

CITATION: *Angelo Perperiadis v Peter Markopoulos* [2004] NTMC 029

PARTIES: ANGELO PERPERIADIS

v

PETER MARKOPOULOS

TITLE OF COURT: Local Court

JURISDICTION: Local Court – Tennant Creek

FILE NO(s): 20306107

DELIVERED ON: 12 March 2004

DELIVERED AT: Tennant Creed

HEARING DATE(s): 10 March 2004

JUDGMENT OF: M Ward

CATCHWORDS:

REPRESENTATION:

Counsel:

Plaintiff: P Maley
Defendant: Self Represented

Solicitors:

Plaintiff: Withnall Maley & Co
Defendant: Self Represented

Judgment category classification:

Judgment ID number: 029

Number of paragraphs: 23

IN THE LOCAL COURT
AT TENNANT CREEK IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20306107

BETWEEN:

ANGELO PERPERIADIS
Plaintiff

AND:

PETER MARKOPOULOS
Defendant

REASONS FOR JUDGMENT

(Delivered 12 March 2004)

Mr M WARD DCM:

1. The defendant worked for the plaintiff for about 54 weeks from January 2001 to January 2002. He worked in a business called Tennant Creek Meat Supply and Mini Market. He was employed as an unskilled labourer, unloading goods off vehicles and stacking shelves and the like, and doing some deliveries.
2. The original claim by the plaintiff wanted three things. It claimed repayment of a rental bond of \$480 said to have been paid by the plaintiff so the defendant would be able to secure a rental property in which to live. It claimed repayment of \$10,800 said to have been paid by the plaintiff to the defendant to subsidise the defendant's rental payments on the property he was renting. The \$10,800 consisted of 54 payments for the 54 weeks of employment at \$200 per week each. Finally, the plaintiff claimed unspecified damage for an unspecified occasion or occasions when the defendant was supposed to have delivered goods on behalf of the plaintiff to Mirnirri Store and the baker at Ali Curung.
3. The defendant lodged a defence denying any indebtedness to the plaintiff, and a counterclaim. The counterclaim alleged underpayment of wages by the plaintiff to the defendant in the sum total of \$4,932.83.

4. In his defence to the counterclaim, the plaintiff denied any underpayment of wages.
5. Sometime before the hearing, and again at the hearing, the plaintiff dropped the third part of his claim. That was that claim which sought the unspecified damages for the alleged non-delivery of goods to Mirnirri Store and the baker at Ali Curung.
6. At trial, the plaintiff had legal representation. The defendant was not represented.
7. Also at trial, I suspect somewhat to the surprise of his legal representative, the plaintiff dropped that part of his claim relating to the payment of the defendant's rental bond (\$480).

[“I got nothing to do with his bond. I never paid his bond.”]

So the plaintiff's claim was ultimately pruned back to the claim for rental subsidy of \$200 per week for 54 weeks.

8. Finally, by way of introduction, the plaintiff at trial admitted underpayment of wages to the defendant in the amount claimed (\$4,932.83). Judgement will accordingly be entered for the defendant on his counterclaim for that amount.

9. The Issues

There were two issues at trial. One was as to the terms of the defendant's employment, based upon an alleged conversation between the plaintiff and defendant just before the defendant commenced work for the plaintiff. The other issue is the plaintiff's assertion that, over and above the wages he paid the defendant, he gave him \$200 each week for rental subsidy for the entire period of the defendant's employment of 54 weeks. The defendant denied he ever received any such payment.

10. The Plaintiff's Version of the Terms of Engagement

The plaintiff's version of the conversation between he and the defendant is as follows. (This is taken from my notes. I have not had the opportunity of seeing a transcript, nor listening to the tapes.)

I said I pay him 30 hours, 5-6 hours per day, and I said I pay rent \$200 each Friday morning, but if you leave before 2 years, I want my money back.

He said: “No worries”.

[I discussed these things two days before he started work.]

I said: “If you leave here before 2 years, please Peter, I need the money back”.

11. There was no witness to this conversation. Needless to say, the terms of it were never reduced to writing.

12. The Defendant’s Version of the Terms of Engagement

The defendant admitted that there was a conversation between he and the plaintiff before he commenced work. He claimed that the plaintiff approached him and offered him 30 hours work each week at \$12.50 per hour. He said “ok” to that offer. That was the extent of the conversation. There was no offer to pay him an extra \$200 per week towards rental assistance. There was no suggestion that he had to remain in the job for a minimum of 2 years, not that any money had to be refunded should he not stay for 2 years.

13. Even on the plaintiff’s version, the alleged agreement is void through uncertainty. Further, it is probably illegal and hence void.

14. The Uncertainty

It is uncertain because it is not possible with any certainty to identify what monies are to be repaid. According to the plaintiff, he said (in effect) that he would pay him for 30 hours work at \$12.50 per hour, and in addition, and extra \$200 per week rental subsidy as some sort of fringe benefit. “But if you leave before 2 years, I want my money back.” What money? The 30 hours at \$12.50? The \$200 per week? Or both? The contract is be void for uncertainty.

15. Illegality

No matter how an employer may dress up an employment contract, s/he can’t demand that the worker repay any part of it in the event of early termination.

16. The \$200 per week (it if was paid) was as much a part of the defendant's wages as the \$12.50 per hour for 30 hours. Under no circumstances can the worker be expected to refund it, once paid. The alleged contract to repay was plainly illegal.

17. Did the Plaintiff in fact even pay \$200 per week

If in fact the plaintiff did pay \$200 per week for 54 weeks to the defendant, one would expect these to be some record of it. There is not. No books of account (except one) were produced to corroborate the claim that that sum was paid. No profit and loss statement was produced. No group certificate was produced. No bank statement was produced. The payment of \$200 per week does not appear on the defendant's weekly pay slips. Indeed the weekly pay slips reveal he was taxed on the \$12.50 per hour x 30 hours per week basis and no more. No fringe benefit declarations or statements were produced.

18. The defendant denies he was ever paid \$200 per week for 54 weeks, or received anything towards a rental subsidy.

19. One witness was produced. His name was Peters, a butcher employed by the plaintiff. He said that the plaintiff told him he was giving the defendant extra for rental assistance. He believed the amount was \$200 per week. That evidence is hearsay and inadmissible.

20. I prefer the defendant's version on this point that no such payments were ever made. The plaintiff's claim must fail accordingly.

21. Exhibit 1

I mentioned a book of account, a Tudor Yearly time book, exhibit 1. This purports to be a record of the times worked by the defendant and the wages received by him. It has all the hallmarks of a book produced ("bodgied up" might be a better description) for the purpose of this litigation. It duplicates everything in the official times and wage book (exhibit 2) kept for all employees, but it doesn't contain the same detail. It has one important extra. Each week it has the words "plus \$200 cash" in it. These words are missing from the official book, exhibit 2.

22. The defendant significantly was asked to and did sign exhibit 2 as a correct record of hours worked and monies received. That has no mention of the extra \$200 cash. He did not sign exhibit 1, which has the only mention of the payment of \$200.
23. There will be judgment for the defendant on the plaintiff's claim, and judgment for the defendant on the counterclaim for \$4,932.83. The defendant is to have costs of the action to be taxed or agreed. The plaintiff is to pay interest at the prescribed rate on the \$4,932.83 for the 1st of January 2002.

Dated this 12th day of March 2004.

M Ward
DEPUTY CHIEF MAGISTRATE