

SUPERIOR COURT OF NEW JERSEY
ESSEX VICINAGE

CHAMBERS OF
CHRISTINE FARRINGTON
SUPERIOR COURT JUDGE



Essex County Historic Courthouse
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Chambers 410
Newark, New Jersey 07102
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February 18, 2016

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RE: **City Council v. City of Orange Township**
Docket No.: ESX-L-1805-13

Dear Counsel:

This matter came before the court upon Verified Complaint in Lieu of Prerogative Writ filed March 6, 2013 for trial on January 4, 2016. At the outset of trial, plaintiff dismissed against defendants Mayor Warren and City of Orange Township. The remaining defendant is Willis Edwards, III. There are no counter or cross claims.

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Defendant Edwards moved to dismiss at the commencement of trial, contending the matter was moot on account of his resignation as Deputy Business Administrator, effective December 31, 2015 and because the City Council dismissed against Mayor Warren and the City of Orange Township. Plaintiff City Council of the Township of Orange opposed, seeking recoupment of the salary and benefits in excess of \$268,750 paid to defendant Edwards as Deputy Business Administrator. The motion to dismiss is denied. The court finds that the Mayor is not a necessary party, but a potentially adverse one, as it is the Council whose right of advice and consent to the Mayor's appointment is at stake as well as the rights of the taxpayers of the City of Orange Township for misuse of taxpayer dollars in the payment of an illegal salary. The City, represented by counsel in the initial proceedings was neutral. The defense argued that recoupment should be denied because defendant rendered services and is entitled to quantum meruit compensation. The motion was renewed after plaintiff rested. For the reasons contained herein that motion is denied.

There was also a motion by defendant to bar plaintiff's witnesses from testifying on the basis they were not previously

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disclosed, and to bar admission of documents, including those authored by the defendant, court orders and Township resolutions. Plaintiff argued the witnesses were the same named at the last trial date without objection, at which time the parties made opening statements prior to settling. The settlement was never effected resulting in the January 4, 2016 trial date. The court noting that the proposed witnesses were a council woman and the Township Clerk, the documents were largely public record, and further that the parties failed to take depositions of any witnesses or parties, denied the motion. The terms of the failed settlement agreement, which were previously unknown to the court, but set forth in defendant's brief were not considered by the court in rendering this opinion.

Plaintiff moved for a directed verdict which the court reserved. Since the court is both the trier of fact and law this decision resolves that motion. The court considered Plaintiff 1 through 21 in Evidence and Defendant 1 through 3 in Evidence together with the testimony and briefs of the parties and recording of the argument before Judge Arre.

This matter has a tortured history. On March 8, 2013 the Honorable Siobhan A. Teare entered an Order to Show Cause with

temporary restraints pursuant to R. 4:52 ordering the parties to appear and show cause as to "why an Order should not be issued preliminarily enjoining and restraining" defendants. On April 18, 2013 Judge Teare entered an Order finding (1) Willis Edwards III could not perform the functions of Business Administrator after May 30, 2013, absent approval of the council; (2) compelling Mayor Dwayne Warren to appoint a business administrator or acting business administrator on or before May 30, 2013; (3) compelling the City to comply with the statutory law in the appointment of Deputy Business Administrator; and (4) dismissing the Edwards counter claim and third party complaint without prejudice. On May 31, 2013, defendants filed a Notice of Appeal. On June 7, 2013, the council filed a second Order to Show Cause and Verified Complaint alleging the defendants violated the April 18, 2013 order. The trial court entered an order on June 7, 2013 requiring defendants to file an Answer on or before June 21, 2013, and to show cause why the order should not be entered finding them in contempt of the April 18, 2013 order. On June 17, 2013, defendants filed an answer to the second order to show cause, and the trial counsel held a hearing on June 26, 2013. On that date, the court determined that it

