

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LARRY PAGE and TYRONE WILLIAMS : CIVIL ACTION
: :
v. : :
: :
ECC MANAGEMENT SERVICES : NO. 97-2654

MEMORANDUM AND ORDER

BECHTLE, J.

JULY 20, 1998

Presently before the court are defendant ECC of Philadelphia's ("ECC")¹ motions for summary judgment and to preclude introduction of evidence and plaintiffs Larry Page and Tyrone Williams' ("Plaintiffs") opposition thereto. For the reasons set forth below, the court will grant the motion for summary judgment and dismiss the motion to preclude introduction of evidence as moot. The court will also dismiss ECC's state law counterclaim without prejudice.

I. BACKGROUND

The facts viewed in the light most favorable to the non-moving Plaintiffs are as follows. ECC is a corporation engaged in the business of financial collection services. Plaintiffs are two black males who were employed by ECC as collection supervisors. During Plaintiffs employment with ECC, their supervisors directed them to participate in a "small pay"

1. ECC was incorrectly named as "ECC Management Services" in the Complaint.

practice whereby ECC paid a minimal amount to its clients, the creditors, of the deficiency owed by delinquent debtors to assure that the clients would pay full commission on the accounts. When Chemical Bank learned of the practice it demanded that ECC remove the personnel responsible from its account. ECC then temporarily reassigned Plaintiffs to other non-supervisory positions. Plaintiffs incurred no pay decrease and continued to get raises and promotions in the new positions. Both received extra vacation as a result of the reassignment. Williams was eventually reassigned to the position he had previously held. Because ECC lost the Chemical Bank account and Page's position had been phased-out, Page was not returned to his former position. Plaintiffs' manager was not removed from the account or otherwise treated adversely. On December 2, 1992, Plaintiffs first complained to a supervisor that they believed that their reassignments/demotions were due solely to their race. Since that date, Plaintiffs allege that ECC has failed to promote them to positions for which they were equally or more qualified than the white recipients.

On February 1, 1993, Plaintiffs each dual-filed a claim² with the Pennsylvania Human Relations Commission ("PHRC") and the Equal Employment Opportunity Commission ("EEOC"), alleging that ECC discriminated against them on the basis of

2. PHRC Docket Nos. E-63110D and E-63111D.

their race by demoting and reassigning them after Chemical Bank's discovery of ECC's "small pay" practice.³

On September 3, 1993, Plaintiffs each dual-filed a second claim⁴ with the PHRC and the EEOC, alleging that ECC retaliated against them by failing to promote them to managerial or supervisory positions following their complaints of race discrimination. On January 30, 1997, Plaintiffs received right to sue letters from the EEOC regarding their retaliation claim.

Plaintiffs also allege that since ECC learned of their intent to file suit on March 20, 1997, it has retaliated against them by closely scrutinizing their work and asking their co-workers about Plaintiffs' personal conduct and behavior. On April 17, 1997, Plaintiffs filed a Complaint alleging that ECC discriminated against them and engaged in retaliatory action in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq. ("Title VII") and of the Pennsylvania Human Relations Act, 43 Pa. Con. Stat. Ann. § 951 et seq. ("PHRA"). On May 16, 1997, ECC filed a motion to dismiss Plaintiffs' Complaint. On June 2, 1997, Plaintiffs received a right to sue letter from the EEOC covering their race discrimination claim. On June 5, 1997, Plaintiff filed a response to the motion to

3. Plaintiffs' filings were forwarded to the EEOC and were dual filings.

4. PHRC Docket Nos. E-65273D and E-65274D.

dismiss. On December 8, 1997, the court denied the motion to dismiss. On December 23, 1997, ECC filed an Answer and Counterclaim to the Complaint, alleging defamation. On May 21, 1998, ECC filed this motion for summary judgment and on June 16, 1998, Plaintiffs filed a response.

The court has original jurisdiction over matters arising under Title VII. 28 U.S.C. §§ 1331, 1343(a)(4). The court has supplemental jurisdiction over state law claims which are so related to matters arising under Title VII as to form part of the same case or controversy. 28 U.S.C. § 1367(a).

II. LEGAL STANDARD

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)). A fact is material if it might affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). The court must draw all justifiable inferences in the light most favorable to the non-moving party. Id. If the record thus construed could not lead a trier of fact to find for the non-moving party, there is no

genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

In response to a motion for summary judgment, the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings, but must "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 322. If the non-moving party does not so respond, summary judgment shall be entered in the moving party's favor because "a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 322-23.

III. DISCUSSION

A. The Motion for Summary Judgment

Plaintiffs allege discriminatory reassignment, failure to promote and retaliation. (Mem. Opp. Summ. J. at 1.) ECC argues that Plaintiffs cannot prove a prima facie case for any of their claims under the relevant law, and that even if Plaintiffs could prove a prima facie case, they cannot show the legitimate, non-discriminatory reasons offered were pretext, and the court must therefore grant summary judgment in ECC's favor. (Mem. Supp. Summ. J. at 1.)

