

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

MARY JANE STELL	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 04-5739
PMC TECHNOLOGIES, INC.	:	

MEMORANDUM

Baylson, J.

August 29, 2006

Plaintiff Mary Jane Stell is a former Program Director for Defendant PMC Technologies. On December 10, 2004, Plaintiff filed a Complaint (Doc. No. 1) under Title VII of the Civil Rights Act of 1964 and 29 U.S.C. §612 against her former employer, alleging gender and age discrimination in the form of wrongful termination and disparity in compensation, as well as a negligent supervision claim. On August 24, 2005, this Court granted Defendant’s Motion to Dismiss with regard to Count III of the Complaint (negligence), but denied the Motion with regard to the other Counts. Presently before the Court is the Defendant’s Motion for Summary Judgment (Doc. No. 23) on the remaining claims.

Summary judgement is appropriate “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 the moving party is entitled to judgement as a matter of law.” Fed. R. Civ. P. 56(c). A material fact is “genuine” where “the evidence is such that a reasonable jury could return a verdict for the non-moving party.” Anderson v. Liberty Lobby,

Inc., 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgement always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the moving party’s initial burden can be met simply by “pointing out to the district court that there is an absence of evidence to support the non-moving party’s case.” Id. at 325. After the moving party has met its initial burden the “adverse party’s response, by affidavits or otherwise provided in this rule, must set forth specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e). Summary judgement is appropriate if the non-moving party fails to rebut by making a factual showing “sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial.” Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party.

The burden-shifting analysis established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), is the appropriate analysis for summary judgement motions in cases alleging employment discrimination. In order to establish a *prima facie* case of discrimination, the plaintiff must demonstrate the existence of four elements: (1) she is a member of a protected class; (2) she was qualified for the position she held; (3) she suffered an adverse employment action; and (4) similarly situated nonmembers of the protected class were treated more favorably than the plaintiff. Saidu-Kamara v. Parkway Corp., 155 F. Supp. 2d 436, 440 (E.D. Pa. 2001). If

the Plaintiff establishes a prima facie case, the burden shifts to the defendant to offer a legitimate, non-discriminatory reason for the adverse employment action. See Texas Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981). If the defendant provides such a reason, the burden then shifts back to the plaintiff to show that the defendant's stated reason was merely a pretext for unlawful discrimination. See id. at 256. In order to satisfy this burden the Plaintiff must "point to some evidence, direct or circumstantial, from which a factfinder could reasonably either (a) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative factor." Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994). The Fuentes court further notes that this requires a plaintiff to put forward "such weakness, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence. Id. at 765. However, the Third Circuit has also stated that "in determining the appropriateness of summary judgment, the court should not consider the record solely in piecemeal fashion, giving credence to innocent explanations for individual evidence, for a jury ... would be entitled to view the evidence as a whole." Abramson v. William Paterson College of New Jersey, 260 F.3d 265, 285 (3d Cir. 2001) (quoting Howley v. Town of Stratford, 217 F.3d 141, 151 (2d Cir. 2000)).

The Court has reviewed Defendant's Motion for Summary Judgment and concludes that it must be denied. Plaintiff, to some extent through her own testimony, has established the elements of a prima facie case for each of her age and gender discrimination claims. Therefore, under McDonnell Douglas, the burden shifts to Defendant. Defendant has shown some non-discriminatory reasons for its termination of Plaintiff and for paying Plaintiff the salary and

bonuses she received. The Court finds however, that Plaintiff has demonstrated significant issues of fact and has adduced some evidence that Defendant's stated reasons may be pretextual. Together, these disputed issues and evidence of pretext are sufficient to preclude summary judgment.¹

As this is a reduction in force case, it is not surprising that there are disputes between the parties as to the identity of comparators, Plaintiff's motives, and Plaintiff's job performance. However, the Court cannot ignore Plaintiff's own views on these issues; Plaintiff is entitled to the opportunity to introduce her evidence in a trial context. Furthermore, the Court will not grant summary judgment when the admissibility of some of Plaintiff's evidence is too close a question to be appropriately decided at this stage of the case.²

For these reasons, the Court will deny the Motion for Summary Judgment.

¹ Plaintiff's complaint also advances a claim (Count IV) under the Pennsylvania Human Rights Act ("PHRA"). This claim is not addressed by the parties in the summary judgment briefing or pre-trial memoranda. The Court will discuss this claim at the pre-trial conference.

² The Court will reserve ruling on Defendant's assertions that Plaintiff's salary/bonus claims are barred by the statute of limitations.

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ORDER

AND NOW, this 29th day of August, 2006, it is hereby ORDERED that Defendant's Motion for Summary Judgment (Doc. No. 23) is DENIED. Trial will begin at 9:00 a.m. on Tuesday, September 12, 2006. The court will hold a final pre-trial conference by telephone on Tuesday, September 5, 2006, at 3:00 p.m; parties are to call into Chambers together.

BY THE COURT:

/s/ MICHAEL M. BAYLSON
Michael M. Baylson, U.S.D.J.