lacked certain documents upon which to base a decision, and ordered those documents produced by July 22, 2013. Conference calls were held July 23 and 26, 2013 after which the trial court ordered further production of documents to be completed by August 2, 2013. On August 1, 2013 the trial court entered an order identifying specific documents be produced the next day. By letter dated August 5, 2013 counsel for defendant advised the court that they were actively working to obtain the documents identified in the order. On August 7, 2013 the trial court entered an order imposing sanctions against defendants in the amount of \$1,000 per day retroactive to August 3, 2013 and continuing until the court was satisfied the defense was in full compliance with the August 1, 2013 order. On August 13, 2013, Mayor Warren filed a letter brief requesting dismissal of the matter. On August 21, 2013 Judge Teare recused herself from this matter. The case was transferred to Judge Patrick J. Arre. On September 5, 2013, Judge Arre conducted a case management conference at which time he stayed the proceedings pending the outcome of the motion before the Appellate Division. On September 26, 2013, defendants filed a motion to dismiss the appeal as interlocutory. On November 20, 2013, the Honorable

Jack M. Sabatino of the appellate division granted the motion to dismiss the appeal as interlocutory. On December 4, 2013, Mayor Warren filed a motion for reconsideration. Additionally, on August 16, 2013, Mayor Warren had filed a motion to quash the subpoenas served on the Camden Power consultant corporation which was unopposed. The subpoena was quashed. The motion for reconsideration was granted, Judge Arre vacated 1, 2 and 4 of Judge Teare's order and restored Defendants Edwards counterclaims and third party complaint to the active trial calendar. Number 3 of Judge Teare's order, compelling the City to comply with the statutory law in the appointment of Deputy Business Administrator, was not vacated. Judge Arre was transferred to Hudson County and this judge was assigned to the matter.

The facts are not contested. Willis Edwards, III was appointed acting Business Administrator by Mayor Dwayne Warren upon the Mayor being sworn into office in July 2012. N.J.S.A. 40: 69:A-43 requires each municipality have a department of administration. Subsequent sections require that the department be headed by a director who shall be appointed by the mayor with the advice and consent of the counsel. The code of the City of

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Orange Township also provides in Section 4-21 for the appointment, by the mayor, of a business administrator with the advice and consent of the council. At the end of 90 days, on October 2, 2012, Edwards' nomination was placed before the Township council which failed to consent in a four-three vote. Immediately thereafter, Mayor Warren appointed Edwards Deputy Business Administrator. The court notes that this position has been alternately and interchangeably referred to as Deputy Business Administrator or Assistant Business Administrator. The parties at trial stipulated Edwards' salary on October 3, 2012 as Deputy Business Administrator was \$105,000 per year plus medical, dental, and pension benefits. It was further stipulated Edwards received increases in compensation to \$120,000. Ten thousand dollars of each total was a stipend defendant received as the Affirmative Action officer. Neither the appointment to the deputy position, nor the salary was put before the council. City Council objected to the appointment and on October 16, 2012 memorialized same in a letter to Mayor Warren, which letter was marked into evidence as P-2. Council further requested salary information which was not provided. The Council advised the Mayor that Edwards was not lawfully appointed and should not

attend council meetings in that capacity. As set forth above, the City Council brought an order to show cause which was heard by the Honorable Siobhan A. Teare. Judge Teare entered an order on April 18, 2013, which was partially vacated by Judge Arre's order of February 28, 2014. Judge Arre found the injunctive relief and declaratory judgment should have been preceded by a full adjudication of the issues, as opposed to entering an order which essentially disposed of the case. His order was not a repudiation of the findings of Judge Teare, but merely found a hearing was required prior to granting injunctive relief. He did not disturb that aspect of the order which required the City to comply with the law in the appointment of a deputy business administrator. At the time Judge Arre entered his order the issue of whether the City Council's failure to approve Edwards appointment as Business Administrator was proper was an issue before the court. Neither party presented any evidence on this issue during the proceedings before this court. That issue is now moot, as defendant has resigned. Pursuant to Judge Teare's order, Edwards was removed from the Deputy position on May 30, 2014, and thereafter appointed Chief of Staff by the mayor. Following Judge Arre's order, Mayor Warren reappointed Edwards

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as Deputy Administrator, in which position he continued until his resignation effective December 31, 2015. As with the earlier appointment, neither the position nor the attendant salary was brought before City Council.