The Supreme Court, in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), set forth a three part test that this court must apply to Plaintiffs' claims. Under that test, first, a plaintiff must establish a prima facie case of discrimination by a preponderance of the evidence. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252 (1981). Second, if the plaintiff succeeds in proving a prima facie case, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." Id. at 253 (quotation omitted). Third, if the defendant satisfies this burden, the plaintiff must prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. Id. The Court has emphasized that the plaintiff, at all times, has the ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff. Burdine, 450 U.S. at 253.

The Third Circuit has applied the McDonnell Douglas test in the context of a motion for summary judgment. The Third Circuit held that if a plaintiff has made a prima facie case, and the defendant has presented a legitimate, non-discriminatory reason, the plaintiff may defeat a summary judgment motion either by presenting direct or circumstantial evidence "from which a factfinder could reasonably either (1) disbelieve the employer's

articulated legitimate reasons or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994). Thus, if the plaintiff offers evidence to discredit the defendant's proffered reasons, it need not also advance evidence of discrimination beyond his or her prima facie case to defeat a summary judgment motion. Id. More specifically,

to avoid summary judgment, the plaintiff's evidence rebutting the employer's proffered legitimate reasons must allow a factfinder reasonably to infer that each of the employer's proffered nondiscriminatory reasons was either a post hoc fabrication or otherwise did not actually motivate the employment action (that is, the proffered reason is a pretext).

To discredit the employer's proffered reason, however, the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent. Rather, the nonmoving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them "unworthy of credence," and hence infer "that the employer did not act for [the asserted] nondiscriminatory reasons."

Id. at 764-65 (citations and footnote omitted).

1. The Race Discrimination Claim

a. Prima Facie Case

In order to show a prima facie case of racial discrimination, both in the reassignment and the failure to promote, Plaintiffs must show that (1) they are members of a protected class, (2) they were qualified for the position that they held or sought, (3) an adverse action was taken against them, and (4) there is evidence that would allow the inference of racial discrimination. McDonnell, 411 U.S. at 792.

It is undisputed that Plaintiffs are black males, members of a protected class under Title VII. It is also undisputed that both were qualified for the positions from which they were reassigned. (Def.'s Mem. Supp. Summ. J. at 11.) However, Defendant argues that there was no adverse action taken against Plaintiffs and that there is no evidence that would allow an inference that the reassignment was a result of racial discrimination.

Defendants assert that there was no adverse action because Plaintiffs were temporarily reassigned, without a change in benefits or salary, and Plaintiffs were given extra paid vacation and earned pay increases. (Mem. Supp. Summ. J. at 6.) Plaintiffs argue that although there was no decrease in pay, there was an adverse employment action because Plaintiffs' status changed. (Mem. Opp. Summ. J. at 6.) Plaintiff Williams admits that he suffered no pecuniary loss. (Williams Dep. at 97-99.)

The only injury that he alleges is that the reassignment may have harmed his reputation with Chemical Bank. Id. However, he admits that he never attempted to gain employment with Chemical Bank and admits that he does not even know whether Chemical Bank knows that he was involved. (Williams Dep. at 97-99.) Likewise, Plaintiff Page admitted that he does not know whether Chemical Bank is aware that he was involved, and he does not show that he has suffered any pecuniary damage. (Page Dep. at 31-32.) Neither have presented the court with any evidence that the new positions were of a lower status. Further, the only evidence presented in support of racial animus is the fact that Plaintiffs were temporarily reassigned, and their white supervisor and a few other persons were not reassigned.

ECC has shown that Chemical Bank asked ECC to retain Plaintiffs' supervisor, Mitchell Sharp, in his position. (Mem. Supp. Summ. J. at 8; Myers Dep. at 29.) ECC also argues that the facts and evidence presented cannot support a finding of racial animus. See Reply Mem. Supp. Summ. J. at 6-8 (showing that Page was replaced by a black female, Plaintiffs' salaries increased greatly during the time which they believe the discrimination occurred, and Williams was returned to his position). ECC also provides evidence showing that the two other white employees to which Plaintiffs refer, Burman and Hauckes, were not similarly situated. Burman and Hauckes were managers, rather than

supervisors, and had broader responsibilities that made transfer more difficult. (Ex. E, Mem. Supp. Summ. J.)

As for the failure to promote claims, Plaintiffs have not provided any evidence to support their claim that they were not promoted. The court finds that Plaintiffs have failed to establish a prima facie case. However, as discussed below, the court notes that ECC has provided a legitimate non-discriminatory reason for its actions. Plaintiffs have failed to rebut that reason. Therefore, even if the court were to find that Plaintiffs established a prima facie case, they fail to carry their burden, and the court would still grant summary judgment in ECC's favor on this count.

