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

THURMOND CAMERON	:	CIVIL ACTION
	:	
v.	:	
	:	
INFOCONSULTING INTERNATIONAL, LLC, and VERIZON PENNSYLVANIA INC.	:	NO. 04-4365
O'NEILL, J.		MAY 23, 2006

MEMORANDUM

Plaintiff, Thurmond Cameron, filed a complaint on September 15, 2004 alleging that defendants, Infoconsulting International, Inc. and Verizon Pennsylvania, Inc., violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., by terminating his employment with Infoconsulting on September 16, 2002 on the basis of race. Additionally, plaintiff alleges that Infoconsulting breached his employment contract and Verizon tortiously interfered with his contractual relationship with Infoconsulting in violation of Pennsylvania law. Before me now are Verizon's motion for summary judgment, plaintiff's response, and Verizon's reply thereto.[1]

BACKGROUND

I. Verizon

Verizon is a Pennsylvania corporation with its principal place of business in Pennsylvania that provides telecommunication services. Verizon entered into a contractual agreement, titled

[1]Infoconsulting has failed to file an answer to Cameron's Complaint. Cameron has not attempted to default Infoconsulting, deposed any representative from Infoconsulting, or served Infoconsulting with any discovery requests. I will therefore dismiss Cameron's claims against Infoconsulting without prejudice for lack of prosecution.

"Statement of Work" (SOW), with Infosys Technology, an Indian based company, in which Infosys agreed to perform the software maintenance, enhancement, and support of Verizon's billing system.

II. The Statement of Work

The SOW detailed the specific duties, obligations, and budget for Infosys. Although most of the work would be completed in India, the SOW provided that: (1) there would be offices for the Infosys staff at Verizon's facility in Philadelphia; (2) Verizon would supply Infosys with any software applications it needed to complete the work; (3) the work to was be done by Infosys consistent with Verizon's policies; (4) Infosys was required to prepare its own "Detailed Workplan" that "identifies each deliverable to be accomplished during the project that meets Verizon/Infosys agreed milestone delivery dates"; and (5) Infosys could incur expenses and charge Verizon up to $3,587,344 to complete the billing software enhancement. Although Verizon estimated that Infosys would need twelve staff positions for the month of September in order to complete the work on time and stay on budget, Infosys was responsible for staffing the required number of employees to complete the project. In his July 7, 2005 deposition, Joseph Gravante, Verizon's manager of the Infosys project, testified that "under the statement of work [Verizon] cannot interfere with who Infosys hires and fires." However, Infosys was required to obtain Verizon's written approval before hiring any consultant for the project.

III. Infoconsulting

In order to staff the project, Infosys hired Infoconsulting, a New Jersey head hunting agency with its principal place of business in New Jersey. Infoconsulting selected candidates from resumes, recommended the selected candidates to Infosys, and scheduled phone interviews

between Infosys and the selected candidates. If Infosys determined that a candidate should be hired, Infoconsulting executed an employment contract between itself and that candidate specifying that Infoconsulting was the employer and that the candidate would be working for a client of Infoconsulting.

IV. Cameron

On August 26, 2002, Infoconsulting called Thurmond Cameron regarding a position with Infosys. Cameron, an African-American male, is a software consultant by trade. He worked for Verizon and its predecessor, Bell of Pennsylvania, Inc., for twenty-seven years. Cameron voluntarily retired from Verizon in 1999. Thereafter, Cameron sought work elsewhere by posting his resume on the Internet. Cameron expressed his interest in the position and had a telephone interview scheduled with representatives from Infosys. Infosys found Cameron to be suitable for the position and told Infoconsulting that it would like to bring Cameron on for the Verizon project. Thereafter, Infoconsulting contacted Cameron and offered him the position. Cameron accepted and set up a meeting with Infoconsulting to go over the details of his employment. At the meeting, Cameron signed an employment contract with Infoconsulting.

