

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ERIC SMITH

Plaintiff

v.

MIAMI UNIVERSITY

Defendant

Case No. 2008-06270-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On May 4, 2008, plaintiff, Eric Smith, was employed as part of the wait staff serving Sunday brunch at the 1809 Room in the Shriver Center, a facility owned and operated by defendant, Miami University ("University"). Plaintiff claimed dining guests at the Sunday brunch allocated a total of \$595.17 in tips for his service, but defendant's personnel forwarded only \$105.17 of the intended tips to him. Plaintiff asserted defendant wrongfully withheld \$490.00 of his tips and he has consequently filed this complaint seeking to recover that amount. The filing fee was paid. Plaintiff submitted a copy of a University produced print out (dated May 4, 2008) titled "Employee Tips" under the name Eric Smith and includes tabulations for "Gross Receipts," "Charged Tips," "Total Tips," and "Tips Paid." This submitted list of May 4, 2008 dining transactions representing cumulative instances when plaintiff was involved as a server indicated "Charged Tips" in the amount of \$595.17 were bestowed by various diners on "Gross Receipts" of \$598.05. "Total Tips" equaled 99.53% of the "Gross Receipts." At the time plaintiff did not receive any tip money, although he acknowledged subsequently receiving \$105.17 in tips from his May 4, 2008 serving shift

worked.

{¶ 2} Defendant acknowledged the fact a controversy exists regarding tip money owed to plaintiff for the time he worked as part of the wait staff serving brunch on May 4, 2008 at the University Shriver Center 1809 Room. Defendant explained the basis of the tip dispute involves one particular student dining guest who plaintiff served at brunch. The student dining guest, who defendant identified as “Student X” due to privacy act considerations, was a University Harrison Scholar subject to the internal policies and rules regarding the use of Harrison Scholarship funds granted. Defendant noted that Harrison Scholarship recipients are entitled to a meal plan funded account and apparently Student X authorized the use of meal plan money to pay for his May 4, 2008 brunch bill that totaled \$13.50. Defendant stated, “Student X paid for the brunch bill by swiping his student card which automatically deducted the cost of the meal (\$13.50) and tip from his meal plan.” Defendant submitted a copy of a “charge slip” for the brunch meal Student X had ordered. The charge slip listed the cost of brunch, \$13.50, and also included a tip of \$500.00. This \$500.00 tip had been added to the brunch bill as recorded on the charge slip and was intended to be paid with meal plan funds deducted from the Harrison Scholarship account of Student X. Defendant also submitted a copy of the receipt printed for Student X’s brunch bill. This receipt reflects the total charge for brunch, but does not list any tip amount although a separate line on the receipt is printed to record a tip. Defendant related the charge slip amount listed “would cause the deduction from the meal plan” of Harrison Scholar Student X. At the conclusion of work shift on May 4, 2008, plaintiff had accumulated total tips of \$595.17, including the disputed tip of \$500.00 intended to be deducted from the Harrison Scholarship meal plan for Student X. Defendant related no tip money was forwarded to plaintiff at this time due to the lack of available cash at the 1809 Room dining facility. Consequently, the University’s 1809 supervisor and plaintiff agreed to attempt to resolve the matter by the next day, Monday May 5, 2008.

{¶ 3} Defendant’s 1809 Room supervisor, Rachel Marr, contacted the University’s Business Officer Manager, Geraldine Schick concerning University approval of the purported \$500.00 tip Student X intended to give plaintiff from the Harrison Scholarship funded meal money account. Defendant submitted a written statement from Geraldine Schick regarding her involvement with the issue advanced and the

measures she engaged in to try to resolve matters such as validity of the tip transaction. Schick noted she was contacted by 1809 Room supervisor after tallies were made indicating plaintiff had been tipped a total of \$595.17 on May 4, 2008 and was informed \$500.00 of that tip amount was attributed to one customer plaintiff served.