At trial, the City of Orange Township called Donna K. Williams, councilwoman. Ms. Williams was a member of council and Council Vice President in 2012, having served since 2008. She signed the verified complaint on behalf of the council. She remains a council member. She testified that following Edwards' failure to be confirmed by the council, the council did not receive any resolution from the Mayor's office regarding the appointment of Edwards as deputy business administrator and such appointment was contrary to municipal code. The council did not approve his salary which exceeded the salary of other deputies by \$25,000 to \$30,000. Williams was shown City Code 4-20 and confirmed its provisions required the Mayor to remove acting appointees who do not receive approval by council after 90 days. She testified Edwards continued to act as business administrator following the entry of Judge Teare's order. She testified the Mayor, up to the time of her testimony had not appointed another acting business administrator, contrary to Judge Teare's order.

She testified when Edwards was named chief of staff he continued to perform duties of the business administrator. Following Judge Arre's order, Edwards again was appointed Deputy Business Administrator. She testified that although Edwards' resignation letter was dated December 1, 2015, effective December 31, 2015, the council did not receive notice of his resignation. The court finds Ms. Williams to be a very credible witness. Her demeanor on the witness stand was thoughtful and direct on both direct and cross examination. Likewise, Ms. Lanier. During trial, City of Orange Township municipal clerk, Joyce Lanier, testified that she is a registered municipal clerk and researched City of Orange Township records and determined that the position of Deputy or Assistant Business Administrator was created in 1985 and subsequently abolished. She further testified that her research found no evidence that the position of "chief of staff" had ever been created in the City of Orange Township. Despite her findings, she confirmed that prior to Edwards there had been a person in the chief of staff position and there was at time of trial a person in the position of "chief of staff". She testified the salary of the current person had also not been approved by City Council. Ms. Lanier was direct and business

like in her testimony and impressed the court as knowledgeable about the duties of her position.

Mr. Edwards testified. He was not a credible witness. He was argumentative, combative and evasive. While he possesses impressive education credentials, and a long history of service on boards in this state and in New York, is a former state legislator and long history of teaching at the college level, he repeatedly claimed lack of understanding of questions, lack of knowledge, lack of recall, or ignorance. The thrust of his defense was not that he was lawfully appointed, but that it was the Mayor who appointed him and therefore, the Mayor, not he was responsible for his continuing in a position to which he was not lawfully appointed, at a salary not approved by the council and engaging in duties for positions which did not exist. He testified he either did not read, or thought the statute, code and Judge Teare's order were subject to interpretation based upon his discussions with the City attorney and his own counsel. He denied ever speaking to Mayor Warren, who is an attorney, about the lawfulness of his appointment at any time. He testified that he performed his duties competently and his efforts resulted in improvements and benefits to the City of

Orange Township. His testimony did not contradict any of the testimony of Councilwoman Williams, and although he disputed aspects of Ms. Lanier's testimony he did not provide any evidence to the contrary. The court gives no credence to his position in his opposition brief that he relied upon Judge Arre's order and/or a colloquy between Judge Arre and plaintiff's counsel as a basis to continue in the position of deputy business administrator. Mr. Edwards did not testify to such reliance before this court, and paragraph three of the order speaks for itself. The transcript of the proceeding before Judge Arre was not supplied to this court. This court did take the opportunity to listen to the recorded proceedings and finds the order, not the colloquy, reflects the finding of Judge Arre.

The applicable law is N.J.S.A. 40:69A-1 et seq., commonly known as the Faulkner Act, and the code of the City of Orange Township. City of Orange Township is a Plan D, Mayor-Council form of government pursuant to N.J.S.A. 40:69A-67.1; Township Ordinance Section 4-2A. There are departments within the city including the Department of Administration pursuant to Section 4-26, 27 and 28, Those sections provide the department shall be

headed by the Business Administrator, who shall also supervise administration of all other departments, offices and agencies and shall include the Office of Business Administrator, Office of Budget and Management and Office of Administrative Services. Section 4-25 provides that each department, office and agency shall have such employees as the Council may authorize.

"Employees shall be appointed and may be removed pursuant to the Charter, civil service regulations and city personnel rules and shall be paid in accordance with the annual Salary Ordinance."