V. The Employment Contract

The employment contract between Infoconsulting and Cameron specified that Cameron was an at will employee. Cameron's job description stated that his "responsibilities will be to provide the Client with computer programming and analysis under the direction of Infoconsulting and/or the Client to whom you are assigned." The term "client" is not defined in the employment contract. However, Infoconsulting identified the "client" in the cover letter of the employment contract when it stated that Cameron was being offered "a position as a Software consultant

contingent upon your acceptance to the project described to you by one of our Clients." Additionally, the policy for accessing Infosys' computer resources for software consultants was included in the employment contract as an appendix. Verizon was not mentioned in the Infoconsulting employment contract.

The employment contract specified that: (1) Cameron was an at will employee; (2) the length of Cameron's employment was for the "length of the current project on which [Cameron] is working, plus any extensions made by the Client to whom you are assigned or reassigned by Infoconsulting"; (3) Infoconsulting was responsible for paying Cameron's salary; (4) Cameron's salary was based upon an eight hour day; (5) Cameron's work product remained the property of both Infoconsulting and its client; (6) Cameron was "exclusively employed by [Infoconsulting] for the period of the current project"; and (7) Cameron was not permitted to work for or solicit business from any client of Infoconsulting for one year after the completion of the project.

VI. The Termination

During the meeting where Cameron signed his employment contract, Infoconsulting told him that he should report to Nagaraj Anatharaman, the project manager for Infosys, at Verizon's offices in Philadelphia when he arrived for his first day of work on September 16, 2002. Upon entering the building, Cameron could not find Anatharaman but was signed into the building by a Verizon employee. Cameron was told a cubicle was set up for him and was directed to the location. The cubicle was empty, except for a desk, telephone, and computer terminal.

Verizon claims that it had no knowledge of Infosys' hiring of Cameron until he showed up to work on September 16, 2002. On the morning of September 16, Gravante was informed that Infosys hired Cameron and that he was in the building. Gravante went to speak with

Anatharaman to find out for which position Cameron was hired. Gravante stated that he did this because he knew the SOW was a "firm fixed price contract based on the number of resources with a set amount of money that goes against it" and that "all of [the] positions were filled." After speaking with his supervisor Gravante told Anatharaman that the SOW budget did not allow for another employee and that Infosys had to terminate him or pay for his salary out of Infosys' own funds.

Anatharaman then met Cameron at the cubicle. Cameron claims that Anatharaman was going to issue him a log on ID for the computer terminal, but was not able to because Anatharaman's cell phone rang. After answering the phone, Anatharaman handed the phone to Cameron. The president of Infoconsulting was on the phone and informed Cameron that his services were no longer necessary. Verizon asserts that no one has been hired to fill the position Infosys hired Cameron.

VII. Testimony of Deborah Bey

Deborah Bey, a current Verizon employee working for the company on a contractual basis, testified during her October 20, 2005 deposition that she believes that she has witnessed racial discrimination. She noted three African-Americans that she thought Verizon discriminated against. First, she claims that an African-American employee who was a "great programer" was fired while other white employees were retained who "couldn't code anything compared to what he could do." The second person that she claims was discriminated against was a Verizon employee who voluntarily left the company and subsequently sought a contractual position with Verizon but was unable to obtain a position. The third person that Bey claimed was

discriminated against was fired and then failed to be rehired when she sought a contract position with Verizon.

STANDARD OF REVIEW

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." Fed. R. Civ. P. 56(c)(2005). The moving party "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions . . . which it believes demonstrate the absence of a genuine issue of material fact." Celotex v. Catrett, 477 U.S. 317, 323 (1986). After the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e) (2005).

I must determine whether any genuine issue of material fact exists. An issue is genuine if the fact finder could reasonably return a verdict in favor of the non-moving party with respect to an issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue is material only if the dispute over the facts "might affect the outcome of the suit under the governing law." Id. In making this determination, I must view the facts in the light most favorable to the non-moving party, and that non-moving party must raise "more than a mere scintilla of evidence in its favor" in order to overcome a summary judgment motion and cannot survive by relying on unsupported assertions, conclusory allegations, or mere suspicions. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989).