{¶ 4} Schick provided the following narrative of the events which led to her involvement in the incident forming the basis for this claim. Schick wrote:

{¶ 5} “This occurred at the Sunday Brunch May 4. A student, (blank) purchased 1 adult buffet in the amount of \$13.50 and used his Snack account to pay this. The wait staff presents the receipt to the customer who then presents it to the cashier. The cashier asks each customer if they want to include a tip. The customer should sign and indicate on their copy of the receipt this information. In this particular situation, neither was followed through. When it came time to pay the wait staff their tips, it was found that Eric Smith had a \$595.15 tips. The cashier and supervisor on duty did not have enough money in the drawer to pay him so they called me at home. I asked if the student receiving the tip could stop by the office on Monday since this was unusually large. I do not recall any student receiving that large of an amount. I also wanted to balance that area with the sales reports to make sure that there was not any other errors.”

{¶ 6} Schick recalled she contacted Student X on May 5, 2008 to question him about the tip he intended to leave on the \$13.50 brunch transaction. Schick related she did not mention any tip dollar amount when she talked to Student X but did specifically ask him “how much he had intended to leave.” According to Schick, she was first told by Student X that he intended to tip \$50.00, but then said \$5.00. Schick reported that after she advised Student X regarding common tipping practice in the food service industry, he considered \$5.00 to be an appropriate tip for the brunch he had ordered. Schick related she then informed Student X “that there was a very large amount deducted from his snack account because of this large tip” and Student X offered that he had not intended to leave such a substantial tip, but then requested if a \$10.00 tip could be approved. Schick stated she told Student X he would need to verbally inform her of his intent to make the negotiated adjustments in his “snack account” to reflect the adjusted \$10.00 tip amount. Apparently, Student X gave the verbal confirmation to adjust the “snack account” and Schick then contacted the Harrison Scholarship meal

plan office to put \$490.00 back into the “snack account” of Student X. Based on the negotiations between Schick and Student X, plaintiff’s tip adjustment was set at \$10.00 from Student X and the meal plan fund, plus \$95.17 from other customers.

{¶ 7} Defendant recorded that at sometime after the tip amount conversation between Geraldine Schick and Student X, it was discovered Student X was a Harrison Scholar “which is the highest undergraduate recognition awarded by the University.” Defendant acknowledged Harrison Scholars such as Student X are provided with a meal plan account awarded by the University. However, this meal plan is subject to “University rules regarding use of scholarship funds” with specific rules including the use of plan money for food purchases only and the reversion of all unused meal money back into the Harrison Scholarship fund pool at the conclusion of the academic year. The reverted money is intended for future use. Defendant suggested, “[i]t appears that Student X may have initially attempted to thwart this reversion by providing (p)laintiff with the extraordinarily large tip.” Defendant contended any attempt to use meal plan monies toward an exorbitant \$500.00 tip constitutes improper and unauthorized use of such funds.

{¶ 8} Defendant submitted a copy of a letter dated April 21, 2008 generated by the University and directed to Harrison Scholars advising them of an opportunity to use meal plan funds for a “promotion” at various dining locations covering the time frame from April 28, 2008 to May 11, 2008. This notice letter of the “promotion” was signed by defendant’s Senior Assistant Director of Student Financial Assistance, Beth Johnson, and defendant’s Assistant Director of Student Housing and Meal Plan Services, Brian Woodruff. The letter provided the following relevant information:

{¶ 9} “During this time, non-food items will be available for purchase with meal plan dollars. However, meal plans that were issued through scholarship funds are not eligible for these non-food items. You will be billed through the Office of the Bursar if you use your scholarship-based meal pan [sic] dollars for any of these promotional purchases.”

{¶ 10} Therefore University personnel had authority to review any purchase using meal plan money and either approve or deny the purchase. Also contained in the body of the letter was the statement, “[s]pecifically, meal plans may be used for the purchase of food and beverages only.” The trier of fact finds the language of the letter arguably

provides authority to approve, deny, or modify gratuities using meal plan dollars. Under defendant's analysis, this statement constitutes proof that the use of meal plan money was restricted and Student X consequently had no right or authority to use meal plan money to bestow a \$500.00 tip for a \$13.50 meal.