The mayor appoints heads of departments with the consent of the council which consists of seven members. Section 4-24A permits the mayor to appoint acting directors for 90 days. After 90 days, failing the council's consent, the person so acting is deemed no longer employed in said position. The departments may employ deputy directors, but appointment of a deputy may only be made by the head of the department. N.J.S.A. 40:69A-43.1. The mayor cannot appointment the deputy, and the council must approve the salary to be paid to the director and the deputy. Further, under Section 4:24C(1) of the municipal code, "Each director (1) shall appoint subordinate officers and employees within his/her department and may, with the approval of the

Mayor, remove such officers and employees subject to Civil Service provisions." Therefore it is clear after the council failed to consent to the appointment of Edwards, he was no longer employed and could not be appointed by the Mayor to the position of Deputy, because there was no Director of the Department of Administration, and because the deputy position had been abolished. This was clearly recognized by Judge Teare when the matter came before her on order to show cause. Judge Teare in her decision from the bench stated at page 103, line 12 of the transcript of April 18, 2013, "It is clear that the City is simply seeking to circumvent the applicable provisions of State law and the City Code by remaining (sic)---renaming the position of Acting Business Administrator as Deputy Business Administrator. The City's actions in the appointment of Willis Edwards, III, to the position of Deputy Business Administrator under the circumstances in this case, constitute a clear violation of section 4:24(a)(4) of the City Code."

Following Judge Teare's order, the Mayor appointed Edwards Chief of Staff. As the municipal clerk testified, which testimony is unrefuted, the position of chief of staff has never been created as required by ordinance. The fact that other

persons are alleged to have held the position, both before and after Edwards, does not validate the Edwards appointment. It merely demonstrates to the court that the City of Orange Township has, over time, failed to follow the Faulkner Act and its own municipal code.

The law and the evidence is such that the court cannot find other than Mr. Williams was not lawfully appointed as either Deputy Administrative Director or Chief of Staff. His appointment to both positions by Mayor Warren was ultra vires. The question remains whether the remedy shall be disgorgement as to the deputy business administrator position. Since the City is not seeking disgorgement of salary and benefits paid to Willis for the chief of staff position, the court will not consider same. Edwards argued at trial he provided good and valuable service to the City and therefore is entitled to quantum meruit in both capacities. He does not make that argument in his brief, but instead argues (1) disgorgement is not warranted because he acted in good faith, (2) the alleged ultra vires appointments were ratified by the Council when it passed the annual salary ordinance, which included salaries paid to Edwards, as part of the municipal budget; and, (3) the de

facto officer doctrine. The Council argues that Mayor Warren and Edwards willfully and knowingly thwarted the letter and intent of the Faulkner Act and City of Orange Township code, and flouted the authority of the council. It opposes any award based upon quantum meruit or any other argument. The Council urges the court to determine the act was ultra vires in the primary sense, meaning the appointments are void ab initio, citing Middletown Township Policemens' Benevolent Association Local No. 124 v. Twp of Middletown, 162 N.J. 361 (2000) and Independence One Mortgage Corp. v. Gillespie, 289 N.J. Super. 91 (App. Div. 1996) and Maltese v. Township of New Brunswick, 353 N.J. Super. 226 (App. Div. 2002). These cases focus on whether an ultra vires act could be ratified to determine whether the appointment is void in the primary or secondary sense. Defendant argues the appointment was not ultra vires, but for the sake of argument, if it were, it is in the secondary sense and disgorgement is not warranted. The defense relies on Summer Cottages Ass'n of Cape May v. City of Cape May, 19 N.J. 483 (1955). That case concerned the sale of municipal land which failed to comply with statutory requirements of public notice and free competitive bidding. The Supreme Court invoked