DISCUSSION

I. EMPLOYMENT DISCRIMINATION

Title VII provides that "[i]t shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). To prevail on a Title VII claim, plaintiff "must prove a prima facie case by showing that [he] is a member of a protected class, qualified for the job from which [he] was discharged, and that others, not in the protected class, were treated more favorably." Hugh v. Butler County Family YMCA, 418 F.3d 265, 267 (3d Cir. 2005) citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973). "Once a plaintiff under Title VII establishes a *prima facie* case, the employer must come forward with a legitimate, non-discriminatory reason for the adverse employment decision." Goosby v. Jonhson & Jonshon Med., Inc., 228 F.3d 313, 319 (3d Cir. 2000). If defendant is able to provide a legitimate reason for the discharge, plaintiff "must show that the reasons asserted are a pretext for discrimination." Hugh, 418 F.3d at 267-68. However, it is plain that Title VII liability can be found only against an employer. See 42 U.S.C. § 2000e-2(a)(1).

A. Employment Relationship

For liability to attach under Title VII, there must be an employment relationship between plaintiff and defendant. See Ziegler v. Anesthesia Assocs. of Lancaster, Ltd., 74 Fed. App'x 197, 201 (3d Cir. 2003) (affirming the district court's dismissal of a physician's discrimination claim by holding that shareholders were "not employees for purposes of Title VII"); Graves v. Lowery,

117 F.3d 723, 729 (1997) (holding that a dismissal is not proper if there exist facts to suggest an employment relationship); Cimino v. Borough of Dunmore, No. 02-1137, 2005 WL 3488419, *8 (M.D. Pa. 2005) (granting summary judgment for defendant where no reasonable jury could conclude defendant was plaintiff's employer); Rodriguez v. Lauren, 77 F. Supp. 2d 643, 645 (E.D. Pa. 1996) ("A threshold legal question in considering liability under Title VII is whether the defendant is plaintiff's employer"). Cameron argues that Verizon was his de facto employer because a master-servant relationship developed between the two as a result of Verizon's control over the work he was to do pursuant to the SOW.

1. Contractual Analysis

Initially, it is necessary to determine whether Verizon was Cameron's employer under the terms of the employment contract. The employment contract demonstrated that Cameron had an employment relationship with Infoconsulting and its "Client." See Graves, 117 F.3d at 727 (recognizing that entities "may share co-employer or joint employer status" when both entities determine the conditions of employment). Cameron claims that there is a genuine issue of material fact as to whether Verizon is the client of Infoconsulting. Verizon, on the other hand, claims that the client was Infosys.

I find that Infosys, not Verizon, was the "client" of Infoconsulting for three reasons. First, in the cover letter to the employment contract, Infoconsulting wrote that the position it was offering was "contingent upon your acceptance to the project described to you by one of our Clients." Prior to signing the contract, Cameron had a telephone interview with Infosys in which Cameron first learned of the project. Cameron never spoke to any Verizon representative about his employment with the specific project prior to the first day of his employment. Second, the

appendix to the employment contract provided the explanation of accessing the computer resources of Infosys. By contrast, Verizon is not mentioned in the employment contract. Third, Verizon also claims, and Cameron does not dispute, that it never has had a contractual relationship with Infoconsulting. There is no genuine issue of material fact as to whether Verizon was the client of Infoconsulting or whether there was an employment contract between Verizon and Cameron.