{¶ 11} Plaintiff filed a response insisting Student X intended to tip him \$500.00 on May 4, 2008 and Harrison Scholarship meal plan funds were not subject to any restrictions in regard to being used as tips for meal service. Furthermore, plaintiff disputed the written recollections of Geraldine Schick concerning her involvement in the matter with both himself and Student X. Plaintiff stated he learned the identity of Student X when he went to Geraldine Schick's office and she presented the May 4, 2008 brunch meal check bearing the signature of Student X. The copy of the check submitted by defendant does not show any signature and plaintiff has presumed the signature was subsequently blocked out. Additionally, plaintiff speculated whether or not the signature he saw was the actual signature of Student X. Plaintiff related that after he learned the identity of Student X he "was able to research him" and discovered an electronic transmission in which the May 4, 2008 tip incident is addressed allegedly by Student X. Plaintiff provided a copy of an undated electronic transmission where a response is made to an earlier inquiry about "a generous tip." The electronic transmission response purportedly from Student X to the "generous tip" inquiry states "actually . . . first thing this morning I got a call from the business office of Shriver, and was lectured on how an appropriate tip amount is 20% of the bill, which is \$3, not \$500, so my tip was changed from 500 to 10." Plaintiff contended defendant has not presented "any evidence that suggests that the tip was a mistake except for a statement written by Ms. Schick." Conversely, plaintiff has not presented any evidence to establish Student X was given any right or authority to disperse University grant money as a gift in appreciation of dining service.

{¶ 12} Neither plaintiff nor defendant submitted any statement from Student X in direct reference to his intended tipping on May 4, 2008 and subsequent conversations with University personnel. Neither plaintiff nor defendant presented any documentation in regard to specific drafted rules, guidelines, regulations, and duties addressed for students who receive grant money under the Harrison Scholarship program.

{¶ 13} Plaintiff's claim for \$490.00 representing a tip for dining service is denied.

Plaintiff has not provided any evidence to show defendant relinquished all control over meal plan funds earmarked under the Harrison Scholarship program. There has been no evidence offered to establish Student X had unilateral authority to leave a gratuity using grant money. The clear intention of the meal plan fund available was to pay for food. Student X is free to leave a generous tip using his own money to convey his generosity. There has been no indication under the facts of this claim that meal plan money may be used for a gratuity without University approval. In fact, the nature of the grant has been shown that unused meal plan monies are returned to the scholarship fund and are not to be used to deplete the fund by being dispersed on an eleventh hour whim by individuals who feel generous with conditional grant funds. Furthermore, the real condition that unused meal plan funds revert to a general pool is inconsistent with any conception that the money may be used for tips or that the grant recipient has any discretion to extend a gratuity using grant money. Plaintiff has failed to prove Student X had any authority or discretion under the terms of the Harrison Scholarship grant to bestow a \$500.00 tip with meal plan funds. The evidence establishes plaintiff received a tip amount approved by both Student X and the University. Plaintiff has not proven entitlement to any additional tip and has therefore not satisfied the requirements to prevail on a claim for conversion.

{¶ 14} Conversion is a wrongful exercise of dominion or control over property of another in denial of or under a claim inconsistent with his rights. *Okocha v. Rehrenbacher* (1995), 101 Ohio App. 3d 309, 318, 655 N.E. 2d 744. Money may be converted when it is identifiable and there is an obligation to return the specific money in question. *Kiss v. Dick Baker Dodge* (Dec. 31, 1998), 6th Dist. No. E-98-027. In the instant claim, plaintiff failed to offer sufficient evidence to prove he was entitled to the \$490.00 in question and consequently, he has failed to prove any ownership right in the property. Plaintiff's claim is denied.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa

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