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estoppel in refusing to void the sale on the basis that innocent parties would be harmed. The case is inapplicable here, not least because there is no innocent party. The defense also cites Juliano v Borough of Ocean Gate, 214 N.J. Super. 503 (Law Div. 1986). In Juliano, the court declined to order disqualification on account of plaintiff's age which exceeded the statutory cut off at the time of her appointment. Judge Serpentelli found that the equities, which included an "innocent mistake" and inordinate delay by the municipality", would make voiding the appointment a "gross injustice." Again, the facts here are inapposite. There was no delay by City Council, no innocent mistake, no gross injustice. It appears defendant raises, for the first time in his brief, an advice of counsel defense. There is nothing before the court to consider such a defense. Defendant did not testify to such reliance at trial and did not call his prior counsel as a witness. Indeed, there are no facts upon which to base a finding in defendant's favor. Of special note is defendant's claim that the City Council ratified his appointment by passing municipal budgets which included his salary. No line item budget proving such allegation was presented in evidence. The City Council refutes

the claim stating it never approved a salary for a Deputy Business Administrator. It did approve departmental budgets, as it was required to do, one of which was for the Department of Administration. Nothing in the record suggests to the court that a finding against the defendant would result in injustice and be contrary to morality and fairness. The defendant further argues for the first time in his brief, that he should retain his salary based upon the doctrine of "de facto officer doctrine". The doctrine of de facto officer is a product of judicial intervention based on considerations of policy and public convenience rather than the dictates of strict logic. Jersey City v. Department of Civil Service, 57 N.J. Super. 13 (App. Div. 1959) at p. 27, citing Constantineau, De Facto Doctrine, Sec. 3, p.5 (1910). The doctrine defines a de facto officer as, "an officer De facto is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve the interests of the public and third persons, where the duties of the office were exercised, 'First without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or

invoke his action, supposing him to be the officer he assumed to be. Second, under color of a known and valid appointment or election, but where the officer had failed to conform to some precedent requirement or condition, as to take an oath, give a bond, or the like. Third, under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public. Fourth, under color of an election or appointment by or pursuant to a public unconstitutional law, before same is adjudged to be such.'" The defendant appears to argue the first part applies to his appointments. The court disagrees and finds only the third part of the definition arguably applies. Edwards' appointments were known and, particularly with regard to the position of Deputy Business Administrator, clearly and timely rejected by the Council, which advised the Mayor, in writing, that he was not to appear before the Council in that capacity. His appointment as Chief of Staff was also known. His performance as Chief of Staff was not specifically rejected by the Council, but the continuation of

his performance as Deputy Business Administrator under the ruse of the Chief of Staff position clearly was rejected, as demonstrated by this litigation. Section three applies because the appointments could be said to be "under color of a known appointment and void because there was a want of power... in the appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public". The last clause of that section is the rub: the want of power or irregularity was known and objected to by the part of the appointing authority having the power to reject the appointment, the City Council. The objection was known to the public, the Mayor and the appointee, defendant Edwards. Further, the holding in Jersey City, supra, stating that there may be a De facto officer without a De jure office *when public convenience so requires* the actions of such persons are as fully binding with respect to *third parties* as are the acts of a De facto holder of a De jure office. (emphasis provided) The effect of the holding in Jersey City goes not to the entitlement of the defendant to retain remuneration, but rather to the validation of acts performed in the capacity of Deputy Business Administrator as same concern third parties.

Certainly, the acts he performed in the capacity of business administrator were necessary for the operation of City government. The issue of his retention of remuneration is entirely separate. The question before the court is shall defendant Edwards be rewarded for continuation in a position against the clear vote and actions of City Council, exercising its lawful prerogative, to confirm or deny the appointment? In the matter before the court, it is clear that the appointment as Deputy Business Administrator could not have been ratified because it cannot exist without a Business Administrator. This means it is ultra vires in the primary sense, which bars the defense of estoppel. Plaintiff cites Hudson City Contracting Company Inc. v. Jersey City Incinerator Authority, 17 N.J. 297 (1955). In that matter, the Supreme Court considered whether quantum meruit payments were due on a contracts awarded ultra vires by a public corporation. The Supreme Court in Hudson City noted that cases up to the point of its decision, had applied principles of public policy, unjust enrichment, and bad faith to constitutional, statutory and factual circumstances to set the scales of justice for or against the contractor. The court also noted other states, finding contracts to be void and precluding

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recovery, permitted, on principals of common honesty and fair dealing, just compensation to contractors on the basis that a counties or municipalities should not be permitted to receive the benefit of money, property or services, without paying just compensation therefor. Still other jurisdictions permitted recovery on the implied contract as opposed to the void contract. The Supreme Court, however, concluded

"New Jersey law pertinent to this type of case is that where the contract was not within the corporate power no recovery may be had by the contractor either on express or implied contract; where the Legislature expressly prohibits the incurring of liability on contract or otherwise no recovery may be had either on express or implied contract; but where the power to contract lies within the competence of the municipal corporation and there has been an irregular exercise of that power in good faith, recovery on the quantum meruit may be had although the express contract is void".