2. Master-Servant Relationship

Nevertheless, "the proper inquiry under Title VII for determining employer status looks to the nature of the relationship regardless of whether that party may or may no be technically described as an employer." Id, at 728. Therefore, although Cameron was not technically an employee of Verizon pursuant to the employment contract, I must determine whether or not there was a master-servant relationship between Verizon and Cameron. "The precise contours of an employment relationship can only be established by a careful factual inquiry." Id. at 729. The Supreme Court adopted traditional agency law criteria for identifying a master-servant relationship "in interpreting the meaning of 'employee' in a statute that does not helpfully define it." Rodriguez, 77 F. Supp. 2d at 646 citing Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 322-323.

> In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion

> over when and how long to work; the mehtod of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

Id. at 323-24 (explaining that the inquiry is guided by the common-law agency test to determine if a master-servant relationship exists).

Cameron argues that a master-servant relationship existed because: (1) Verizon controlled the manner and means of the work to be performed under the SOW; (2) Cameron learned the skills required to perform the work under the SOW while an employee at Verizon; (3) Verizon provided the software that was the source of work under the SOW; (4) Cameron was to work at Verizon's office; (5) Cameron did not control his work hours; (6) Cameron had no authority to hire or pay for assistants; and (7) the work to be performed was part of Verizon's regular business as a telecommunications company.

However, Cameron mischaracterizes the extent of control Verizon had over him. While the SOW between Verizon and Infosys provided expansive details on what work was to be done, Infosys was ultimately responsible for determining the method by which work was to be done because it created its own detailed work plans. Since Infosys ultimately was responsible for determining the manner by which work was to be done, Infosys maintained control over Cameron's work product, not Verizon. Cameron asserts that he had no control over when to report to work; however, Verizon did not maintain any control over this aspect of Cameron's employment either. Cameron's tenure on the project was specifically outlined and controlled by the employment contract. Again, Infosys, not Verizon, was associated with Cameron's

employment contract with Infoconsulting. Although Cameron had no role in hiring or paying assistants, Verizon did not control this aspect of Cameron's employment. Infosys was granted the ability to decide whom to hire for the project pursuant to the SOW. Thus, it was Infosys, not Verizon, that controlled this aspect of Cameron's employment relationship.

Cameron also focuses on his previous employment with Verizon as a relevant inquiry to his recent relationship with Verizon. Although Cameron learned the skills necessary to perform the work under the SOW when he was working at Verizon, these skills were learned during his tenure between 1972-1999. The billing project for which he was hired was not related to his previous employment with Verizon. His voluntary resignation terminated any previous master-servant relationship with Verizon and the recent hiring created an altogether different type of relationship. Similarly, the length of Cameron's prior employment relationship with Verizon is not relevant because it ended with his retirement and the analysis focuses on the current project for which he was hired. Here, the length of time Cameron spent employed for the billing project lasted less than half of a day.

While the evidence demonstrates that the work was to be done at Verizon's facility and the instrumentalities, such as the application software, layered software, and any Verizon-specific development software/tools, were to be supplied by Verizon, Verizon did not pay, provide benefits, or withhold taxes from Cameron since Infoconsulting controlled those aspects of Cameron's employment. Verizon did not hire Cameron, nor was it able to fire Cameron, since only Infoconsulting and Infosys controlled those aspects of Cameron's employment. With such an attenuated relationship between Verizon and Cameron, Verizon cannot be found to be was Cameron's employer under the Darden analysis.

I find this case analagous to two other cases. In Cimino v. Borough of Dunmore, *supra*, the District Court for the Middle District of Pennsylvania granted summary judgment for a municipal defendant on plaintiff janitor's Title VII claim because it held that an employment relationship did not exist between janitor and the Borough where the Borough did not pay the janitor's salary; it was paid by an independent contractor. No. 02-1137, 2005 WL 3488419, *8 (M.D. Pa. 2005). The Borough hired Dustbusters, an independent contractor, to clean its police station. Id. In turn, Dustbusters hired plaintiff. Id. at 1 A dispatcher for the Borough Police allegedly verbally and sexually harassed plaintiff. Id. at 2. The Court did not apply the Darden factors because it stated that it needed to analyze those factors "only in situtations that plausibly approximate an employment relationship." Id. at 6 quoting O'Connor v. Davis, 126 F.3d 112, 115 (2d Cir. 1997). The Court held that where "plaintiff receives no compensation from the defendant, she cannot plausibly argue that she was an employee and the court need not engage in an analysis of the defendant's level of control over the plaintiff." Cimino, at 6 citing O'Conner, 126 F.3d at 115. Like plaintiff in Cimino, Cameron worked at Verizon's facility but was not paid by Verizon; rather, he was hired by an independent contractor to complete work for Verizon.