b. Legitimate Non-discriminatory Reason

ECC has proffered a legitimate non-discriminatory reason for the action. Namely, that in order to appease Chemical Bank and retain them as a customer, ECC temporarily reassigned the supervisors on the accounts (Plaintiffs) to other positions. In an effort to salvage the relationship, ECC retained the higher level management, including Mitchell Sharp, to maintain and manage the accounts. (W. Gary Myers Dep. at 12-13, 29-30, Mem. Supp. Summ. J. at 14.) ECC intended to reassign Plaintiffs to their positions after the controversy passed, and the persons who replaced them did so knowing that the position was temporary. (Sharp Aff. ¶¶ 15-18.) While this may not have been the most

prudent solution, it is a legitimate, non-discriminatory reason. Plaintiffs belief that they were scapegoats appears justified, however, there is no evidence that the reason they were placed in that position was racial discrimination.

c. Pretext

Plaintiffs have not presented evidence from which a jury could find that the reason offered was pretextual. Plaintiffs merely argue that other employees "should have been removed." (Mem. Opp. Summ. J. at 12.) The fact that ECC's actions were possibly unwise and/or contrary to the request by Chemical Bank are irrelevant. See Fuentes, 32 F.3d at 764-65. The burden remains on Plaintiffs to show discriminatory animus and they have failed to carry their burden. The court will grant ECC's motion on this claim.

2. The Retaliation Claim

The McDonnell Douglas test applies to this claim as well. To show a prima facie case of retaliation, Plaintiffs must show that (1) they were involved in a protected activity, (2) they were subsequently or contemporaneously subject to an adverse employment action, (3) there is some causal link between the protected activity and the adverse employment action. Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997).

It is undisputed that Plaintiffs engaged in a protected activity by filing a charge with the EEOC and the PHRC. (Mem.

Supp. Summ. J. at 21.) However, ECC argues that Plaintiffs have not shown that any adverse employment decision occurred and they therefore cannot show any link between the filing and an adverse action on the part of ECC. (Mem. Supp. Summ. J. at 21.)

Plaintiffs contend that after they filed the complaints, they were not selected for employment opportunities, and white employees who did not complain were selected. Plaintiffs claim that they were as qualified or more qualified than those white employees.

Plaintiffs present no facts to support this allegation, they merely repeat their allegations. They do not identify the white employees who were given opportunities and they have provided no information to show that they were as qualified or more qualified for the positions than these unknown white persons. Moreover, they cannot even show that they applied for the positions that they argue they should have received. See Williams Dep. at 78-80 (stating that he does not remember whether he put anything in writing to apply for the position, he does not remember who he talked to about the position, and he does not know who, if anyone was hired for the position). Williams has not shown any evidence of promotions that he did not receive let alone promotions that he did not receive as a result of ECC's retaliation for his filing the complaints. He identifies no positions or opportunities for which he applied and was rejected.

Likewise, Page identifies one position for which he applied. However, he admits that he applied for the position after the closing date. (Page Dep. at 55-57.) The record shows that other individuals, including a white male, who submitted late applications for the position received the same boilerplate denial letter stating that the applications were received too late for consideration. (Exs. I-L, Def.'s Mem. Summ. J.)

Plaintiffs have failed to establish a prima facie case of retaliation. While temporal proximity will support an inference of causation, proximity alone will not suffice. Delli Santi v. CNA Ins. Cos., 88 F.3d 192, 199 n.10 (3d Cir. 1996). Proximity is the only evidence Plaintiffs have adduced. ECC has shown that there is no dispute as to any genuine issue of material fact, and the court will grant summary judgment in its favor.⁵

5. Plaintiffs also alleged that they were subject to retaliatory treatment including closer scrutiny of their work. (Compl. ¶¶ 19-20.) Plaintiffs have provided absolutely no evidence to support this claim. See Page Dep. at 64-65 (stating that he does not remember if it took place, and that the allegation of managers inquiring of their personal lives did not apply to him); Williams Dep. at 108-110 (stating that he does not know of anything to support the claim and he can think of no instances.) There is no evidence adduced in this regard and the court will grant summary judgment.

B. The Motion to Preclude Introduction of Evidence

Because the motion to preclude introduction of evidence asks the court to preclude introduction of evidence relating to Plaintiffs' damages, the court will dismiss the motion as moot.

C. ECC's Counterclaim

ECC's state law defamation counterclaim remains. However, there are no federal claims remaining. Therefore, the court will decline to exercise jurisdiction over ECC's state law defamation claim, and will dismiss it without prejudice.

IV. CONCLUSION

For the reasons set forth above, the court will grant ECC's motion for summary judgment, dismiss the motion to preclude evidence as moot, and dismiss Defendant ECC's counterclaim without prejudice. An appropriate Order follows.

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ORDER

AND NOW, TO WIT, this day of July, 1998, upon consideration of defendant ECC Management Services' motions for summary judgment and to preclude introduction of evidence and Plaintiffs' Larry Page and Tyrone Williams' opposition thereto, IT IS ORDERED that Defendant's motion for summary judgment is GRANTED and Defendant's motion to preclude introduction of evidence is DISMISSED AS MOOT.

Judgment is entered in favor of Defendant ECC and against Plaintiffs Larry Page and Tyrone Williams on all counts contained in Plaintiffs' Complaint.

IT IS FURTHER ORDERED that Defendant ECC's Counterclaim, based on state law, is dismissed without prejudice.

LOUIS C. BECHTLE, J.