Here, as in Hudson City, the plaintiff is the municipal council of the municipality of the City of Orange Township. That municipality is required to be governed in accordance with the Faulkner Act and its own municipal code. Here, as in Hudson City, the Mayor and defendant Edwards, have engaged in an attempt to "avoid the pertinent legislative enactments and public responsibility" (Hudson, citing Scatuorchio v. Jersey City Incinerator Authority, 14 N.J. 72 (1953) at page 88). At

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issue is not a contract, but an appointment subject to the advice and consent of the City Council. It is important to consider the purposes of the requirement of advice and consent, which is to limit the mayor's unilateral appointment power, and constitute a structural safeguard based upon the separation of powers. Nat'l Labor Relations Bd. v. New Vista Nursing & Rehab., 719 F.3d 203 (3rd Cir. 2013), p. 242. The court must also consider the requirements that the positions and salaries of municipal employees to be effectuated in accordance with law. The real difficulty of this case is not the law, but the time which has elapsed between the order to show cause and verified complaint and this ruling. The court is presented with circumstances which have continued in excess of two years, together with uncontroverted evidence that the City persists in engaging in unlawful practices, appointments to the non-existent chief of staff position as example, which resulted in the instant litigation. As a result, the issue of disgorgement, in terms of the dollar amount, is considerable. The court finds defendant knew or should have known that his appointment to the position of Deputy Business Administrator was ultra vires. The parties have been on notice since Judge Teare's April 18, 2013

order that as to the Deputy Business Administrator position there was a "clear violation of ... city code." The position of Deputy Business Administrator could lawfully exist within the City of Orange Township, with the condition precedent of a properly appointed Director of Administration. The Mayor has absolutely no authority to appoint a Deputy Business Administrator, with or without a director. The power of appointment of the deputy is reserved to the Director. The appointment of Edwards to that position is ultra vires in the primary sense. The Chief of Staff position could also exist within the City of Orange Township. Unlike the Deputy position, the appointment does not require the prior appointment of a Director with the advice and consent of the council. It does, however, require an ordinance creating the position and authorization for a salary. On the basis that the chief of staff position could be ratified, without more, the court might have been able to find the appointment ultra vires in the secondary sense, meaning Edwards could receive quantum meruit compensation for services rendered as chief of staff. However there is more, and that includes the wilful, unlawful acts of Mayor Warren and defendant Edwards. The court finds they acted with knowledge and

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at their peril to circumvent the authority of the Council. The court finds that the services rendered by Edwards in conjunction with both the Deputy Administrator and chief of staff positions were not rendered in good faith. They were rendered in clear contravention of state and local law and the order of the court. Edwards and the Mayor used both titles to have Edwards continue to act as business administrator. Edwards' own testimony is supports this conclusion. He holds himself out as an eminently qualified business administrator. He is a former state legislator, holds a Masters degree from Columbia, and is currently pursuing a Ph.D at Seton Hall University. He has taught at the college level and has long experience in public administration. His attempts to present himself as an innocent party and cast blame for the appointments on the Mayor are unconvincing and disingenuous. The court finds he knew or had the ability to know the requirements of state and local law. His alleged reliance on the advice of counsel and the City of Orange Township counsel, the specifics of which were never testified to before the court, does not exculpate him. His qualifications for the position do not entitle him to the position. Judge Teare's decision, at which he and his prior

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attorney were present, clearly sets forth her reasoning and analysis of the law which resulted in the order prohibiting him from acting as Business Administrator. The order, which did not direct Edwards' immediate removal, was not an endorsement of the occupancy of that position by Edwards, rather it was an effort to afford Mayor Warren the opportunity to appoint another Director. That Mayor Warren did not do so, in contravention of Judge Teare's order does not change Edwards' status. Judge Arre's order was not a reversal of Judge Teare's order on the merits. Finally, only Edwards received the compensation for the positions to which he was appointed ultra vires.