In Rodriguez v. Lauren, *supra*, this Court granted defendant's motion for summary judgment because it held that a master-servant relationship did not exist between a security guard, hired by an independent contractor, and defendant, a clothing retail store. 77 F. Supp. 2d 643, 647-48 (E.D. Pa. 1996). The security guard was under contract with a security agency that was hired by defendant to supply guards at its store. Plaintiff alleged that the store's Loss Prevention Manager urged the security agency to fire him and replace him with white male guards because of racial motivations. Applying the Darden factors, the Court held that the clothing store was not

plaintiff's employer because it was the security agency that hired plaintiff and it was the responsibility of the security agency to pay, provide uniforms, provide insurance, and supervise and withhold taxes from plaintiff. Id. at 647-48. Additionally, the Court noted that the store lacked the ability to assign additional projects to plaintiff. Like plaintiff in Rodriguez, Cameron was hired by an independent contractor that was responsible for paying him, providing his benefits, and withholding his taxes. Additionally, Verizon did not have the ability to assign Cameron additional projects since that was at the discretion of Infosys. Like in Cimino and Rodriguez, the undisputed facts in this case demonstrate that the Cameron was not an employee of Verizon.

B. Title VII Prima Facie Case

Even if Verizon had a master-servant relationship with Cameron, he cannot carry his rebuttal burden of proof under McDonnell Douglas, 411 U.S. at 802-05. Plaintiff bears "the initial burden under the statute of establishing a prima facie case of racial discrimination." Id. at 802. "A prima facie case consists of the showing that the plaintiff is (1) in a protected class, (2) qualified for the job he was discharged from, and (3) that others not in the protected class were treated more favorably." Hugh, 418 F.3d at 267 citing McDonnell Douglas, 411 U.S. at 802-03.

Once a prima facie case has been established, the "burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection." Hugh, 418 F.3d at 802. "This burden is 'relatively light,' and the employer need only introduc[e] evidence which, taken as true, would permit the conclusion that there was a nondiscriminatory reason for the unfavorable employment decision." Tomasso v. Boeing Co., — F.3d —, No. 04-4657, 2006 WL 1008839, *3 (3d. Cir. 2006) (internal quotations omitted). "The employer need not prove that

the tendered reason *actually* motivated its behavior, as throughout this burden-shifting paradigm the ultimate burden of proving intentional discrimination always rests with the plaintiff." Fuentes v. Perskie, 32 F.3d 759, 763 (3d. Cir. 1994) (emphasis in original) citing Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253, 254, 256 (1981). "Once the employer answers its relatively light burden by articulating a legitimate reason for the unfavorable employment decision, the burden of production rebounds to the plaintiff, who must now show by a preponderance of the evidence that the employer's explanation is pretextual (thus meeting the plaintiff's burden of persuasion)." Fuentes, 32 F.3d at 763.

Verizon does not dispute that Cameron, an African-American, is in a protected class. However, Verizon disputes that he was qualified because of his twenty-seven years of experience working for Verizon and its predecessor prior to being hired for the specific project and Cameron's claims that Verizon hired more white men on a contractual basis than it did African-Americans.

