a rebuttal to the Defendants’ objection. Dr. Barrett contends that state statute compels the prompt payment of the \$256,196. Defendants reply that the bonus amount is exempted from the requirement of the statute.

II

STANDARD OF REVIEW

When deciding a motion for summary judgment, the trial justice must keep in mind that it “is a drastic remedy and should be cautiously applied.” *Steinberg v. State*, 427 A.2d 338, 339-40 (R.I. 1981) (quoting *Ardente v. Horan*, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976)). “Thus, ‘[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.’” *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Education*, 93 A.3d 949, 951

(R.I. 2014). However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. *Steinberg*, 427 A.2d at 340. When determining whether a genuine issue of material fact exists, the Court reviews “pleadings, affidavits . . . and other similar matters . . . in the light most favorable” to the nonmoving party. *Saltzman v. Atlantic Realty Co.*, 434 A.2d 1343, 1345 (R.I. 1981).

The party who opposes the motion for summary judgment “carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.” *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1225 (R.I. 1996); *see also* *McAdam v. Grzelczyk*, 911 A.2d 255, 259 (R.I. 2006). In this context, “‘material’ means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant.” *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995). The party opposing summary judgment cannot rest upon conclusions or mere allegations or denials in the pleadings; rather, the party must affirmatively set forth competent evidence that raises a genuine issue to be resolved. *Sisters of Mercy of Providence, Inc. v. Wilkie*, 668 A.2d 650, 652 (R.I. 1996).

III

ANALYSIS

The Rhode Island Wage Act, G.L. 1956 § 28-14-9, provides that:

“[n]othing contained in this chapter shall in any way limit or prohibit the payment of wages or compensation at more frequent intervals, or in greater amounts or in full when or before due, but no provision of this chapter can in any way be contravened or set aside by a private agreement; provided, that no agreement contained in a written contract relating to the payment of any bonus in addition to the payment of wages shall be subject to the provisions of this chapter.” Section 28-14-9.

The Rhode Island Wage Act defines wages as “all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, commission basis, or other method of calculating the amount.” Section 28-14-1(4).

A bonus is “[a] premium paid in addition to what is due or expected.” Black’s Law Dictionary (8th ed. 2014). “In the employment context, workers’ bonuses are not a gift or gratuity; they are paid for services or on consideration in addition to or in excess of the compensation that would ordinarily be given.” *Id.* According to the Merriam-Webster dictionary, the term “bonus” means “money or an equivalent given in addition to an employee’s usual compensation.” Merriam-Webster Online Dictionary (retrieved May 28, 2021, from <https://www.merriam-webster.com/dictionary/bonus>).

Here, the employment agreement between the Plaintiff and the Defendants included a provision for compensation. Exhibit A ¶ 3. Dr. Barrett suggests to this Court that his remaining bonuses due represent wages under the Wage Act. Pl.’s Mem. at 7. OrthoRI suggests that the Wage Act expressly excludes bonuses due under written agreements. Defs.’ Mem. at 6. This is an extremely close call, but as the application of the Wage Act is a question of law, it is a question this Court must decide as it relates to this motion for partial summary judgment. R.C.P. 56(c).

Based on the established facts and the clear language of the statute, the Wage Act applies to the monies due to Dr. Barrett. While the employer and the contract label the funds as “Bonus,” they do not function as such. The employer has no discretion in paying such bonuses. The payments are not ‘in addition to what is due or expected’—they are both due and expected.

The mere labelling of an item as something which it is not cannot change its nature or exempt it from a statutory mandate. Here, a goal of the statute is to compensate employees fairly and timely for work completed. Referencing a payment as a bonus does not avoid the statute. The

so-called bonuses are wages pursuant to § 28-14-1(4). They were, and are, payments for services rendered.

Accordingly, pursuant to § 28-14-24(a), none of the monies for services rendered should be deducted from the funds presently due to Dr. Barrett as a setoff or counterclaim.

IV

CONCLUSION

For the foregoing reasons, this Court grants Dr. Barrett's Motion for Partial Summary Judgment on liability. Dr. Barrett is awarded \$50,546 for unpaid wages. Other damages may be determined at a hearing on proof of claim.



RHODE ISLAND SUPERIOR COURT

Decision Cover Sheet

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COURT: Kent County Superior Court

DATE DECISION FILED: August 19, 2021

JUSTICE/MAGISTRATE: Lanphear, J.

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