The court further finds that there is no basis for equitable estoppel. There was no good faith reliance on the part of Edwards on the actions of Mayor Warren in appointing him. The appointments were clearly contrary to statute and municipal code. There is no interest of justice, morality or common fairness which would dictate a finding Edwards is entitled to retain his salary under the circumstances. Irvin v. Twp. Of Neptune, 305 N.J. Super. 652 (App. Div. 1997); Twp. Of Fairfield v. Kikanchuk's, 274 N.J. Super. 320 (App. Div. 1994); Gruber v. Mayor and Twp. Comm. Of Twp. Of Raritan, 39 N.J.

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1(1962); Maltese, supra. The court finds the violations were intentional on the part of both Mayor Warren and Edwards. As such the case law indicates an award based on quantum meruit is not proper. As stated in Township Committee of Edgewater Park v. Edgewater Park Housing Authority, 187 N.J. Super. 588 (App. Div. 1982)

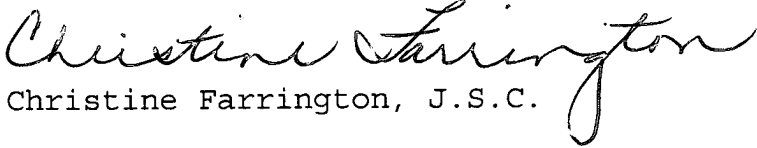
The quantum meruit theory presents difficulties in the present case. It would permit the violation of our Municipal Land Use Law, N.J.S.A. 40:55D-31, with impunity, in addition to permitting a disregard of the statutes relating to contracts for professional services. The equities are countervailing, and I conclude that fees may not be recoverable here on a quantum meruit basis.

The equities are also countervailing here. The court finds Edwards is entitled to his salary and benefits from the date of his appointment as acting Director of Administration up to October 3, 2012, the day the council failed to consent to his permanent appointment. He is entitled to retain the stipends he received for acting as the Affirmative Action officer. The court would have ruled Edwards was required to return all remunerations, including those received in the title of Chief of Staff. For reasons known to plaintiff, counsel advises the Council is not seeking remuneration for salary paid to defendant

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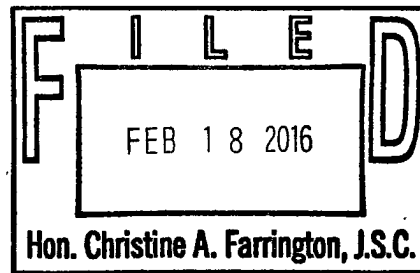
under the title of Chief of Staff. Accordingly, the court will not order same. All other remuneration received by defendant for the position of Deputy or Assistant Business Administrator must be repaid to the City of Orange Township within ninety (90) days of the date of this opinion. The order of the court is enclosed. This opinion is incorporated therein.

Very truly yours,


Christine Farrington, J.S.C.

CF/bc
Enclosed Order

Prepared by the Court



CITY COUNCIL OF THE TWP.
OF ORANGE

Superior Court of New Jersey
Law Division: Essex County
Docket No. ESX-L-1805-13

v.

ORDER

WILLIS EDWARDS, III

This matter having come before the court upon an order to show cause and verified complaint; and the court having heard testimony and received evidence on January 4, 2016; and the parties having submitted briefs in support of their respective positions, and for good cause shown,

IT IS on this ^{18th} day of February, 2016

ORDERED, the appointment of Willis Edwards, III to the position of Deputy Business Administrator was ultra vires; and it is further

ORDERED, the performance of the duties of Business Administrator or Deputy Business administrator under the color of the title of Chief of Staff was ultra vires; and it is further

ORDERED, defendant Willis Edwards, III shall repay to the City of Orange Township, the remuneration he received while serving in the positions of Deputy or Assistant Business Administrator on and after October 3, 2012 through December 31, 2015 within ninety (90) days of the date of this order for the reasons set forth in the attached which are incorporated herein.

A copy of this order was given mailed to both counsel.


Christine Farrington, J.S.C.