1. Qualified for the Position

Verizon's claim that Cameron was unqualified for the position because he never worked on the billing system's specific computer software and would not have been a useful worker in three to six months. However, Cameron's prior experience with the company and his prior experience with computer software for other billing systems creates a genuine issue of material fact as to whether he was qualified. Moreover, the technical representatives from Infosys, the contractors charged with staffing and undertaking this project, deemed Cameron qualified for the position and decided to hire him even though he never worked on the specific billing system

before. Viewing the facts in the light most favorable to plaintiff, I find that Cameron has satisfied his burden of showing he was qualified for the position.

2. Treated Others More Favorably

Cameron claims that Verizon has a history of not rehiring former African-American employees on a contractual basis. Deborah Bey, a current employee of Verizon, testified that she witnessed Verizon treating African-Americans differently than others. Bey testified in her deposition to three examples in which she believed that Verizon dismissed or disparately treated African-American employees but hired less qualified white males. While Verizon claims that it has not treated African-American employees any differently than any other employee, it says that these "claim[s] bring speculation to an artform." Verizon asserts that it has not discriminated against African-Americans by pointing out that Bey is an African-American woman who obtained two separate jobs with Verizon as a contractor after voluntarily resigning.

Viewing the facts in the light most favorable for Cameron, I find Bey's allegations sufficient to satisfy Cameron's prima facie burden for disparate treatment. See Burdine, 450 U.S. at 267 ("The burden of establishing a prima facie case of disparate treatment is not onerous.").

C. Legitimate, Nondiscriminatory Reason

Having satisfied his initial burden, the burden of proof then shifts to Verizon to proffer a legitimate reason for telling the Infosys project manager that he had to fire Cameron or pay the salary from Infosys' own funds. See McDonnell Douglas, 411 U.S. at 802. Verizon asserts that the SOW budget did not permit the hiring of another employee. The SOW specified that the a budget may not exceed $3,587,344 and estimated the number of employees needed to complete the project within the budget. Verizon claims that the budget could not absorb another

employee's salary. Verizon offered Infosys the option to retain Cameron's services if Infosys thought that Cameron was necessary to complete the project effectively but stated that his salary was not to be paid with funds pursuant to the SOW budget. In other words, Verizon asserts that it only informed Infosys of its obligations under the SOW. Moreover, Verizon claims that the position Cameron was hired for has not, and will not be, filled because there are not sufficient funds in the budget. I find Verizon's legitimate, nondiscriminatory reason sufficient to satisfy its burden of proof.

D. Refuting Verizon's Legitimate Reason

The burden thus shifts back to Cameron to "prove by a preponderance of the evidence that the employer's explanation is pretext for discrimination." Fuentes, 32 F.3d at 763. "Plaintiff must point to some evidence, direct or circumstantial, 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 actions." Id. at 764. Plaintiff "has the burden of casting doubt on an employer's articulated reasons for an employment decision." Ezold v. Wolf, Block, Schorr & Solis-Cohen, 983 F.2d 509, 527 (3d Cir. 1992).

"Prong one of the Fuentes test focuses on whether the plaintiff submitted evidence from which a factfinder could reasonably disbelieve the employer's articulated, legitimate reason." Menta v. Cmty. Coll. of Beaver County, — F. Supp. 2d —, No. 03-1283, 2006 WL 895072, *7 (W.D. Pa. 2006). To discredit the employer's proffered reason, 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." Id. at 765 (emphasis in original). Plaintiff "must present evidence contradicting the *core facts* put forward by the employer as the legitimate reason for its decision. Tomasso, at *3 (emphasis in original). If a plaintiff proffers sufficient evident to discredit defendant's reasons, plaintiff "need not also come forward with additional evidence of discrimination beyond his or her prima facie case." Fuentes, 32 F.3d at 764.

In this case, Cameron agrues that Verizon's proffered reason is a fabrication and attempts to discredit that reason through a string of rhetorical questions that focus on why Infoconsulting hired Cameron and why Infosys was expecting Cameron to show up at Verizon's facility on September 16, 2002. However, Cameron does not assert any evidence to suggests that Verizon's rationale for its actions is a cover up for discriminatory motivations.

In the alternative, "[p]laintiff may [also] avoid summary judgment by pointing to 'some' evidence from which a factfinder could reasonably conclude that the defendant's proffered reasons were . . .either a post hoc fabrication or otherwise did not actually motivate the employment action." Id. at 765. "To show that discrimination was more likely than not a cause for the employer's action, the plaintiff must point to evidence with sufficient probative force that a factfinder could conclude by a preponderance of the evidence that [race] was a motivating or determinative factor in the employment decision." Simpson v. Kay Jewelers, 142 F.3d 639, 644-45 (3d Cir. 1998) (emphasis added). "For example, the plaintiff may show that the employer has previously discriminated against [him], that the employer has discriminated against other persons within the plaintiff's protected class or within another protected class, or that the employer has treated more favorably similarly situated persons not within the protected class." Id.

Cameron argues that Verizon discriminated against other African-Americans who tried to

obtain a contractual position after voluntarily retiring. Although, Cameron argues that few minorities have been hired by Verizon and that white employees are more successful at obtaining contracts with Verizon, he does support these allegations with any evidence other than Bey's testimony that she believed that she witnessed Verizon discriminating against African-Americans in the past.

The Court of Appeals rejected a similar attempt to show an employer's past discrimination in Ezold, 983 F.2d at 542. In Ezold, plaintiff tried to show pretext by offering evidence that only five of a law firm's 107 partners were women. Id. The Court of Appeals affirmed the district court's holding that the "statistical evidence" was not probative because plaintiff's "[r]aw numerical comparisons . . . [were] not accompanied by any analysis of either the qualified applicant pool or the flow of qualified candidates over a relevant time period. The district court in Hopkins recognized the weakness of this type of evidence: '[Plaintiff's] proof lacked sufficient data on the number of qualified women available for partnership and failed to take into account that the present pool of partners have been selected over a long span of years during which the pool of available qualified women has changed.'" Id. at 542-543 quoting Hopkins v. Pricewaterhouse, 618 F. Supp. 1109, 1116 (D.D.C. 1985).

Neither Cameron's assertions nor Bey's testimony offer any context for their claims that fewer minorities were successful at obtaining a Verizon contract position. They do not even go so far as to offer "raw number comparisons," but offer a belief on their own subjective observations. Cameron does not state how many minorities have attempted to obtain contract positions, nor does he show how many minorities were successful versus unsuccessful at obtaining contract positions. I agree with the Court of Appeals for the Sixth Circuit that "[i]f he wanted to introduce

true statistical evidence, he could have obtained the company records during the course of discovery." Chappell v. GTE Prods. Corp., 803 F.2d 261, 268 (6th Cir. 1986). Bey testified that she thought that African-Americans were treated unfairly; however, she was only able to offer a vague description of each scenario that she says she believed to be unfair treatment. The first event she described involved one African-American male who was fired during the first round of job eliminations while some other white employees were not. She testified that she thought he was a "great programmer" and one of her mentors while the white employees were "not the performers that he was." However, there was nothing else offered than her subjective opinion of the employees' talents and a summary of the employee pool. The second event Bey described involved an African-American employee who asked for a pay raise, subsequently was told the company could not accommodate her, left the company voluntarily, and then tried to come back but was not hired by Verizon. When asked why she thought that there was racism in that instance, Bey replied, "Because she's a black woman." The third event Bey described lacks any content regarding why there could have been discrimination.

However, a "discrimination plaintiff who offers such evidence must account for the qualified applicant pool . . .; mere summary of the demographic composition of the applicant pool is insufficient" to show that discrimination was more likely than not a reason for the employer's actions. Haley v. City of Plainfield, No. 05-2236., 2006 WL 267208, *3 (3d Cir. 2006) citing Ezold, 983 F.2d at 542-43. "Mere personal beliefs, conjecture and speculation are insufficient to support an inference of [racial] discrimination." Chappell, 803 F.2d at 268 citing Elliott v. Group Med. & Surgical Serv., 714 F.2d 556, 567 (5th Cir. 1983). Cameron and Bey's testimony only offers believes, conjectures, and speculations without sufficient context to support an inference of

discrimination. "Such an inference may be acceptable at the prima facie stage of the analysis . . . where the inquiry is based on a few generalized factors . . . but not necessarily at the pretext stage where the factual inquiry into the alleged discriminatory motives of the employer has risen to a new level of specificity." Simpson, 142 F.3d at 646 (referring to allegations where plaintiff "singles out one white person who was treated more favorably when there were other white persons who were treated less favorably that other black persons.").

As discussed above, the evidence demonstrates that Verizon was willing to keep Cameron working on the project if Infosys paid him out of its own funds. If Verizon was attempting to discriminate against Cameron, it would not have offered Infosys the option of retaining his services. Cameron has not produced any evidence to suggest otherwise. Cameron and Bey's testimony lacks sufficient probative force to support an inference that discrimination was more likely than not Verizon's motivating factor when it told Infosys it had to either pay for Cameron itself or let him go.

Cameron has failed to show any incoherencies, inconsistencies, or contradictions with Verizon's actions and its proffered reason. Nor has Cameron shown any probative evidence with which a reasonable factfinder could conclude that discrimination was more likely than not a motivating factor behind Verizon's actions. I will therefore grant Verizon's motion for summary judgment on Cameron's Title VII claim.

IX. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

Cameron claims that Verizon tortiously interfered with his contractual relationship with Infoconsulting in violation of Pennsylvania common-law. To establish a claim of tortious interference with contract, Cameron must show the following four elements:

> (1) the existence of a contractual, or prospective contractual relationship between the complainant and a third party;
> (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring;
> (3) the absence of privilege or justification on the part of the defendant; and
> (4) the occasioning of actual legal damage as a result of the defendant's conduct.

Remick v. Manfredy, 238 F.3d 248, 264 (3d Cir. 2001) quoting Pelagatti v. Cohen, 536 A.2d 1337, 1343 (Pa. 1988). There is no dispute that Cameron had an existing contract with the third party, Infoconsulting. Additionally, there is no dispute that Cameron's services were terminated and that he suffered actual damages from the termination. There is, however, a dispute as to whether the purpose of Verizon's actions were intended to harm Cameron's relationship with Infoconsulting and if Verizon's actions were justified.

Cameron's sole contention that Verizon tortiously interfered with his contractual relationship with Infoconsulting is that Verizon's actions were motivated by racial prejudice. As explained above, Cameron has not established a basis for a reasonable fact finder to conclude that Verizon's actions were more likely than not motivated by a discriminatory intent. Accordingly, I hold that Verizon did not tortiously interfere with Cameron's contractual relationship with Infoconsulting. Verzion's motion for summary judgment with respect to Cameron's tortious interference with contract claim will be granted.

An appropriate order follows.

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

THURMOND CAMERON	:	CIVIL ACTION
	:	
v.	:	
	:	
INFOCONSULTING INTERNATIONAL, LLC, and VERIZON PENNSYLVANIA INC.	:	NO. 04-4365

ORDER

AND NOW, this 23nd day of May 2006, upon consideration of defendant's motion for summary judgment , plaintiff's response, and defendant's reply thereto, and for the reasons set forth in the accompanying memorandum, it is ORDERED that defendant's motion for summary judgment is GRANTED , and judgment is entered in favor of defendant, Verizon Pennsylvania, on all claims, and against plaintiff, Thurmond Cameron.

It is further ORDERED that plaintiffs claims against defendant Infoconsulting International, LLC, are DISMISSED without prejudice for lack of prosecution. The Clerk of Court is directed to close this case statistically.

s/ Thomas N. O'Neill
THOMAS N. O'NEILL, JR., J.